Commission Meeting Date: November 4, 2010 **Agenda Item: 7.a**

PLANNING COMMISSION AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Proposed Amendments to the Development Code
DEPARTMENT:	Planning and Development Services
PREPARED BY:	Jeff Forry, Permit Services Manager
	Steven Cohn, Senior Planner

INTRODUCTION

Amendments to the Development Code are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations. The Planning Commission is the review authority for legislative decisions and is responsible for holding an open record Public Hearing on the official docket of proposed Development Code amendments and making a recommendation to the City Council on each amendment.

A public hearing on these items was held on September 16. The Commission did not make recommendations at that hearing and asked further questions and provided additional guidance on the proposal.

This hearing will offer another opportunity to:

- Briefly review the proposals and respond to the Commission's questions from the September 16 hearing.
- Provide the Commission an opportunity to hear or read additional public testimony, to deliberate and ask further questions of staff, and develop and forward a recommendation to the City Council

BACKGROUND

The purpose of amending the Development Code is to bring the City's land use and development regulations into conformity with the Comprehensive Plan, State of Washington rules and regulations, or to respond to changing conditions or needs of the City.

This group of development code amendments includes three components:

- Modify Chapter 20.30 regarding certain aspects of SEPA (State Environmental Policy Act), including:

1. Remove requirement for SEPA review of categorically exempt projects within critical areas;
2. Amend appeal process for Type C quasi-judicial actions.

- Rewrite Chapter 20.70 SMC including:

  1. Remove technical standards from Chapter 20.70 SMC;

  2. Modify provisions for single family frontage improvements.

- Adds a section to the SMC (Development Code, 20.30.340(c)) that formalizes the process to create an annual docket of Comprehensive Plan Amendment for Council review.

A summary of proposed amendments can be found in **Attachments 1-4.**

ANALYSIS

In April of 2010 the Council adopted a series of goals that provide direction to departments and assistance in developing their respective workplans. Included in Council goal number one is a desire to implement the Community Vision by updating key development regulations and to make the permit process clear, timely and predictable through appropriate planning tools. Periodically staff reviews various sections of the Development Code with this goal in mind and identifies candidate amendments. This set of code amendments was discussed at several previous Planning Commission meetings and was the subject of the September 16, 2010 hearing

Following the hearing, the Commission requested staff to carry out additional research, determine whether the research warranted revised recommendations and schedule a new public hearing. Responses to Commissioner's questions are included in the narrative for Issue 1 and in a modified recommendation for Issue 3.

Issue 1 – Environmental Review Procedures

❖ Critical Areas

GMA (Growth Management Act) cities and counties considering adjustments to their categorical exemptions should consider whether the exemption would apply to a project proposed within a critical area. The administrative rules in WAC 197-11-908 provide that:

1. *Each county/city may select certain categorical exemptions that do not apply in one or more critical areas designated in a critical areas ordinance adopted under GMA (RCW 36.70A.060). The selection of exemptions that will not apply may be made from the following subsections of WAC 197-11-800: (1), (2)(a) through (h), (3), (5), (6)(a), (13)(c), (23)(a) through (g), and (24)(c), (e), (g), (h).*

The scope of environmental review of actions within these areas shall be limited to:

(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

All other categorical exemptions apply whether or not the proposal will be located within a critical area. Exemptions selected by an agency under this section shall be listed in the agency's SEPA procedures (WAC 197-11-906).

2. *Proposals that will be located within critical areas are to be treated no differently than other proposals under this chapter, except as stated in the prior subsection. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in a critical area.*

The City's critical area regulations were originally adopted under Ordinance 238 and subsequently amended by Ordinance 324 and 398. The regulations, adopted under RCW 36.70A.060, include best available science as required by RCW 36.70A.172. The regulations provide optimum levels of mitigation for categorically exempt projects. The City also employs qualified professionals as necessary in reaching its decisions on development in or adjacent to critical areas. Accordingly, there is no net loss of environmental evaluation caused by eliminating environmental review for categorically exempt projects. The proposed change to the code does not eliminate permit review.

During the public hearing on September 16, 2010 a commissioner, in response to public comment, raised a question regarding the SEPA review of categorically exempt projects. The proposal would not eliminate permit requirements and review for conformance with the critical area regulations and other adopted codes. Simply stated, proposals that are exempt from environmental review under SEPA would not automatically be exempt from any other review. Many of the activities that are listed as being exempt from the critical areas regulations are either required to meet best management practices or the potential impact has been deemed de minimus.

❖ Appeals

Under the proposed amendment, legislative decisions and the few Type C actions that are heard by the Planning Commission will not have an administrative appeal. Under the amendments, SEPA appeals for these actions would be made directly to Superior Court.

The amendment addresses a conflict with State law requiring that procedural SEPA appeals be consolidated with the predecision hearing if one is held. It also satisfies the requirement that the appeal be heard by the same hearing body or officer conducting the predecision hearing. Currently, in the City's code the SEPA appeal is heard by the Hearing Examiner in all cases but the predecision hearing is held by the Planning Commission for a few Type C actions. The Hearing Examiner is currently conducting predecision hearings on most Type C actions as authorized by the City Council. The amendment removes the administrative appeal for a DNS on Type C actions where the Planning Commission makes the recommendation to City Council after the predecision hearing. In the instance where the Hearing Examiner conducts the pre-decisional hearing, the SEPA appeal will continue to be heard by the Hearing Examiner.

The amendment also removes administrative SEPA appeals that challenge the City's use of its substantive authority under SEPA to condition a DNS or deny all Type C actions. Substantive appeals unlike procedural SEPA threshold appeals may not be consolidated with a predecision hearing on the merits of the proposal, but must be consolidated with an administrative appeal of the decision itself. There is no local agency appeal authority of Type C action, these SEPA appeals must be brought together with appeal of the underlying decision in Superior Court. Former subsections B, C and D are combined in new A (1) and (2) to specify when substantive appeals are allowed rather than using the existing "if any" language.

Finally the provision allowing an extra seven days for a SEPA appeal is clarified to emphasize that the additional requirement of WAC197-11-680(3)(vi)(D) applies only to a permit decision that is filed at the same time as the DNS and not simply all DNS's that receive public comment. The City uses the optional DNS process for most permits which avoids duplicate comment on the DNS and for which additional appeal time is not required.

Comparison with Other Jurisdictions

At the June 17 study session, a Commissioner raised a question about how neighboring jurisdictions handle SEPA appeals. Staff has researched several codes and offers the following information:

Several cities were sampled and it was evident that they employ different methods to meet the statutory requirements for public hearings, decision makers, and SEPA appeals (and none are the same.) This is due to different governmental philosophies and interpretation of the regulations.

Each jurisdiction grants different authorities to planning commissions, hearing examiners, planning directors and city councils. Their processes and procedures reflect the authorities, making a direct comparison of such things as SEPA appeals extremely difficult. However, having discussed this with Shoreline's City Attorney, it is staff's understanding that the process being proposed (specifically--SEPA appeal of certain types of Type C actions) is appropriate given the City's adopted procedures and is consistent with the concepts in SEPA.

Options Considered
The City Attorney provided the following observations and insights into the options that were presented at previous meetings. As part of her research, Ms. Collins conferred with the City's insurance pool, the Washington Cities Insurance Authority. Ms. Collins' full response is in **Attachment 5.** Highlights from it are reproduced below:

Commissioner Kaje's suggested: *Divide the SEPA administrative appeal authority, depending on the grounds of review; i.e., the Planning Commission would hear the SEPA appeal for those actions which they have decision-making authority, if the grounds appealed were (B) – the Director failed to follow applicable procedures in reaching the decision; or (D) – the findings, conclusion or decision prepared by the Director or review authority are not supported by substantial evidence. If grounds (A) – the Director exceeded his or her jurisdiction or authority – or (C) – the Director committed an error of law – are appealed, this appeal would go to Superior Court.*

The risk pool and the City Attorney's Office *would not support* splitting the appeal authority, depending on the grounds appealed. While this option may be legally permissible, it is fraught with flaws and creates greater liability risk.

- First, it is very confusing and would be difficult to administer.
- Second, it raises the issue of an individual trying to file a SEPA appeal with the Planning Commission based on one ground but then, at a later point, after a final decision has been made, attempting to appeal to a different decision-maker on a different ground – thus prompting two or more SEPA appeals. This would likely be in violation of the regulatory reform found in RCW chapter 36.70B, and the requirement for only one consolidated SEPA appeal.
- Finally, this process would favor those who are well skilled in land use permitting and appeal process and disfavor those who are inexperienced and unskilled with land use appeals.

Issue 2 – Engineering Standards – Chapter 20.70

Periodic review of adopted standards and regulations is necessary to insure that there is consistency between policies and the regulations. Review of the Engineering and Utility Development Standards (Chapter 20.70 SMC) was required as a result of the adoption of the 2005 Washington State Department of Ecology Stormwater Manual and modifications to technical manuals employed by the City during development review.

Given the number of recommended changes the chapter has been rewritten and reformatted. In reviewing Chapter 20.70 the following issues were identified:

1. Many of the codified standards were excerpts from various technical manuals that are not referenced in the chapter so their origins are unknown. Technical standards are subject to change and some of the information contained in this chapter is inconsistent with technical engineering manuals employed by the City, State and other local agencies.

2. The City requires frontage improvements for a variety of development activities including individual new single family residences and additions or remodels to single family dwellings where the value exceeds 50% of the improved value of the property. Frontage improvements are intended to offset the impact of the development activity.

   Evaluation of this practice indicates that it is inconsistent with the policies in the Comprehensive Plan. Additionally, several court cases at the state and federal levels have caused re-thinking of this requirement.

Standards revisions

Generally, technical manuals are adopted in their entirety by reference. Subsequent to the adoption of Chapter 20.70 in 2000 an Engineering Development Guide (EDG) was published. The EDG is prepared under the authority granted the director in section 20.70.020 SMC and contains specifications, standardized details, and design standards. The current edition of the EDG establishes the technical manuals (including the 2005 DOE Stormwater Manual) and standards employed for public works projects and development. The intent of the EDG is to provide a set of technical and procedural criteria.

During the most recent review cycle the EDG was reviewed against the provisions in Chapter 20.70. Inconsistencies were identified in the technical standards adopted in this chapter and the technical manuals employed in the EDG.

Procedural criteria are also published in Chapter 20.70. Criteria are established for dedications, streets, sidewalks, and the undergrounding of utilities. This criteria was evaluated against other sections of the SMC and revisions are proposed as necessary to maintain consistency.

Frontage improvements

Comprehensive Plan policy T35 provides that development regulations "require all commercial, multi-family and residential short plat and long plat developments to provide for sidewalks or separated all weather trails, or payment in-lieu of sidewalks." This policy provides clear direction relative to the types of projects that must install sidewalks aka frontage improvements. The authority for mitigation of the impacts on infrastructure for this level of development is provided in the Revised Code of Washington (RCW) and through the use of the City's substantive authority under SEPA. This policy was developed after the adoption of the Development Code and does not extend to individual single family dwellings.

For determining the level of impact of development, the RCW defines "development activity" as any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities. In reviewing current regulations a nexus cannot be drawn to demonstrate that the level of mitigation required for development or redevelopment of an existing platted single family lot is reasonably related to the

development. Nor can it be demonstrated that this level of development "creates additional" demand and need for public facilities.

Issue 3 – Adding a section to SMC 20.30.340 that addresses the Comprehensive Plan Amendment annual docket process

Most cities have regulations that detail the process for developing a Comprehensive Plan docket, which is required by GMA. Shoreline never formalized its process, and while it did not vary a great deal from year to year, there has been some variation. To provide some certainty to the public, staff proposes a process which will be codified. (**See Attachment 3.**)

Amendment Criteria

Section 20.30.350 lists the decision criteria for amendments to the Development Code. Amendments are the mechanism used by the City to bring the land use and development regulations into conformity with the Comprehensive Plan or respond to changing conditions or needs of the City. The City Council has identified a need to update key development regulations and to make the permit process clear, timely and predictable through appropriate planning tools. The proposed amendments have been reviewed for consistency with this vision and the following criteria:

1. The amendment is in accordance with the Comprehensive Plan.

   One of the thirteen statutory goals of the GMA incorporated into the Comprehensive Plan is to "encourage predictable and timely permit process." Inconsistencies in appeal processes between local ordinances and SEPA is a cause for delay and potential liabilities in the permitting process. Issue 1 strives to resolve this conflict.

   To further support this goal, technical standards for development should support and supplement development regulations. Ad-hoc, piecemeal recital of various standards intertwined with regulation does not give a clear concise guide for City and private improvement projects. Cities routinely maintain administrative guides or manuals that provide the basis for technical engineering decisions. It is with this in mind and in accordance with the authorities in SMC 20.70 that the amendments to Chapter 20.70 SMC are proposed.

   The Citizen Participation section of the Comprehensive Plan includes policies that encourage more active citizen participation. These would be enhanced with a formalized Comprehensive Plan Amendment Process so that, on a yearly basis, citizens will know when and where they can find information about proposed amendments and the schedule for review.

2. The amendment will not adversely affect the public health, safety or general welfare.

Re: SEPA. Amendments to the appeal provisions provide consistency between the City's environmental regulations and SEPA. Providing consistency does not adversely affect the general public welfare.

Re: Engineering Standards. The constant of employing technical resources that are consistent with recognized standards provides for a safe-built environment. A safe-built environment protects the public health, safety and general welfare.

Re: Formalizing the Docket Process. Proposed amendment clarifies and codifies the rules for proposing amendments for the annual review process. This will make the process more predictable, and will not adversely affect the public health, safety or welfare.

3. The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.

The amendments are consistent with the Community Vision adopted as part of the City Council goals. In establishing these goals Council was acting on behalf of the citizens and property owners. Given the amendments are consistent with the vision they are "not contrary to the best interest" of the citizens.

TIMING & SCHEDULE

The following is a chronology of the amendment process for the proposed amendments:

Application #301642 – Modify Chapter 20.30 re: SEPA and rewrite Chapter 20.70

Notice to Washington State Dept. of Commerce	June 15, 2010
Planning Commission Study Session	June 17, 2010
SEPA determination issued	June 30, 2010
Initial Public Hearing	September 16, 2010
2nd Public Hearing Notice	October 13, 2010
2nd Public Hearing	November 4, 2010

Application #301650 – Adding a section to SMC 20.30.340 that addresses the Comprehensive Plan Amendment annual docket process

Notice to Washington State Dept. of Commerce	July 12, 2010
Planning Commission Study Session	July 15, 2010
SEPA determination	Categorically exempt per WAC 197-11-800
Initial Public Hearing	September 16, 2010
2nd Public Hearing Notice	October 13, 2010
2nd Public Hearing	November 4, 2010

AMENDMENT FORMAT

The attachments include a copy of the original and proposed amending language shown in legislative format. Legislative format uses ~~strikethroughs~~ for proposed text deletions and underlines for proposed text additions. In some cases the number amendments are extensive, and, rather than providing them in legislative format (which would be confusing because of the sheer volume of strikeouts and insertions) the proposed revised language is offered.

OPTIONS

1. Recommended approval of Proposed Development Code Amendments; or

2. Modify or delete selected Proposed Development Code Amendments.

RECOMMENDATION

Staff recommends that the Planning Commission approve the code amendments and forward them to the City Council for action.

NEXT STEPS

At the November 4 meeting, the Commission will accept and consider public testimony and may make a recommendation to the Council. If you have questions or comments prior to the meeting, please contact Steven Cohn at 206-801-2511 or email him at scohn@shorelinewa.gov.

ATTACHMENTS

Attachment 1: Amendments to 20.30, Subchapter 8 – Environmental Procedures
Attachment 2: Amendments to Chapter 20.70 – Engineering and Utilities Development Standards.
Attachment 3: Amendments to Chapter 20.30.340 – Amendment and Review of the Comprehensive Plan
Attachment 4: Administrative amendments supporting issues 1 & 2
Attachment 5: City Attorney analysis of options on the Appeal process
Attachment 6: Minutes from September 16, 2010 public hearing

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20.30.550 Categorical exemptions and threshold determinations – Adoption by reference.

The City adopts the following sections of the SEPA Rules by reference, as now existing or hereinafter amended, as supplemented in this subchapter:

WAC

197-11-300 Purpose of this part.
197-11-305 Categorical exemptions.
197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-355 Optional DNS process.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.
197-11-800 Categorical exemptions ~~(flexible thresholds)~~.
~~*Note: the lowest exempt level applies unless otherwise indicated.*~~
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.

(Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(g), 2000).

20.30.560 Categorical exemptions – Minor new construction.

The following types of construction shall be exempt, except: 1) when undertaken wholly or partly on lands covered by water; ~~2) the proposal would alter the existing conditions within a critical area or buffer~~; or 2~~3~~) a rezone or any license governing emissions to the air or discharges to water is required.

A. The construction or location of any residential structures of four dwelling units.

B. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles.

C. The construction of a parking lot designed for 20 automobiles.

D. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder. (Ord. 324 § 1, 2003; Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(h), 2000).

20.30.680 Appeals

A. Any interested person may appeal a threshold determination or ~~and~~ the conditions or denials of a requested action made by a nonelected official pursuant to the procedures set forth in this section and Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals. No other SEPA appeal shall be allowed.

~~B. Appeals of threshold determinations are procedural SEPA appeals which are conducted by the Hearing Examiner pursuant to the provisions of Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals, subject to the following:~~

1. Only one administrative appeal of each threshold determination shall be allowed on a proposal. Procedural appeals shall be consolidated in all cases with substantive SEPA appeals, if any, involving decisions to condition or deny an action pursuant to RCW 43.21C.060 with the public hearing or appeal, if any, on the proposal, except for appeals of a DS.
2. As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight.
3. An appeal of a DS must be filed within 14 calendar days following issuance of the DS.
4. All SEPA ~~An~~ appeals of a DNS for actions classified in SMC 20.30, Subchapter 2, Types of Actions, as Type A or B, or C actions for which the Hearing Examiner has review authority ~~in Chapter 20.30 SMC, Subchapter 2, Types of Actions,~~ must be filed within 14 calendar days following notice of the threshold determination as provided in SMC 20.30.150, Public notice of decision; provided, that the appeal period for a DNS for Type A~~,~~ or B~~, or C~~ actions issued at the same time as the final decision shall be extended for an additional seven calendar days if WAC 197-11-340(2)(a) applies.
5. For Type C actions for which the Hearing Examiner does not have review authority or for Type L actions ~~not classified as Type A, B, or C actions in Chapter 20.30 SMC, Subchapter 2, Types of Actions~~, no administrative appeal of a DNS is permitted.
6. The Hearing Examiner shall make a final decision on all procedural SEPA determinations. The Hearing Examiner's decision may be appealed to superior court as provided in Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals.

~~C. The Hearing Examiner's consideration of procedural SEPA appeals shall be consolidated in all cases with substantive SEPA appeals, if any, involving decisions to condition or deny an application pursuant to RCW 43.21C.060 and with the public hearing or appeal, if any, on the proposal, except for appeals of a DS.~~

~~D. Administrative appeals of decisions to condition or deny applications pursuant to RCW 43.21C.060 shall be consolidated in all cases with administrative appeals, if any, on the merits of a proposal. See Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearing and Appeals.~~

~~E.~~B. Notwithstanding the provisions of subsection~~s~~ (A) ~~through (D) of this section~~, the Department may adopt procedures under which an administrative appeal shall not be provided if the Director finds that consideration of an appeal would be likely to cause the Department to violate a compliance, enforcement or other specific mandatory order or specific legal obligation. The Director's determination shall be included in the notice of the SEPA determination, and the Director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action

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Chapter 20.70
Engineering and Utilities
Development Standards

Subchapter 1. General Engineering Provisions

20.70.010 Purpose.
Reworded purpose statement. Removed regulatory language.

20.70.020 Engineering Development Guide.
Reworded for clarification and added cite to 20.10.050. A clear link to the authority granted to the director to publish standards and procedures is established.

~~**20.70.030**~~ **Required street improvements.**
Moved to 20.70.310 – Subchapter 4
Clarified when frontage improvements are required to address nexus to impact. Clarification lead to a change in voluntary contributions (fee in-lieu) collected for system improvement. Provides consistency with RCW 82.02 and court decisions regarding voluntary payments.

~~**20.70.035**~~ **Required stormwater drainage facilities.**
Moved to 20.70.220 – Subchapter 4

Subchapter 2. Dedications - *Section Renumbered/reorganized*

20.70.040 Purpose.
Summarized purpose statement and added a new General section to identify when dedications could be required

20.70.050 Dedication of right-of-way.
Clarified wording

20.70.060 Dedication of stormwater facilities – Drainage facilities accepted by the City.

20.70.070 Dedication of stormwater facilities – Drainage facilities not accepted by the City.
Combined .060 and .070 into one section.

20.70.080 Dedication of open space.
Wording modified to include critical areas.

20.70.090 Easements and tracts.
Added language to clarify that tracts do not represent a building site.

Subchapter 3. Streets - *Section Renumbered/reorganized*

20.70.100 Purpose.
Wording changes throughout to incorporate Transportation Master Plan

20.70.110 Street classification.

20.70.120 Street plan.

~~**20.70.130 Street trees.**~~
Deleted to eliminate duplication. Landscaping chapter (20.50.480) providesChapter 12 SMC regulates activities in the right-of-way. Specific criteria for street landscaping/trees are based on the street classification and specific street segment. This will be further clarified by the

Transportation Master Plan. Landscaping provisions requiring street trees has also been modified to permit flexibility.

~~**20.70.140 Truck routes.**~~

Deleted section. Discussion of truck routes is not necessary.

20.70.150 Street naming and numbering.

20.70.160 Private streets.

~~**20.70.170 Sight clearance at intersections – Purpose.**~~

~~**20.70.180 Sight clearance at intersections – Obstruction of intersection.**~~

~~**20.70.190 Sight clearance at intersections – Sightline setbacks for intersection types.**~~

~~**20.70.200 Sight clearance at intersections – Obstructions allowed.**~~

Deleted sections. Conflict with WSDOT Manual and other technical standards and do not provide a comprehensive evaluation of access management. General engineering principles for access management have been added to the Engineering Development Guide.

Subchapter 4. ~~Sidewalks, Walkways, Paths and Trails~~

Created new subchapter 4 and incorporated required improvements for frontage, stormwater, pathways. Wording in these sections was changed to meet reformatting.

~~**20.70.210 Purpose.**~~

~~**20.70.220 Required installation.**~~

~~**20.70.230 Location.**~~

Subchapter 5. Utility Standards

Clarified language by adding the term service connection. Title 13 regulates when Utilities must underground their facilities, the Development Code specifies when development triggers for undergrounding of service connections.

Reformatted section

20.70.440 Undergrounding of electric and communication facilities – Purpose.

20.70.470 Undergrounding of electric and communication facilities – When required.

Chapter 20.70
Engineering and Utilities Development Standards

SUBCHAPTER 1. General Engineering Provisions

20.70.010 Purpose.
The purpose of this chapter is to establish engineering regulations and standards to implement the Comprehensive Plan and provide a general framework for relating the standards and other requirements of this Code to development.

20.70.020 Engineering Development Guide.
Pursuant to SMC Section 20.10.050 The Director is authorized to prepare and administer an "Engineering Development Guide". The Engineering Development Guide includes processes, design and construction criteria, inspection requirements, standard plans, and technical standards for engineering design related to development. The specifications shall include, but are not limited to:

A. Street widths, curve radii, alignments, street layout, street grades;
B. Intersection design, sight distance and clearance, driveway location;
C. Block size, sidewalk placement and standards, length of cul-de-sacs, usage of hammerhead turnarounds;
D. Streetscape specifications (trees, landscaping, benches, other amenities);
E. Surface water and stormwater specifications;
F. Traffic control and safety markings, signs, signals, street lights, turn lanes and other devices be installed or funded; and
G. Other improvements within rights-of-way.

SUBCHAPTER 2. Dedications

20.70.110 Purpose.
The purpose of this subchapter is to provide guidance regarding the dedication of facilities to the City.

20.70.120 General

A. Dedication shall occur at the time of recording for subdivisions, and prior to permit issuance for development projects.
B. Dedications may be required in the following situations:
    1. When it can demonstrated that the dedications of land or easements within the proposed development or plat are necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply;
    2. To accommodate motorized and nonmotorized transportation, landscaping, utilities, surface water drainage, street lighting, traffic control devices, and buffer requirements as required in subchapter 4, Required Improvements, and subchapter 5, Utility Standards;
    3. Prior to the acceptance of a private street, private stormwater drainage system or other facility for maintenance;
    4. When the development project abuts an existing substandard public street and additional right-of-way is necessary to incorporate future frontage improvements as set forth in the Transportation Master Plan and the Engineering Development Guide for public safety; or

5. Right-of-way is needed for the extension of existing public street improvements necessary for public safety.

20.70.130 Dedication of Right-of-Way

A. The Director may grant some reduction in the minimum right-of-way requirement where it can be demonstrated that sufficient area has been provided for all frontage improvements.

B. The City may accept dedication and assume maintenance responsibility of a private street only if the following conditions are met:
   1. All necessary upgrades to the street to meet City standards have been completed;
   2. All necessary easements and dedications entitling the City to properly maintain the street have been conveyed to the City;
   3. The Director has determined that maintenance of the facility will contribute to protecting or improving the health, safety, and welfare of the community served by the private road; and
   4. The City has accepted maintenance responsibility in writing.

20.70.140 Dedication of stormwater facilities

A. The City is responsible for the maintenance, including performance and operation, of drainage facilities which the City has accepted for maintenance. The City may require the dedication of these facilities.

B. The City may assume maintenance of privately maintained drainage facilities only if the following conditions have been met:
   1. All necessary upgrades to the facilities to meet current City standards have been completed;
   2. All necessary easements or dedications entitling the City to properly maintain the drainage facility have been conveyed to the City;
   3. The Director has determined that the facility is in the dedicated public road right-of-way or that maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
      a. Flooding;
      b. Downstream erosion;
      c. Property damage due to improper function of the facility;
      d. Safety hazard associated with the facility;
      e. Degradation of water quality or in-stream resources; or
      f. Degradation to the general welfare of the community; and
   4. The City has accepted maintenance responsibility in writing.

C. The Director may terminate the assumption of maintenance responsibilities in writing after determining that continued maintenance will not significantly contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
   1. Flooding;
   2. Downstream erosion;
   3. Property damage due to improper function of the facility;

4. Safety hazard associated with the facility;
5. Degradation of water quality or in-stream resources; or
6. Degradation to the general welfare of the community.

D. A drainage facility which does not meet the criteria of this section shall remain the responsibility of the persons holding title to the property for which the facility was required.

20.70.150 Dedication of open space.

A. The City may accept dedications of open space and critical areas which have been identified and are required to be protected as a condition of development. Dedication of such areas to the City will be considered when:
   1. The dedicated area would contribute to the City's overall open space and greenway system;
   2. The dedicated area would provide passive recreation opportunities and nonmotorized linkages;
   3. The dedicated area would preserve and protect ecologically sensitive natural areas, wildlife habitat and wildlife corridors;
   4. The dedicated area is of low hazard/liability potential; and
   5. The dedicated area can be adequately managed and maintained.

20.70.160 Easements and tracts

The purpose of this section is to address easements and tracts when facilities on private property will be used by more than one lot or by the public in addition to the property owner(s).

A. **Easements.**
   1. Easements may be used for facilities used by a limited number of parties. Examples of situations where easements may be used include, but are not limited to:
      a Access for ingress and egress or utilities to neighboring property;
      b. Design features of a street necessitate the granting of slope, wall, or drainage easements; or
      c. Nonmotorized easements required to provide pedestrian circulation between neighborhoods, schools, shopping centers and other activity centers even if the facility is not specifically shown on the City's adopted nonmotorized circulation plan maps.
   2. Easements granted for public use shall be designated "City of Shoreline Public Easement." All easements shall specify the maintenance responsibility in the recording documents.

B. **Tracts**
   1. Tracts should be used for facilities that are used by a broader group of individuals, may have some degree of access by the general public, and typically require regular maintenance activities. Examples of facilities that may be located in tracts include private streets, drainage facilities serving more than one lot, or critical areas.

2. Tracts are not subject to minimum lot size specifications for the zone, although they must be large enough to accommodate the facilities located within them.
3. Tracts created under the provisions of this subchapter shall not be considered a lot of record unless all zoning, dimensional, and use provisions of this code can be met.

SUBCHAPTER 3. Streets

20.70.210 Purpose.

The purpose of this subchapter is to classify streets in accordance with designations of the Comprehensive Plan and to ensure the naming of new streets and assignment of new addresses occurs in an orderly manner.

20.70.220 Street classification.

Streets and rights-of-way are classified in the Transportation Master Plan.

20.70.230 Street plan.

Streets shall be designed and located to conform to the adopted plans. Where not part of an adopted plan, new streets shall be designed to provide for the appropriate continuation of existing streets.

The Public Works Department shall maintain a list of public streets maintained by the City.

20.70.240 Private streets.

Local access streets may be private, subject to the approval of the City. If the conditions for approval of a private street cannot be met then a public street will be required. Private streets may be allowed when all of the following conditions are present:

A. The private street is located within a tract or easement; and
B. A covenant, tract, or easement which provides for maintenance and repair of the private street by property owners has been approved by the City and recorded with King County; and
C. The covenant or easement includes a condition that the private street will remain open at all times for emergency and public service vehicles; and
D. The private street would not hinder public street circulation; and
E. The proposed private street would be adequate for transportation and fire access needs; and
F. At least one of the following conditions exists:
    1. The street would ultimately serve four or fewer single-family lots; or
    2. The private street would ultimately serve more than four lots, and the Director determines that no other access is available; or
    3. The private street would serve developments where no circulation continuity is necessary.

20.70.250 Street naming and numbering.

The purpose of this section is to establish standards for designating street names and numbers, and for addressing the principal entrances of all buildings or other developments.

A. All streets shall be named or numbered in the following manner:
    1. Public or private street names and/or numbers shall be consistent with the established grid system as determined by the Department. Named streets can only be assigned when the numbered grid is determined infeasible by the Department. The Department may change the existing public or private street name if it is determined to be inconsistent with the surrounding street naming system.
    2. All streets shall carry a geographic suffix or prefix. Streets designated as "Avenues" shall carry a geographic suffix and be in a north-south direction, and streets designated as "Streets" shall carry a geographic prefix and be in an east-west direction. Diagonal streets are treated as being either north-south or east-west streets. Names such as lane, place, way, court, and drive may be used on streets running either direction.
    3. Only entire street lengths or distinct major portions of street shall be separately designated.
    4. In determining the designation, the Department shall consider consistency with the provisions of this section and emergency services responsiveness including Emergency-911 services.

B. Building addresses shall be assigned as follows:
    1. New Buildings. The assignment of addresses for new buildings shall occur in conjunction with the issuance of a building permit.
    2. New Lots. The assignment of addresses for new lots created by subdividing shall occur during project review and be included in the recording documents.
    3. Previously Unassigned Lots. Lots with no address of record shall be assigned an address and the property owner shall be notified of the address.
    4. The assignment of addresses shall be based on the following criteria:
        a. Even numbers shall be used on the northerly side of streets named as east-west and on the easterly side of streets named as north-south.
        b. Odd numbers shall be used on the southerly side of streets named as east-west and on the westerly side of streets named as north-south. Addresses shall be assigned whole numbers only.
        c. In determining the address assignment, the Department shall consider the consistency with the provisions of this section, consistency with the addressing needs of the area, and emergency services.

C. All buildings must display addresses as follows:
    1. The owner, occupant, or renter of any addressed building or other structure shall maintain the address numbers in a conspicuous place over or near the principal entrance or entrances. If said entrance(s) cannot be easily seen from the nearest adjoining street, the address numbers shall be placed in such other conspicuous place on said building or structure as is necessary for visually locating such address numbers from the nearest adjoining street.
    2. If the addressed building or structure cannot be easily seen or is greater than 50 feet from the nearest adjoining street, the address numbers shall be placed

on a portion of the site that is clearly visible and no greater than 20 feet from the street.

3. The address numbers shall be easily legible figures, not less than three inches high if a residential use or individual multifamily unit, nor less than five inches high if a commercial use. Numbers shall contrast with the color of the structure upon which they are placed, and shall either be illuminated during periods of darkness, or be reflective, so they are easily seen at night.

SUBCHAPTER 4. Required Improvements.

20.70.310 Purpose

The purpose of this subchapter is to provide safe and accessible transportation facilities for all modes of travel as described in the Comprehensive Plan, Transportation Master Plan, and the Parks, Recreation and Open Space Plan.

20.70.320 Frontage improvements.

Frontage improvements required for subdivisions pursuant to RCW 58.17 and SMC 20.30, Subchapter 7, and to mitigate identified impacts, shall be provided pursuant to this section. When required, frontage improvements shall be installed as described in the Transportation Master Plan and the Engineering Development Guide for the specific street classification and street segment

A. Standard frontage improvements consist of curb, gutter, sidewalk, amenity zone and landscaping, drainage improvements, and pavement overlay to one-half of each right-of-way abutting a property as defined for the specific street classification. Additional improvements may be required to ensure safe movement of traffic, including pedestrians, bicycles, transit, and nonmotorized vehicles. The improvements can include transit bus shelters, bus pullouts, utility under grounding, street lighting, signage, and channelization.

B. Frontage improvements are required for:
   1. All new multifamily, nonresidential, and mixed-use construction;
   2. Remodeling or additions to multifamily, nonresidential, and mixed-use buildings or conversions to these uses that increase floor area by 20 percent or greater, as long as the original building footprint is a minimum of 4,000 square feet, or any alterations or repairs which exceed 50 percent of the value of the previously existing structure;
   3. Subdivisions;
      Exception:
      i. Subdivisions, short plats, and binding site plans where all of the lots are fully developed.
   ~~4. New development on vacant lots platted before August 31, 1995.~~

C. Exemptions to some or all of these requirements may be allowed if the street will be improved as a whole through a Local Improvement District (LID) or Capital

Improvement Project scheduled to be completed within five years of permit issuance. In such a case, a contribution may be made and calculated based on the improvements that would be required of the development. Contributed funds shall be directed to the City's capital project fund and shall be used for the capital project and offset future assessments on the property resulting from an LID. An LID "no-protest" commitment shall also be recorded. Adequate interim levels of improvements for public safety shall be required.

D. Required improvements shall be installed by the applicant prior to final approval or occupancy.

E. For subdivisions the improvements shall be completed prior to final plat approval or post a bond or other surety as provided for in SMC 20.30.440.

20.70.330 Surface water facilities.

A. All development and redevelopment as defined in the Stormwater Manual shall provide stormwater drainage improvements that meet the minimum requirements of 13.10 SMC.
B. Development proposals that do not require City-approved plans or a permit must meet the requirements specified in 13.10 SMC.
C. Required improvements shall be installed by the applicant prior to final approval or occupancy.
D. For subdivisions the improvements shall be completed prior to final plat approval or post a bond or other surety as provided for in SMC 20.30.440.

20.70.340 Sidewalks, Walkways, Paths and Trails.

A. Sidewalks required pursuant to SMC 20.70.320 and fronting public streets shall be located within public right-of-way or a public easement as approved by the Director.
B. Walkways, paths or trails provided to mitigate identified impacts should use existing undeveloped right-of-way, or, if located outside the City's planned street system, may be located across private property in a pedestrian easement or tract restricted to that purpose.
C. Required sidewalks on public and private streets shall be installed as described in the Transportation Master Plan and the Engineering Development Guide for the specific street classification and street segment.
D. Installation, or a financial security of installation subject to approval by the Director, is required as a condition of development approval.

SUBCHAPTER 5. Utility Standards

20.70.410 Purpose.

The purpose of this subchapter is to establish when new and existing service connections including telephone, cable television, electrical power, natural gas, water, and sewer, are to be installed and/or placed underground.

20.70.420 Utility installation

Required utility improvements shall be installed by the applicant prior to final approval or occupancy. For subdivisions the applicant shall complete the improvements prior to final plat approval or post a bond or other surety with the utility provider.

20.70.430 Undergrounding of electric and communication service connections

A. Undergrounding required under this subchapter shall be limited to the service connection and new facilities located within and directly serving the development from the public right-of-way, excluding existing or relocated street crossings.

B. Undergrounding of service connections and new electrical and telecommunication facilities defined in chapter 13.20 SMC shall be required with new development as follows:
   1. All new nonresidential construction, including remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the property and improvements and involves the relocation of service.
   2. All new residential construction and new accessory structures or the creation of new residential lots.
   3. Residential remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the property and improvements and involves the relocation of the service connection to the structure.

C. Conversion of a service connection from aboveground to underground shall not be required under this subchapter for:
   1. The upgrade or change of location of electrical panel, service, or meter for existing structures not associated with a development application; and
   2. New or replacement phone lines, cable lines, or any communication lines for existing structures not associated with a development application.

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Amendment to SMC 20.30.340, adding a section to describe the CPA annual docket process *(The following section is new language)*

The City of Shoreline's process for accepting and reviewing Comprehensive Plan amendments for the annual docket shall be as follows:

A. Amendment proposals will be accepted throughout the year. The closing date for the current year's docket is the last business day in December.

- Anyone can propose an amendment to the Comprehensive Plan. A partially completed application is acceptable prior to the establishment of the final docket, but a completed application must be submitted and applicable fees paid within 6 weeks after the final docket is established.

- There is no fee for submitting a General Text Amendment to the Comprehensive Plan.

An amendment to change the land use designation, also referred to as a Site Specific Comprehensive Plan amendment requires the applicant to apply for a rezone application to be processed in conjunction with the Comprehensive Plan amendment. There are separate fees for a Site Specific CPA request and a rezone application.

B. At least three weeks prior to the closing date, there will be general public dissemination of the deadline for proposals for the current year's docket. Information will include a staff contact, a re-statement of the deadline for accepting proposed amendments, and a general description of the amendment process. At a minimum, this information will be advertised in the newspaper and available on the City's website.

C. Amendment proposals will be posted on the City's website and available at the Department of Planning and Development Services.

D. The DRAFT Docket will be comprised of all complete Comprehensive Plan amendment applications received prior to the deadline.

E. The Planning Commission will review the DRAFT docket in a study session and forward recommendations to the City Council. The draft docket may include Commission recommendations that reflect modification of the originally submitted proposal.

F. A summary of the amendment proposals will be published in the City's newspaper of record.

G. The City Council will establish the FINAL docket at a public meeting.

H. The City will be responsible for developing an environmental review of combined impacts of the proposals on the FINAL docket. Applicants for site specific Comprehensive Plan Amendments will be responsible for providing current accurate analysis of the impacts from their proposal.

I. After the FINAL docket is adopted, staff will analyze each proposal and schedule public hearings before the Planning Commission. The amendments will be reviewed by the Planning Commission in publicly noticed meetings and recommendations made using adopted criteria. The proposed amendments may be altered through the review process.

J. The Commission's recommendations will be forwarded to the City Council for adoption.

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time limits for Decisions

Action	Notice Requirements for Application and Decision [5],[6]	Review Authority, Open Record Public Hearing ~~[1]~~	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	PC [3]	City Council	120 days	20.30.410
2. Rezone of Property [2] and Zoning Map Change	Mail, Post Site, Newspaper	PC [3]	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	PC [3]	City Council	120 days	20.30.330
4. Critical Areas Special Use Permit	Mail, Post Site, Newspaper	HE [1] [4]		120 days	20.30.333
5. Critical Areas Reasonable Use Permit	Mail, Post Site, Newspaper	HE [1] [4]		120 days	20.30.336
6. Final Formal Plat	None	Review by the Director – no hearing	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper ~~[7]~~	PC [3]	City Council	120 days	20.40.505
8. Street Vacation	PC [3]	PC [3]	City Council	120 days	Chapter 12.17 SMC
9. Master Development Plan ~~[8]~~	Mail, Post Site, Newspaper ~~[7]~~	PC [3]	City Council	120 days	20

[1] Including consolidated SEPA threshold determination appeal.

[2] The rezone must be consistent with the adopted Comprehensive Plan.

[3] PC = Planning Commission

[4] HE = Hearing Examiner

[5] Notice of application requirements are specified in SMC 20.30.120.

[6] Notice of decision requirements are specified in SMC 20.30.150.

[7] ~~a. Notice of application shall be mailed to residents and property owners within 1,000 feet of the proposed site. b. Enlarged notice of application signs (a minimum of four feet by four feet) as approved by the City of Shoreline shall be posted on all sides of the parcel(s) that front on a street. The Director may require additional signage on large or unusually shaped parcels.~~

~~c. Applicants shall place a display (nonlegal) advertisement approved by the City of Shoreline in the Enterprise announcing the notice of application and notice of public hearing.~~

~~(8).~~ ~~Information regarding master development plans will be posted on the City's website and cable access channel regarding the notice of application and public hearing.~~

20.30.120 Public notices of application.

A. Within 14 days of the determination of completeness, the City shall issue a notice of complete application for all Type B and C applications.

B. The notice of complete application shall include the following information:

1. The dates of application, determination of completeness, and the date of the notice of application;
2. The name of the applicant;
3. The location and description of the project;
4. The requested actions and/or required studies;
5. The date, time, and place of an open record hearing, if one has been scheduled;
6. Identification of environmental documents, if any;
7. A statement of the public comment period (if any), not less than 14 days nor more than 30 days; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision (once made) and any appeal rights;
8. The City staff Project Manager and phone number;
9. Identification of the development regulations used in determining consistency of the project with the City's Comprehensive Plan; and
10. Any other information that the City determines to be appropriate.

C. The notice of complete application shall be made available to the public by the Department, through any or all of the following methods (as specified in Tables 20.30.050 and 20.30.060):

1. **Mail.** Mailing to owners of real property located within 500 feet of the subject property. Notice of application for SCTF and Master Development Plan permits shall be mailed to residents and property owners within 1,000 feet of the proposed site;
2. **Post Site.** Posting the property (for site-specific proposals). For SCTF and Master Development Plan permits enlarged notice of application signs (a minimum of four feet by four feet) as approved by the City of Shoreline shall be posted on all sides of the parcel(s) that front on a street. The Director may require additional signage on large or unusually shaped parcels;
3. **Newspaper.** The Department shall publish a notice of the application in the newspaper of general circulation for the general area in which the proposal is located. This notice shall include the project location and description, the type of permit(s) required, comments period dates, and the location where the complete application may be reviewed;
4. Information regarding Master Development Plan notice of applications will be posted on the City's website and cable access channel.

D. The Department must receive all comments received on the notice of application by 5:00 p.m. on the last day of the comment period. (Ord. 238 Ch. III § 4(e), 2000).

20.30.180 Public notice of public hearing.

Notice of the time and place of an open record hearing shall be made available to the public by the Department no less than 14 days prior to the hearing, through use of these methods:

- **Mail.** Mailing to owners of real property located within 500 feet of the subject property;
- **Newspaper.** The Department shall publish a notice of the open record public hearing in the newspaper of general circulation for the general area in which the proposal is located;
- **Post Site.** Posting the property (for site-specific proposals).
- Information regarding Master Development Plan public hearings will be posted on the City's website and cable access channel.

20.50.520 General standards for landscape installation and maintenance – Standards.

O. Landscape plans and utility plans shall be coordinated. In general, the placement of trees and large shrubs should adjust to the location of required utility routes both above and below ground. Location of plants shall be based on the plant's mature canopy and root mat width. Root mat width is assumed to be the same width as the canopy unless otherwise documented in a credible print source. Mature tree and shrub canopies may reach an above ground utility such as street lights and power-lines. Mature tree and shrub root mats may overlap utility trenches as long as approximately 80 percent of the root mat area is unaffected. Adjustment of plant location does not reduce the number of plants required for landscaping. Site distance triangle shall be established for visual clearance consistent with the Engineering Development Guide ~~SMC 20.70.170~~ for all driveway exits and entrances and street corners.

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The following will result if the proposed amendments to the SEPA appeals section are adopted:

1. Administrative SEPA appeals of a DNS determination that are associated with the following Type A and Type B appeals will be brought before the Hearing Examiner. This is the code as it exists today; no changes are proposed to appeals for Type A and Type B actions.

    a. SEPA is periodically applied to the following Type A actions:
        i. Building Permit (if not exempt due to size)
        ii. Site Development Permit (if not exempt)
        iii. Clearing and Grading Permit (if not exempt)
        iv. Planned Action Determination

    b. Similarly, SEPA review is periodically applied to the following Type B actions:
        i. Conditional Use Permit (if underlying action is not exempt)
        ii. Shoreline Substantial Development Permit, Shoreline Variance, Shoreline CUP (if underlying action is not exempt)
        iii. Zoning Variance (if underlying action is not exempt)

2. Under the proposed amendments, legislative decisions and a small number of Type C actions will not have an administrative appeal. Type L actions do not currently have an administrative appeal under the SMC, so this change does apply or affect appeals of Type L actions. Type C actions do currently have an administrative appeal. Under the amendments, administrative SEPA appeals for the few Type C actions that are heard by the Planning Commission would be made directly to Superior Court.

3. Other options (not proposed by staff) are to:

    a. Transfer the decision making authority for all Type C actions to the Hearing Examiner and allow the Hearing Examiner to hear SEPA administrative appeals for the Type C actions.
    b. Transfer the decision making authority for all Type C actions to the Planning Commission and allow the Planning Commission to hear SEPA administrative appeals for the Type C actions.
        i. Commissioner Kaje's Query: Divide the SEPA administrative appeal authority, depending on the grounds of review; i.e., the Planning Commission would hear the SEPA appeal for those actions which they have decision-making authority, if the grounds

appealed were (B) – the Director failed to follow applicable procedures in reaching the decision; or (D) – the findings, conclusion or decision prepared by the Director or review authority are not supported by substantial evidence. If grounds (A) – the Director exceeded his or her jurisdiction or authority – or (C) – the Director committed an error of law – are appealed, this appeal would go to Superior Court.

c. Keep the Type C action review authority as-is and transfer the SEPA administrative appeal authority to the City Council.

4. Analysis of the other options:
    a. Hearing Examiner hears all Type C actions and all related SEPA appeals:
        i. This option would take away the Planning Commission's jurisdiction for the following actions and vest it with the Hearing Examiner: Town Center Subarea site-specific rezones; Special Use Permits; and Master Development Plans.
        ii. If SEPA administrative appeals are allowed, it is the City's risk pool (Washington Cities Insurance Authority) and the City Attorney's Office opinion that these appeal should be held by the Hearing Examiner.
            1. The Hearing Examiner is professionally trained, typically an attorney, who acts like a judge, has land use planning expertise and is familiar with handling procedural and substantive appeals.
            2. The Hearing Examiner is objective and under not political influence or pressure. Also, he/she has experience and works with many different jurisdictions and regulations. More efficient and more streamlined appeal process.
    b. Planning Commission hears all Type C actions and all related SEPA appeals:
        i. Conversely, this option would take away the Hearing Examiner's jurisdiction for the following, and vest the jurisdiction with the Planning Commission: Preliminary Formal Subdivisions, all site-specific Rezones, Critical Areas Special Use Permits and Reasonable Use Permits, and Street Vacations.
        ii. The City's risk pool and the City Attorney's Office *would not support* transfer of SEPA appeals to the Planning Commission.
            1. Planning Commissions are not trained in hearing and deciding administrative appeals. The primary role of a Planning Commission is to act in an "advisory capacity" on

planning matters (RCW 35A.63.020) and do research and act as a fact finding agency of the city and to make recommendations on land use planning matters (RCW 35.63.060). Hearing SEPA appeals, although legally permissible, is outside the role of a Planning Commission. Procedural and substantive errors are more likely to occur.

iii. The risk pool and the City Attorney's Office *would also not support* splitting the appeal authority, depending on the grounds appealed. While this option may be legally permissible, it is fraught with flaws and creates greater liability risk. First, it is very confusing and would be difficult to administer. Second, it raises the issue of an individual trying to file a SEPA appeal with the Planning Commission based on one ground but then, at a later point, after a final decision has been made, attempting to appeal to a different decision-maker on a different ground – thus prompting two or more SEPA appeals. This would likely be in violation of the regulatory reform found in RCW chapter 36.70B, and the requirement for only one consolidated SEPA appeal. Finally, this process would favor those who are well skilled in land use permitting and appeal process and disfavor those who are inexperienced and unskilled with land use appeals.

c. City Council hears all administrative SEPA appeals for Type C actions.
   i. The City's risk pool and the City Attorney's Office *would not support* transfer of SEPA appeals to the City Council.
      1. City Councils are not trained in hearing and deciding administrative appeals. Procedural and substantive errors are more likely to occur.

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GENERAL PUBLIC COMMENT

Laethan Wene, Shoreline, said he is on the Board of Director's for Northwest Center, and they want to build a facility for people with disabilities in the City of Shoreline. They would like a letter in writing from the City regarding the process.

Chair Wagner recognized Mayor McGlashan, who was present in the audience.

LEGISLATIVE PUBLIC HEARING ON DEVELOPMENT CODE AMENDMENTS (#301650 AND #301642)

Chair Wagner reviewed the rules and procedures for legislative public hearings. She announced that the Commission received a number of items via email, and a desk packet was provided at the meeting. Because some Commissioners did not have an opportunity to read all of the items, they agreed to take a break after the staff presentation.

Staff Overview and Presentation of Preliminary Staff Recommendation

Mr. Forry reviewed that the Commission has held several study sessions on the proposed amendments, and notice of the hearing was provided in *THE SEATTLE TIMES*, the Planning Commission's webpage, and the Development Code webpage. In addition, notices were submitted to the Department of Ecology (DOE) through the Department of Commerce as required. Staff reviewed the proposed amendments as follows:

- **Modify Chapter 20.30, which deals with the State Environmental Policy Act (SEPA), to remove the requirement for SEPA review of categorically exempt projects that are located within critical areas.**

  Mr. Forry referred to the proposed amendment that would eliminate the review of otherwise exempt action in critical areas. He explained that, currently, the code provides that environmental review is required for any proposal that is conducted within a critical area or critical area buffer. This provision came from SEPA and originally referred to "critical areas" as "environmentally sensitive areas." He explained that, since that time, the City adopted a Critical Areas Ordinance under the provisions of the Growth Management Act (GMA) that requires the use of best available science. Staff now believes that the City's Critical Areas Ordinance has matured to the point where the SEPA tool no longer provides additional protection. Therefore, they are recommending removing the requirement for SEPA review of categorically exempt projects that are located within critical areas. He emphasized that the proposed amendment would not eliminate the review of items that rise above the current thresholds (more than 4 single-family dwelling units, more than 4,000 square feet of new commercial space, clearing and grading over 500 cubic yards). Nor would it eliminate permit provisions for those activities that are conducted in or around critical areas, which would still be subject to review under the City's current standards.

Mr. Forry explained that the environmental review (SEPA) is very narrow and only addresses a proposed structure's impact to a critical area. It does not address the proposed development itself. Therefore, there is a tendency to look at deficiencies in the Critical Areas Ordinance during SEPA review. Staff suggests a better approach is to reevaluate weaknesses and discrepancies in the Critical Areas Ordinance, if appropriate, as a separate issue.

- **Modify Chapter 20.30, which deals with the State Environmental Policy Act (SEPA), to change the appeal process for Type C quasi-judicial actions.**

Ms. Collins explained that the current language allows for the underlying open record public hearing on a permit application to be heard by the Planning Commission for most Type C actions. However, the Hearing Examiner is supposed to hear administrative appeals to SEPA. This results in a split of authority and is inconsistent with the Revised Code of Washington (RCW), which requires that the issues be consolidated into a single hearing and heard by one body. The proposed amendment is intended to address this discrepancy. She reminded the Commission that State law does not require the City to have an administrative SEPA appeal. They can choose to offer it or not. As per the proposed amendment, administrative SEPA appeals would still be provided for Type A and B actions, but they would be eliminated for Type C actions. She acknowledged there are other options to address the issue. For example, the City could transfer all Type C review authority for the underlying permit (master plans, rezones, etc.) to the Hearing Examiner, including the SEPA appeal. Another option is for the Planning Commission to retain all Type C permit review and hear all SEPA appeals or for the Commission to hear Type C permits and the City Council hear SEPA appeals.

Ms. Collins said that neither the City Attorney's Office nor the City's insurance authority recommends the Planning Commission or City Council hear SEPA appeals because they are very litigious in nature. She explained that, typically, SEPA decisions are appealed based on procedural issues, and Hearing Examiners are very familiar with how to hold appeals and limit the issues. Other bodies are not as familiar with the process.

Mr. Forry said that as requested earlier by Commissioner Kaje, staff researched comparisons from other jurisdictions in the area. They found that each jurisdiction is different in the way their structure their permits and assign them to a hearing body. In addition, the authority of the various hearing bodies differs greatly. Therefore, it was difficult for staff to draw a straight-line comparison. Staff believes the City's current process fits their permit structure. He explained that, at this time, the Hearing Examiner and Planning Commission conduct an open record hearing, and any SEPA evaluation issued by the Planning Director is still brought before the Planning Commission in its entirety for consideration as part of the record. Testimony can be taken at the hearing on all of the issues. A complete record can be formed during the Commission or Hearing Examiner hearing, but it would not be considered complete until the City Council has issued a decision or approved a permit. The conditions would be very clear and well-established at that point, and appeals would go to the Superior Court.

Mr. Forry explained that, even though the Planning Director might issue a SEPA decision on an application, the conditions are based on the information received up to that point. Through public

testimony, the Hearing Examiner may identify additional mitigations. These could be added without having to go through an appeal process. Staff believes the City's current process is a bit redundant, depending on what they are trying to accomplish with the public hearing and appeal processes. He suggested the Commission ask themselves if an appeal is intended to be a mechanism to look at a failure in the procedure or decision making process, or is it a mechanism to delay a project. If it is truly a mechanism to look at failures in the process, the Commission and the Hearing Examiner should have an opportunity to create a full record for the City Council to make a final decision. That is why staff recommends that appeals on Type C actions be judicial and not administrative. This would not eliminate any of the administrative processes for Type A and B actions.

- **Rewrite of Chapter 20.70, which deals with engineering guidelines, by moving the technical standards from Chapter 20.70 to the Engineering Development Guide.**

  Mr. Forry explained that, from time to time, staff evaluates how the City is doing business and what technical standards are used during plan review. There are technical standards in place in the Engineering Chapter of the Development Code, primarily with regard to access management, that had no relationship or point in time; and they did not point to a particular engineering manual that staff could identify. Staff is recommending these technical standards be removed from the Development Code and placed in the Engineering Development Guide, which includes all of the various technical engineering manuals adopted by the City. However, when the technical standards were removed, Chapter 20.70 became very fragmented and staff decided to restructure and re-write the provisions in the chapter.

- **Rewrite of Chapter 20.70, which deals with engineering guidelines, by modifying the provisions for single-family frontage improvements.**

  Mr. Forry said staff is recommending an amendment that would remove the frontage requirements for individual single-family dwelling units and additions and alterations to single-family dwelling units. He explained that, currently, the Development Code requires frontage improvements for additions and alterations to single-family dwelling units that exceed 50% of the assessed value of the property and structure. In their review of the provision, staff found the City was asking property owners to do system improvements under a permit that was not generating an impact. The need for frontage improvements is not caused by a remodel, replacement or construction of a single dwelling unit.

  Mr. Forry said staff also found that the City is asking property owners to dedicate right-of-way to implement the frontage improvements. However, by law, the City is required to pay for this right-of-way, and the City is not in a position where they need or want to acquire additional right-of-way. In light of the transportation impact fee proposal that will be coming forward for City Council consideration in the future and because the City cannot draw a nexus to the requirement, staff is recommending the requirement be eliminated for individual single-family dwelling units. However, the proposed amendment would not eliminate frontage improvements for other types of development such as commercial, multi-family, subdivisions, short plats, etc. The City will continue to ask for frontage improvements on any project that would have an impact on the road system. In addition, the amendment would not eliminate the City's ability to ask for improvements to the right-of-way to

correct a safety issue that may exists when a new house is constructed or an existing house is remodeled.

- **Add a new section (20.33.040) to the Development Code to formalize the process for creating an annual Comprehensive Plan Amendment docket for City Council review.**

  Mr. Cohn said the City has never had a formalized process for their Comprehensive Plan docket, which means it changes somewhat from year to year. Staff believes it is appropriate to formalize the process at this time. The proposed amendment states that proposals would be accepted throughout the year, but the deadline would be the last business day in December. It further states that the public would be notified of the deadline three weeks prior to the closing date. At a minimum, the deadline would be advertised in the local newspaper and available on the City's website. After the deadline, all proposals would be posted on the City's website, and a draft docket would be presented to the Planning Commission for review. The docket recommended by the Planning Commission would be posted on the City's website and forwarded to the City Council, who would establish the final docket. Once the final docket has been established, staff would analyze each amendment and provide a recommendation to the Commission. The Commission would review each of the amendments throughout the year and forward a recommendation to the City Council for final approval.

Mr. Forry noted that some of the public comments in the Staff Report were brought forward from previous study sessions and public hearings. They also received additional comments today. One issue was regarding the permitting process, which is not really germane to tonight's discussion, but is germane to the Commission's discussion on process and how they implement the regulations. There was a question about the process used by the church on 155th and 15th for their major expansion project. He noted that City records indicate that the owners of the church property went through a conditional use process in 1999 and 2000, which was a public process and comments were taken. A SEPA review was conducted and a Mitigated Determination of Significance (MDNS) was issued that allowed the project to go forward.

Mr. Cohn entered the following items from the Desk Packet into the record:

- **Exhibit 5:** Minutes from the May 6, 2010 Planning Commission Meeting.
- **Exhibit 6:** Minutes from the June 17, 2010 Planning Commission Meeting.
- **Exhibit 7:** Minutes from July 15, 2010 Planning Commission Meeting.
- **Exhibit 8:** Comment letter from Ms. DiPeso submitted at the June 17, 2010 Planning Commission Meeting.
- **Exhibit 9:** Comment letters from the May 6, 2010 public hearing desk packet.
- **Exhibit 10:** An email chain between Ms. Phelps and Joe Tovar dated July 12, 2010.
- **Exhibit 11:** An email from Mr. Marinac dated July 12, 2010.
- **Exhibit 12:** A comment letter from Mr. Scully dated July 12, 2010.
- **Exhibit 13:** An email from Ms. Roth dated July 13, 2010.
- **Exhibit 14:** An email from Ms. Kellogg dated September 14, 2010.
- **Exhibit 15:** An email from Ms. Kellogg dated September 14, 2010.
- **Exhibit 16:** A letter transmitted by email from Ms. Kellogg dated September 14, 2010.

- **Exhibit 17:** An email from Ms. Kellogg dated September 16, 2010.
- **Exhibit 18:** An email from Ms. Kellogg dated September 16, 2010.
- **Exhibit 19:** A comment letter from Mr. Scully dated September 16, 2010.

Mr. Cohn noted that staff received a number of suggestions about improving public outreach, particularly dealing with advertising public hearings. He expressed his belief that staff has met the letter and spirit of the law in this case, as they do in most cases. They advertised the hearing in *THE SEATTLE TIMES*, sent information to the state, posted information on the Planning Commission webpage, and email links were sent to a list of more than 200 individuals. However, staff is currently researching the suggestion that the City's home page include an announcement of upcoming Planning Commission and City Council public hearings. Staff believes this is a very good idea, and they will try to make it a reality.

Questions by Commission to Staff and Applicant

Commissioner Behrens observed that the majority of the public comment letters and emails address the proposed amendment related to categorical exemptions for SEPA that has apparently been dropped. Mr. Cohn agreed that this amendment is not a subject of tonight's hearing. Commissioner Behrens questioned how necessary it is for the Commission to review public comments on an amendment that is no longer before the Commission for consideration. Mr. Cohn agreed that the bulk of the comments received to date talk about items that are not currently before the Commission for review. He suggested it would be appropriate for the Commission to have a retreat discussion about what information would be appropriate to include in the Commission packets for legislative public hearings.

The Commission recessed the regular meeting at 7:40 p.m. to review Exhibits 10 through 19, which were part of their desk packet. The meeting reconvened at 7:54 p.m.

Vice Chair Perkowski referred to the proposed amendments to Chapter 20.30 and asked if other jurisdictions are having the same issue with State law as it relates to SEPA appeals. Mr. Forry answered that the City is one of the few that has a split hearing process. Most jurisdictions have one hearing body that hears both the open record hearing and the SEPA appeal.

Ms. Collins clarified her earlier comment that there is an option for appeals to go to the City Council. She explained that State law includes an exemption that allows the City Council to hear SEPA appeals that are not consolidated with the underlying permit hearing. Mr. Forry added that if the Council were to hear SEPA appeals they would be closed record hearings, and the focus would be on the environmental process. They would not be allowed to hear other issues regarding the proposal, and they must rule only on the evidence of record and the findings imposed by the hearing body. He summarized that this would be a very complicated and narrow appeal process.

Vice Chair Perkowski asked what the risk would be if the City does not amend the current process. Ms. Collins said they must take action one way or another because they are currently out of compliance with the RCW.

Commissioner Behrens said he was somewhat encouraged by Mr. Forry's comment that SEPA issues could be raised as part of an open record hearing before the Planning Commission for Type C actions. He asked how staff foresees this happening. Mr. Forry responded that if, in their review of an application, the Commission finds that an environmental document and its associated mitigation are weak, they can use their conditioning authority to clarify mitigations and to look at the adequacy of the mitigations based on the testimony and the information at hand. However, any additional conditions they recommend must be based on ordinances, rules and policies.

Commissioner Behrens said he feels better about the proposed change that would eliminate appeals for Type C Actions because the Commission and City Council would have the ability to carefully consider environmental issues as part of their decision-making process. He suggested the process be formalized to provide clear direction to the public about when they should raise environmental issues. Mr. Cohn agreed that would be a good idea for master plan applications because the Commission has the right to condition their approval. However, it would be more difficult to implement this concept for rezone applications because the Commission does not have the right to condition them. If people raise issues during a rezone hearing that have not been addressed, the Commission can use this information to decide whether or not to recommend approval of the rezone.

Commissioner Behrens expressed concern that the Commission would be forced to make decisions on whether to approve or disapprove a rezone even if they feel that serious environmental issues need to be addressed. They would not have the ability to hold up the rezone until the impacts have been mitigated. Mr. Forry said that, typically, impacts associated with rezones are most likely related to subsequent development projects. Most projects that would rise to the level of having a significant impact would be evaluated under SEPA anyway, and impacts could be addressed at that time. The purpose of a rezone process is to validate whether or not the zoning is in conformance with the underlying Comprehensive Plan policies. While a public hearing is required and SEPA is involved, the necessary impacts are not large because, in theory, most of the environmental analysis has been done through the Comprehensive Planning process and the specific environmental impacts of a project would be reviewed at the project level.

Commissioner Kaje observed that, as proposed, if the Planning Director issues a DNS for a Type C action, there would be no way for the Commission to compel the level of analysis that would happen through an Environmental Impact Statement (EIS). Mr. Forry agreed. Commissioner Kaje said he can foresee situations where the Commission refuses to make a decision, sending staff and/or the applicant back to the drawing board to address environmental impacts that should have been considered as part of an EIS. Mr. Forry explained that when a proposal comes forward, the Commission has the option to recommend approval, denial or approval with conditions. If they feel the information is inadequate, they could choose not to act and remand the issue back to staff for further consideration or recommend that the City Council not act on a proposal, and the applicant would be required to refine the application if they want it to move forward. Other options would be to condition it sufficiently to move it forward or to request that staff reconsider their environmental determination, which requires an official process. He said that as more information becomes available, it would be incumbent upon staff to reevaluate their SEPA determination.

Commissioner Behrens said he understands that the City's current appeal process for Type C actions conflicts with the WAC. However, he believes it is appropriate to have another body other than the Commission make decisions related to SEPA since they would be able to isolate their decisions to just the environmental portion of a proposal. He expressed concern that requiring the Commission to request a re-evaluation of a SEPA determination would place them in a difficult position. He would prefer to avoid this possibility entirely. Mr. Forry said that is exactly what the proposed language is intended to accomplish. If the Commission were the formal appeal body, they would be required to function under a very structured environment with very stringent rules. The Commission would craft a very strict record that could go to a judicial appeal. They have much more flexibility during a quasi-judicial hearing before the Planning Commission than they would have if they were conducting the hearing in tandem with an appeal under SEPA. That is why staff recommends they not eliminate appeals, but that the appeals happen after the record is formed and all the conditions have been applied. Courts have recognized in their analysis of SEPA appeals that this type of process could extend the review period, but they also recognized that additional time is already built into the legislation. While it is an option, he said staff does not believe the City's current system lends itself to administrative appeals of Type C actions. The Commission should feel comfortable raising their concerns to staff and requesting additional information to help them make an informed decision, and it is totally appropriate for the Commission to determine they do not have enough information to make a recommendation.

Public Testimony

Debbie Kellogg, Shoreline, said it was useful to finally hear the truth come out about why staff wants to dispense with administrative appeals. Previously, staff stated that the purpose was to promote business development and make the process more predictable. Staff has now indicated they believe people file appeals just to hold up the process, and not to make a better project or to see that the process is fair, just and complete. She noted that over the past 25 years, less than 25 appeals were filed for Type C projects. Of those appeals, only about four were Type III appeals. She summarized that staff is proposing to not even allow an avenue for appeals on Type C projects, which are the most intensive land use actions. She said she finds the proposed amendment mind boggling, and she cannot understand how staff could advocate for the change. She suggested it would be prudent for the City to develop a more granular approach for separating the types of land use actions and how to treat them, instead of cramming them into three types. They should redo the entire process instead of trying to make the current process work.

Commissioner Behrens asked how Ms. Kellogg would address the current conflict with the WAC. Ms. Kellogg suggested they study what other jurisdictions do. For example, Bothell and Issaquah separate land use actions into much more detailed and multi-tiered levels. They base their process on the type of project and how intense it will be. They have established different types of review boards, and assign projects to different types of review authorities. This allows them to get around the conflicts with the WAC because the review bodies also hear the appeals. Again, she suggested that they redo the entire program instead of looking at the problem the same way over and over again.

Elaine Phelps, Shoreline, expressed her belief that a democracy is messy, and tyranny is very efficient. She suggested that when the City removes the citizens' opportunity to provide input and their

accessibility to information and participation in very important local decision, they are removing one of the most important aspects of democracy. It is important for people to know what is going on so they can have a say before action is taken. Anything that diminishes the public's ability to participate is that much less democracy and that much less successful. These types of changes create antagonism and dissention between City staff and the citizens. She urged the Commission to think about how democracy works best. Land use decisions should be made in the local neighborhoods.

Wendy DiPeso, Shoreline, expressed her belief that eliminating administrative appeals would mean citizens would have no recourse except Superior Court. Someone recently said that, "anytime a citizen has to sue the City, that represents a failure." She suggested that, in this case, it also represents an avoidable expense. She observed the irony of tax dollars being spent to defend the City in court against taxpayers who are just watching out for the best interest of their community. In a perfect world, all the codes and land use regulations would be supportive of a healthy community and enforced consistently. In a perfect world, developers would use best-use practices that improve the environment and provide value to the neighborhood. In a perfect world, we would not need a court system, and there would not be contempt of court assessments against the City staff or reason for any appeals. However, they do not have a perfect world, so they are doing the best they can with what they have to work with. She suggested that an appeals process that is outside the court system is a valuable tool that any community needs to stay healthy. She summarized that allowing the City Council to handle administrative appeals would meet the requirements of the Revised Code of Washington (RCW) and retain the right of the public to have a say in issues that affect them.

David Pyle, Shoreline, submitted written comments for the record. He said he was present to talk specifically about the proposed amendment to Chapter 20.30, which would remove the requirement for SEPA review of categorically exempt projects that are located within critical areas. While he fully appreciates staff's reasoning, he suggested they have gone one step too far by exempting projects in all critical areas and not just the critical area buffers. He noted that a whole host of exemptions apply to critical areas under WAC, unless the City specifically states they do not. They have heard from staff that the proposed amendment is generally recommended, but they did not indicate who is making this recommendation. He observed that there is a series of exemptions that do not apply to critical areas, which are sensitive resources in the City. That means that certain actions require SEPA review, which gives the community an opportunity to comment on a proposal. He referred to Chapter 20.80.030 (Exemptions) and said that while it may appear that if SEPA is not required, another permit would be required to address environmental issues. However, this alternate permit may not have an appeal mechanism or a notice requirement. He suggested that Item L in Section 20.80.030. could be interpreted to mean the City could exempt anything and there would be no appeal period or permit requirements except for a basic clearing and grading or building permits. A developer could potentially fill a wetland.

Commissioner Behrens asked Mr. Pyle how he would change the proposed language. Mr. Pyle referred to his written comments, and recommended the language be changed to read, "The following types of construction shall be exempt, except: 1) When undertaken wholly or partly on lands covered by water; and 2) the proposal would alter the conditions of a critical area or stream critical area buffer defined by SMC 20.80."

He explained that right now, the City requires SEPA when work is done within the buffer area, which is ridiculous in most cases. The City is losing out on competitiveness. No one wants to do work in the City because they have to do SEPA every time they get near the buffer. He suggested that the core of SEPA and the Growth Management Act (GMA) is the protection of critical areas resources, which is the actual critical area (wetland, steep slope, etc.) and not the buffer. Anytime someone is proposing to alter or modify a critical area, SEPA should be done. He summarized that the community wants critical areas to be protected, and that is the purpose of the ordinance.

Vice Chair Perkowski observed that work within a wetland would not be exempt under the Critical Areas Ordinance. Therefore, SEPA would be required. Mr. Pyle answered that as per the proposed amendment, any work done within a wetland that meets one of the exemptions would not require SEPA review. That means you could remove up to 500 cubic yards of fill within a wetland without doing SEPA review because it would be exempt. While a permit may be required, the exemptions would determine the type, and the proposed language opens the door to political abuse.

Boni Biery, Shoreline, provided an example of a recent situation that occurred in the City and asked the Commission to consider what doing away with administrative appeal would mean for the citizens. She said she lives a few blocks from the CRISTA Campus, and they recently went through the master development plan process. Almost everyone in the neighborhood was upset with some of the decisions that were made, but no one could afford to take their concerns to judicial review. One person did so only because a brother was a land-use attorney who paid for it. The proposed amendment would put appeals out of the price range of the regular tax-paying citizens and place them into the favor of developers who can afford the process. If that's the intent, getting rid of the administrative appeal is a good idea.

Chair Wagner cautioned the Commission from commenting on the CRISTA Master Plan since there is a pending appeal.

Vice Chair Perkowski asked Ms. Biery what hearing body she would recommend for appeals to Type C actions. Ms. Biery said she cannot give them a recommendation at this time. She can only tell the Commission how it feels to think that she has to have a very large sum of money to even consider an appeal. This eliminates the citizens' ability to participate in the process.

Commissioner Behrens observed that the Commission is faced with a dilemma. The WAC says they can only have one hearing before a single hearing body. It appears from the public comments, that citizens are asking a voluntary organization to act in a very complicated legal process that they are probably not qualified for. He said he would be very uncomfortable trying to wade through a SEPA hearing, and the City Council would likely feel the same way. Ms. Biery said she appreciates this concern. While she does not have an answer, the one thing she has heard tonight that makes sense is to look at the problem in a new way.

Final Questions by the Commission

In response to Commissioner Behren's previous question, Mr. Forry said staff looked at how the proposed amendment would apply to what staff believes is a very streamlined and appropriate permitting system given the level of permits and types of actions the City deals with. Part of his task is to review the City's current process to see how they reflect the community's needs and what the City is trying to accomplish with goals, visioning, etc. He also considers input from the City Council and the community. Dismantling a system that seems to be working fairly well most of the time to address a structural flaw to be compliant with State law seems almost over the top. The choices are very narrow. It is a matter of deciding what path the Commission and City Council want to take. Staff still recommends going with a judicial appeal.

Mr. Forry explained that the proposed amendment would not eliminate public participation in a very public process. The intent is to change the method of appeal. He observed that an individual could go through the process of formulating an appeal in an open record public hearing, with the Commission acting as the hearing body. If the Commission reaches the same conclusion as before the appeal, the individual's next course of action would be to appeal the decision to Superior Court. He said he would not recommend going through a wholesale change of the City's regulations at this point

Ms. Collins pointed out that the criteria for Type C actions include a lot of environmental consideration. Therefore, requiring an additional SEPA review for these applications would be a duplication of process. She emphasized that, as per the proposed amendment, the public would not lose their ability to comment regarding environmental issues, and the City's ability to condition a project based on the Critical Areas Ordinance is more excessive than with SEPA, particularly in regard to a master development plans.

Chair Wagner asked what the appeal process would be if someone did not like a condition that is imposed on an applicant to address an environmental impact. Ms. Collins answered that these appeals would go to Superior Court, as well.

Commissioner Kaje summarized that previous conversation has implied that it would be too difficult for the Commission to take on an appeal role, and he respects the staff's recommendation that neither the Commission nor the City Council should do so. He observed that, currently with Type C decisions, the Planning Commission conducts the hearing and forwards a recommendation, but the City Council makes the final decision. Appeals to City Council decisions must go to Superior Court as per Section 20.30.200 of the Development Code. He summarized that they are not talking about the Commission hearing an appeal on the permit decision. As per the WAC, only two things can be appealed procedurally: the final threshold determination and the final EIS.

Commissioner Kaje referred to Section 20.30.210 (Grounds for an Administrative Appeal) of the Development Code, which states that the "grounds for filing an appeal shall be limited to the following: A) the director exceed his/her jurisdiction or authority; B) the director failed to follow applicable procedures in reaching the decision; C) the director committed an error of law; or D) the findings, conclusions or decision prepared by the director or review authority are not supported by substantial evidence." He agreed the Commission should not have appeal authority for appeals related to Reasons A and C, but they could possibly serve as the hearings body for appeals related to Items B and D. He

reminded the Commission that their purpose is to consider substantial evidence. He suggested they separate the appeal types into separate categories. The Planning Commission could hear appeals related to Reasons B and D, and appeals related to Reasons A and C could go before another hearings body. He noted that State law does not even require SEPA appeals. Therefore, it appears they can be somewhat choosy in how they are done. He noted that implementing this approach would require a change in Section 20.30.200.A, which is a general statement about appeals.

Ms. Collins asked what would happen in the case of an appeal that is not limited to Reasons B and D or Reasons A and C. Commissioner Kaje replied that if they choose to cite either A or C as the reason for their appeal, they would have to go to a higher hearings body. Only appeals related to Reasons B and D could go before the Commission for review. Ms. Collins said this approach would be unique and complicated to implement but could comply with State law. Staff agreed to consider this option further.

Vice Chair Perkowski asked for an example of how Commissioner Kaje's recommendation would play out. Commissioner Kaje reminded the Commission that the appeal would have to be related to a threshold determination or the final EIS. The proposed concept would not be applicable to appeals related to the final permit, which is a City Council decision. As per his proposal, appeals to the threshold determination or the EIS would come before the Commission in conjunction with the public hearing on the permit application. If the Commission decides the SEPA determination is appropriate, they would move onto the open hearing for the permit application. If they decide the SEPA determination is inappropriate, the application would be remanded back to staff for further review.

Vice Chair Perkowski asked staff to describe the City's current process for reviewing appeals to a SEPA determination before an application is presented to the Commission or City Council. Ms. Collins answered that the SEPA determination cannot be challenged before the matter comes before the Commission for review. The proposed amendment would create the ability for someone to challenge a SEPA determination before an application is presented to the Commission for review. That means that before the Commission even talks about the criteria and conditions they want to place on a permit, they will consider whether the environmental review adequately addresses the impacts. Mr. Forry added that any SEPA appeal would be heard at the same hearing as the permit application. The Commission would conduct two separate public hearings on the same evening: one for SEPA and another for the project, itself.

Commissioner Behrens asked if an applicant would be able to appeal for Reasons A and C at a later date if the Commission denies their appeal for Reasons B and D. This could result in a legal quandary of having two SEPA appeals. Commissioner Kaje noted that there is a deadline for appealing SEPA determinations. However, Mr. Forry said that as long as there is an appeal action in process, the timeline would not be limited.

Vice Chair Perkowski referred to Mr. Pyle's comments regarding the proposed amendment to Chapter 20.30, which would remove the requirement for SEPA review of categorically exempt projects that are located within critical areas. Mr. Forry said that Mr. Pyle was referring to the list of over 40 categorical exemptions under SEPA, and not the exemptions listed in the Critical Areas Ordinance. He recalled that the Commission and City Council went through a process to evaluate the criteria in the Critical Areas

Ordinance and identify those activities that are not significant and could be allowed within a critical area or a buffer with no additional environmental evaluation. He explained that if the City is not comfortable allowing an open-ended exemption at the discretion of the Planning Director, they need to reevaluate and possibly amend the Critical Areas Ordinance. They cannot use SEPA to evaluate the inadequacy of the Critical Areas Ordinance. Staff recommends that the level of review provided under the normal stormwater regulations, land-development regulations, and permit criteria give adequate protection. Therefore, SEPA seems a bit redundant in this particular case.

Vice Chair Perkowski asked why the City could not eliminate some of the exemptions from the Critical Areas Ordinance. Mr. Forry said it is possible to eliminate some of the exemptions identified in the Critical Areas Ordinance, but State law is very specific on how the SEPA evaluation is enacted. The City must choose a level of categorical exemption, and then decide whether or not it would apply to critical areas. For instance, citing of a cell tower that is under a certain height and size is categorically exempt under SEPA. To have it affected by the critical area SEPA component, the City would have to say whether or not it is exempt as it pertains to SEPA. This would not be written into the Critical Areas Ordinance, since the items in the Critical Areas Ordinance are intended to identify certain activities that are allowed without additional evaluation.

Commissioner Kaje referred to Section 20.80.030.B.4 (exemptions) of the Critical Areas Ordinance, and said it is very common to have exemptions for utilities. However, the proposed change for SEPA may result in a double loophole for projects that are of a scale that should have triggered closer review. For example, if they remove the language from Section 20.30.560 as proposed, there would be no review based on either SEPA or the Critical Areas Ordinance if a 499-yard fill is done for a utility project. Mr. Forry emphasized that the proposed change would only apply to those activities that fall below an exempt threshold. The relocation of a sewer line may be exempt from strict compliance with the Critical Areas Ordinance criteria if it is mandated by the City. However, most sewer lines are over 8 inches in size and would still require environmental review. The proposed amendment merely takes away the SEPA review on those proposals that would otherwise be categorically exempt. A cut and fill of 100 cubic yards is categorically exempt under the SEPA rules, but if it occurs in or around a critical area, SEPA would be required by the Critical Areas Ordinance. He summarized that staff believes the existing regulations in the Critical Areas Ordinance are adequate to address these situations. In addition, an applicant would need approval from the Department of Ecology and from the Corps of Engineers if a wetland is involved.

Commissioner Behrens referred to Item I of Section 20.33.040, and asked if all of the required analysis must be done by the applicant at the time a site-specific Comprehensive Plan amendment is submitted. Mr. Cohn said staff would likely allow applicants to submit site-specific Comprehensive Plan amendments without the required analysis for the draft docket. However, after an item has been placed on the final document a few months later, a complete application would be required. Commissioner Behrens suggested that the time frame and application process should be made very clear in the language. Mr. Cohn concurred and agreed to make the appropriate changes.

Mr. Cohn explained that when site-specific Comprehensive Plan amendments are submitted in conjunction with a rezone application, the two items would be bundled into one public hearing before

the Planning Commission and the more stringent quasi-judicial process would be applied. He noted that a Comprehensive Plan change is a policy question, and the City Council tends not to give the Hearing Examiner policy questions to deliberate on.
Vice Chair Perkowski referenced Items F and J of the proposed new Section 20.33.040 and voiced his opinion that the language is vague as to the Planning Commission's role in the docketing process. Mr. Cohn explained that the Commission would review the proposed amendments on the final docket based on criteria found in the Comprehensive Plan. However, their review of the draft docket would be a general decision that is not based on any particular criteria. The Commission agreed that this information should be clearly spelled out in Items F and J. Vice Chair Perkowski also recommended that the language in Item J should make it clear that the proposed amendment may be altered and revised by the Commission as part of their review and recommendation to the City Council.

Commissioner Esselman asked if the Fire Department has provided comments about the process for identifying addresses for accessory dwelling units that are developed on single-family lots. Mr. Forry answered that the City utilizes the criteria in the International Fire Code for establishing building identification (addresses) for secondary dwelling units, and staff works with the Fire Department to assign separate addresses.

Commissioner Moss referenced Footnote 7.c at the top of Page 2 of Attachment 4 (Page 55 of the Staff Report) and noted that *THE ENTERPRISE* is no longer published. Therefore, the footnote needs to be updated.

Closure of Public Hearing

The public hearing was closed at 9:22 p.m. A new hearing would be re-noticed for another date in the future.

DIRECTOR'S REPORT

Mr. Cohn did not provide a report.

UNFINISHED BUSINESS

Study Session: Town Center Guidelines

Mr. Cohen explained that the purpose of tonight's discussion is to review the proposed organizational and fundamental changes to further refine the design standards. He noted that technical changes would be forthcoming. He specifically reviewed the following proposed design standards:

1. **Thresholds for Review (20.92.010) –** Mr. Cohen recalled the Commission's previous discussion that if property owners do small changes incrementally, there will never be full design review. He explained that besides having to track what happens on a property over the previous three years, the thresholds are somewhat arbitrary and difficult to apply. For example, a change of more than 50% can be quite different, depending on the type and size of the structure. Staff would like to repeat the