

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION MINUTES OF REGULAR MEETING

February 21, 2013
7:00 P.M.

Shoreline City Hall
Council Chamber

Commissioners Present

Chair Moss
Vice Chair Esselman
Commissioner Craft
Commissioner Maul
Commissioner Montero
Commissioner Scully
Commissioner Wagner

Staff Present

Steve Szafran, Senior Planner, Planning and Community Development
Jeff Forry, Permit Services Manager
Jessica Simulcik Smith, Planning Commission Clerk

CALL TO ORDER

Chair Moss called the regular meeting of the Shoreline Planning Commission to order at 7:00 p.m.

ROLL CALL

Upon roll call by the Commission Clerk the following Commissioners were present: Chair Moss, Vice Chair Esselman and Commissioners Craft, Maul, Montero, Scully and Wagner.

APPROVAL OF AGENDA

The agenda was accepted as presented.

DIRECTOR'S COMMENTS

Mr. Szafran announced that presentation of the 2013 Comprehensive Plan Amendment Docket to the City Council has been postponed from February 25th to March 25th.

GENERAL PUBLIC COMMENT

No one in the audience indicated a desire to address the Commission during this portion of the meeting.

STUDY SESSION: STATE ENVIRONMENTAL POLICY ACT (SEPA) DEVELOPMENT CODE AMENDMENTS

Staff Presentation

Mr. Forry explained that the purpose of the study session is to discuss the proposed amendments to the City's environmental review procedures and to provide background for a staff recommendation. The background is intended to demonstrate that the City has adopted substantive environmental protections that mitigate the direct impacts of development. He advised that the proposal includes exempting activities from environmental review that are below the exempt levels established by the Department of Ecology (DOE) and consideration of eliminating the automatic requirement to meet the procedural requirements of the State Environmental Policy Act (SEPA) when activities occur in or adjacent to critical areas. He provided a chart that identifies the City's current levels for minor new construction, as well as the proposed new levels. He explained that the threshold identifies the upper limit, and activities below that level would be considered exempt. He reviewed the following reasons for the proposed amendment:

- **New Legislation:** Adoption of Senate Bill 6406 presented the City with an opportunity to evaluate existing environmental procedures that haven't been reviewed since incorporation in 1995. The bill put in place interim thresholds, which were to revert to the current levels upon completion of the Department of Ecology's (DOE) rule-making process. The DOE conducted a thorough review of the thresholds for minor new construction and elected to provide agencies the flexibility to substantially amend their local procedures. This process was completed on January 28, 2013, and the interim thresholds are no longer in effect. The City must amend its environmental procedures in order to take advantage of the flexibility afforded by the DOE.
- **Recognize Existing Planning Efforts.** It is important to recognize existing planning efforts and environmental protections. Given the extensive investment the City has and will continue to make in the Comprehensive Plan and Development Code, it is essential that project review start from the fundamental land-use choices that are made at the Comprehensive Plan level. Plans and regulations should not be reevaluated through environmental review. With the adoption of substantive environmental regulations, SEPA has become redundant for minor new construction. The DOE has determined that, with appropriate local regulations, minor new construction below the exempt thresholds pose less than a probable significant impact.
- **Implement Council Goals:** Council Goal 1 directs the City to continue to implement efforts to make the permit process predictable, timely and competitive. Review under the City's current environmental procedures builds a bureaucratic redundancy that focuses on procedures and policies rather than the proposals and regulations intended to mitigate impacts.

Mr. Forry advised that since SEPA was originally enacted in 1971, many new laws and procedures for environmental protection, land use planning, and the provisions for infrastructure have been implemented. He specifically noted the following:

- The City has made concerted efforts to adopt and implement environmental protections, starting as early as incorporation in 1995 when they adopted the King County regulations and environmental procedures that reflected the 1971 thresholds.

- In 1998 the first Comprehensive Plan was adopted, and the impacts of the plan were analyzed under an Environmental Impact Statement (EIS). A development code that implements the policies and mitigations identified in the Comprehensive Plan was adopted in 2000.
- In 2005, the Growth Management Act (GMA) directed a major update to the Comprehensive Plan, which required that adequate facilities be available at the time of development to meet the City's Level of Service (LOS) Standard. The update also provided protections for the natural environment and defined best available science (BAS) in policies and local regulations. To support the new policies in the Comprehensive Plan update, the Critical Area Ordinance (CAO) was adopted in 2006.
- The Surface Water Code was adopted in 2009 to implement the DOE's Stormwater Manual and set the standards for low-impact development.
- The Transportation Master Plan was adopted in 2011 to identify LOS for transportation and define the transportation network. The plan also developed the transportation component of the 6 and 20-year Capital Facilities Plan (CFP), which is intended to identify future improvements that mitigate the long-term impacts of development.
- The Surface Water Master Plan was adopted in 2011 and sets the LOS for stormwater facilities for both the utility and new development.
- The Shoreline Master Program was updated in 2012 and put in place the Shoreline Management Act's (SMA) requirement of no net loss of environmental protection.
- Vegetation and Tree Protections were adopted in 2012 to provide protections for the urban canopy and understory vegetation.
- In 2012, the Floodplain Ordinance was updated as mandated by the Federal Emergency Management Agency (FEMA) to incorporate provisions of the Endangered Species Act.
- As mandated by GMA, the Comprehensive Plan was updated in 2012. The environmental review analyzed the future impacts of development.
- The Legislature approved an amendment to SEPA in 2012, which directed the DOE to modernize the rules that guide state and local agencies in conducting SEPA review in light of the increased environmental protections at the local and state levels.
- The Commercial Design Standards will be adopted in 2013 to implement policies in the Land Use Element of the Comprehensive Plan and further support Council Goal 1. The design standards are system-wide and form the basis for on-the-ground project decisions when permits come in.

Mr. Forry referred to Attachment A, which identifies the local, state and federal regulations that mitigate the impacts of new construction. Additional analysis of the proposal is also provided in the staff report. Due to the extensive planning efforts the Planning Commission has undertaken to meet the requirements of GMA and the instituted environmental protections that were implemented through the permit process, staff recommends the environmental review thresholds for minor new construction be amended as proposed. He briefly reviewed the process for Development Code amendments, noting that review and a public hearing by the Planning Commission is the first step in the process. A public hearing has been tentatively scheduled for March 21st. After the hearing, the Commission will forward a recommendation to the City Council. A study session has been tentatively scheduled with the City Council for April 8th, with final action on the proposal on April 29th. He noted that the time between the Commission's recommendation and the City Council's formal consideration will be used to satisfy the DOE's 21-day comment period. He clarified that while the DOE does not adopt or approve local regulations, they do review and comment as appropriate.

Mr. Forry referred to the table on Page 8 of the Staff Report, which outlines the numbers of activities the City has evaluated over the past eight years that were subject to SEPA. Of the average 103 projects that were evaluated between 2004 and 2012, approximately 20 each year would have required SEPA review based on the proposed amendment. He summarized that while the number and types of proposals subject to SEPA would decrease, the majority of the larger proposals processed by the City would still be subject to a public process. As per the proposed amendment, the City would focus its environmental evaluation on the larger proposals that have greater impacts as opposed to minor new construction projects.

Commissioner Wagner said the Commission previously heard testimony that a fair number of the SEPA appeals filed in the City ended up not having a significant impact on projects because the Hearing's Board found in favor of the initial ruling. She said it would be helpful to have information about recent SEPA appeals and whether or not the projects would have been subject to SEPA based on the proposed amendment. Mr. Forry said CRISTA was the only project of note for which an appeal was filed, and SEPA would still be required for a project of that size. More recently, a project was appealed and the City lost because the ordinance language was not substantive enough to craft valid mitigation. It was remanded back to the City for reconsideration, and the permit was subsequently issued.

Commissioner Scully observed that SEPA is supposed to be a study tool rather than a restrictive tool. It is not supposed to call out what can and cannot be done, but rather the affects a project will have. He referred to the Element and Regulation Matrix on Page 11 of the Staff Report and noted that most of the items in the right column are substantive restrictions. For example, the Tree Code is not necessarily a study tool; it specifically calls out what is and is not allowed in relation to trees. He questioned what would be lost in terms of information to help the City identify the impacts of a project.

Mr. Forry explained that the City does not often issue Mitigated Determinations of Non-Significance (MDNS) because the regulations provide substantive support for the mitigations identified. For example, the CAO mitigates based on a professional evaluation of the critical area. It does not specifically enumerate all of the mitigation options, but it gives the City latitude to accept what a professional says needs to be done to mitigate the impacts. The City has found it cannot identify mitigations above and beyond what the ordinance allows. He explained that SEPA's premise is that environmental review starts by identifying what can be mitigated based on regulations. The next step is to review the Comprehensive Plan policies to identify what has not been mitigated. The City has made an extensive effort over the past 15 years to provide more than adequate levels of protection. The DOE's thresholds identify levels for minor new construction, and any project below the upper threshold would be considered minor and exempt. He referred to a recent 5-story, multi-family development on 152nd with approximately 200 units. The City conducted an extensive public process and environmental review and found there were no substantial impacts that could not be mitigated via the City's existing ordinances. There were no impacts significant enough for the City to exercise its SEPA authority.

Commissioner Scully pointed out that if a project is exempt from SEPA, the applicant would not be required to submit a checklist and the City would lose this information piece. He asked if these information-gathering components are contained in other existing City regulations. Mr. Forry answered affirmatively. For example, there are study components contained in the CAO, and the regulations related to traffic require projects to demonstrate that they meet the LOS standards.

Chair Moss asked staff to comment further on their recommendation that the CAO provides sufficient regulations to allow the City to eliminate automatic environmental reviews for activities in and around critical areas. She noted that an EIS has already been done for a number of properties in the City so that developers do not have to repeat the process for each individual property. Mr. Forry explained that the State's Environmental Policy Act contains a provision that allows local jurisdictions to address exemptions within critical areas. The permissive language was added in 1974 and was intended to provide assistance to cities that did not have critical areas regulations in place. As local jurisdictions developed critical areas regulations, the need to do SEPA evaluations within critical areas became more of a procedural requirement than a pure analysis of what was going on. The City's current CAO requires an analytical analysis that focuses on projects rather than procedures. Requiring a SEPA review, as well, results in a greater focus being placed on procedure, making it more difficult to focus on the actual project, its impacts, and appropriate mitigation.

Chair Moss asked if the City's study for the CAO went outside the boundaries of the actual critical areas. Mr. Forry said the study included the critical areas and their associated buffer areas, which vary, depending on the scope of the critical area.

Chair Moss asked if there are impacts that may not be covered by City regulations that a SEPA review would catch. Mr. Forry said it would be incorrect and naïve to say there would not be any loss of potential study under SEPA. However, the process for reviewing applications employs an evaluation of the majority of the SEPA components. However, if an environmental checklist is no longer required, it is possible that some items would not be covered. The DOE has indicated that the thresholds identified do not present themselves as probable significant impacts if appropriate environmental regulations have been adopted, and staff is suggesting that the City has appropriate environmental regulations in place.

Commissioner Scully asked how other jurisdictions are addressing the new exemptions. Mr. Forry said many have already exercised the interim threshold levels. He noted that the City has two planned action areas (North City and Town Center), and an EIS has been completed for each one. Therefore, new development would be exempt from the SEPA review requirement. Many jurisdictions are using a similar approach by using area-wide planned actions as a way to opt out of SEPA review at the everyday project level. All jurisdictions must go through the process staff is currently proposing in order to adopt the highest levels.

Vice Chair Esselman asked how the DOE arrived at the interim and proposed new levels. Mr. Forry said the interim levels were originally developed by the DOE through a rule-making process. A similar process was used to identify the new thresholds, and the City participated. A proposal was put forward by the DOE, and stakeholder groups were formed to participate in ad hoc committee meetings and public hearings. The thresholds originally proposed were much higher, and through the rule-making process, they were put into a realm of reality that the DOE and all stakeholders were comfortable with.

Chair Moss requested further clarification from Mr. Forry regarding his earlier comment about the City losing an appeal because the regulations were not strong enough. Mr. Forry said this issue related to a proposal to remove a substantial number of trees within a critical area (slope) of an Innis Arden Reserve. The City's intent was to protect as many trees as possible using the CAO and SEPA as a tool. However, SEPA was not the correct tool to accomplish this goal. Anytime SEPA is involved, the process is

opened up to appeal and the City is required to substantiate any mitigation it puts forward. The City was unable to substantiate the mitigation under court scrutiny and lost the appeal. If the City had strictly applied its ordinance, it would have had a very firm basis. However, the City went beyond the scope of its ordinance and probably beyond the scope of SEPA in identifying mitigations and attempting to apply some unfounded science.

Mr. Forry clarified that the left hand column of the Element and Regulation Matrix (Attachment A) lists the elements contained in the environmental checklist that need to be evaluated under environmental review. The right hand column lists the local, federal and state regulations already in place to address each element. He emphasized that the matrix should accompany the amendment process all the way through to the City Council since the DOE's process requires that the City Council enter findings to respond to each of the elements. Chair Moss referred to the right hand column related to the "earth" element and asked if restrictions for impervious surfaces, hardscape, tree protection and site coverage are specifically called out in SMC 20.50. Mr. Forry said SMC 20.50 includes restrictions on hardscape and mandated tree protection. The protection for steep slopes is in SMC 20.80 of the CAO.

Mr. Forry referred to Attachment B, which identifies the actions that require noticing and public comment. Those actions with "checks" require some level of notice and public comment, regardless of whether or not a proposal is exempt under SEPA. Most also have conditioning authority under the development regulations. Administrative Design Review would only be required for development in the commercial areas when departures or variances from the development standards have been requested.

While it is nice to provide an opportunity for the public to comment on development proposals, Mr. Forry cautioned that it can create an expectation that the comments can somehow affect the outcome. This is particularly true with SEPA review. The City has struggled to determine what is "effective comment." Commissioner Scully countered that the public comment process allows the City to gather more information. Even when public comments cannot influence the outcome, there is some value as long as the City appropriately messages what the affect will be. Mr. Forry said staff is looking at ways to support public comment, but get the word out that it will not affect substantive changes.

Chair Moss asked if the properties that would be developed under a Shoreline Substantial Development Permit have already had an independent analysis or an EIS. Mr. Forry answered that these properties within the shoreline area have not been through an environmental process under SEPA. However, many of the City's ordinances have been through a thorough environmental evaluation at the plan level, and mitigations have been incorporated into the City's regulations. He commented that the public can get the "biggest bang for their buck" by participating in the regulatory process.

Chair Moss noted that the list of projects that require noticing and public comment would not change as a result of the proposed amendment. Mr. Forry agreed that the list is intended to demonstrate that a fair number of projects would require a public comment period. He said they typically receive the most public comments on subdivision and short plat proposals, and it is important to keep in mind that the subdivision process is based on state law and is almost as rigorous as SEPA. There is an opportunity for public comment, and the City has conditioning authority to mitigate impacts.

Mr. Forry referred to the proposed new language for SMC 20.30.560 (Attachment C). Commissioner Montero pointed out that a parking lot that accommodates 90 vehicles would be significant in size. Mr. Forry observed that it is not likely that a large, stand-alone parking facility would be constructed in the City given the cost of real estate. Typically, parking would be associated with a commercial development that would likely be subject to SEPA anyway.

Commissioner Scully questioned why the excavation threshold is the only exemption that is cumulative. Mr. Forry clarified that the exemption thresholds have been established by the DOE. It was discussed that the extraction of cubic yards in conjunction with exempt activity would not have a critical impact. Although excavation and fill would not be evaluated under SEPA, it would be extensively evaluated under the Stormwater Regulations and CAO, and the properties would have to comply with the standard engineering principles for cut and fill on properties. In addition, provisions in the Municipal Code require a developer to mitigate route traffic impacts and identify haul routes. They would also be subject to regulations related to noise, time of construction activity, Puget Sound Clean Air Act, etc. Large projects would also be required to obtain a construction permit from the DOE to mitigate potential impacts to streams and runoff. He summarized that there are substantial regulations in place to address the majority of impacts associated with larger developments.

Commissioner Craft summarized that the thresholds should not be raised unless the appropriate regulations and ordinances are in place to monitor activities from a development standpoint. He asked if staff is confident that the City's current regulations and ordinances will effectively address the gap between the existing threshold and the proposed new threshold. He also asked if staff believes the City's regulations are more effective in their application on the various development components. Mr. Forry answered affirmatively.

Commissioner Craft observed that while some of the reporting aspects of SEPA may not be as clearly identified in the regulations and ordinances, staff believes the enforcement of various standards would still be as effective. He said that while there is a certain level of frustration that the City is unable to address public comments that are received via the SEPA process, the comments can help identify elements of a project that the City did not previously understand. He asked if language could be added to the regulations to replace the reporting techniques in SEPA that would disappear with the raised threshold, or would this be a redundant feature of what is already in place. Mr. Forry explained that the project review process is set up to evaluate many of the components of the environment. While the regulations do not specifically respond to some points, such as endangered species, raising the thresholds would not negate the City's ability to react to these concerns at any point of time in the process. Although there would be no formal public comment period, the public could submit information and concerns, and the City would have the ability to react quickly to address issues under their current regulatory and enforcement authority. This would be true with or without SEPA.

Chair Moss noted that some public projects are subject to the National Environmental Policy Act (NEPA). She asked if NEPA would be more stringent than SEPA. Mr. Forry said that SEPA was derived from NEPA, and they are considered comparable. NEPA is required for projects that involve federal funding, and SEPA is required for local level projects. They perform the same general conceptual level of environmental review. He said he does not know what the NEPA thresholds are at this time.

Public Comment

No one in the audience indicated a desire to provide public comment during this portion of the meeting.

DIRECTOR'S REPORT

Mr. Szafran did not have any additional items to report to the Commission.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

Commissioner Scully reported that the Light Rail Station Area Planning Subcommittee is scheduled to meet on the third Friday of each month from 4:00 to 5:00 p.m. He noted that the meetings would be more formal, as the public has expressed an interest in participating in the process. Ms. Simulcik Smith advised that the meetings would be noticed on the bulletin board at City Hall, as well as on the City's website.

AGENDA FOR NEXT MEETING

Mr. Szafran announced that the March 7th meeting agenda would include a study item on regional green building development code amendments. Ms. Simulcik Smith recalled that, at their last meeting, Commissioner Montero raised the idea of forming a subcommittee to keep the Commission updated about the Point Wells property. The Commission could discuss this further on March 7th. Staff would also bring forward some amendments to the Commission's Bylaws.

Commissioner Wagner asked if a Commission retreat has been scheduled. Ms. Simulcik Smith answered that staff is working to schedule the retreat and would provide an update on March 7th. Chair Moss recalled that the Commission also holds joint meetings with the City Council twice each year. Commissioner Wagner noted that, in the past, the Commission has been invited to submit a formal report to the City Council. The Commission agreed to discuss the content of the report on March 7th.

Chair Moss reminded the Commissioners to notify staff as soon as possible of their planned absences from upcoming Commission meetings.

Commissioner Scully asked that the Commissioners consider moving forward with their discussion regarding exemptions for affordable housing, which is currently an item on their parking lot agenda. He noted there is currently a lot of community interest in the topic. Mr. Szafran agreed to discuss this issue with Director Markle to determine if it could be included as part of the next batch of Development Code amendments.

Chair Moss noted that a presentation on the King County Right Sized Parking Project might be scheduled for 4th quarter of 2013. She asked if the Light Rail Station Area Planning Subcommittee would find it helpful to have this information earlier. Ms. Simulcik Smith said the website was just recently launched, and she included it on the Commission's parking lot agenda as an idea for future discussion. Mr. Forry said a staff member has attended several of the sessions and has compiled a lot of

information to assist the City on future projects. Chair Moss asked staff to make arrangements for the presentation to occur sooner than the 4th quarter.

Mr. Szafran said he anticipates that the Shoreline Community College Master Plan proposal would likely move forward during the 2nd quarter. He noted that the proposal would come before the Hearing Examiner for review and not the Commission. The public meetings would be advertised.

ADJOURNMENT

The meeting was adjourned at 9:11 p.m.

Donna Moss
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission

TIME STAMP
February 21, 2013

CALL TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA:

DIRECTOR'S COMMENTS: 1:01

APPROVAL OF MINUTES: 1:20

GENERAL PUBLIC COMMENT: 1:26

**STUDY SESSION: STATE ENVIRONMENTAL POLICY ACT (SEPA) DEVELOPMENT
CODE AMENDMENTS**

Staff Presentation: 1:30

Public Comment: 1:01:45

DIRECTOR'S REPORT: 1:01:56

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS: 1:02:10

AGENDA FOR NEXT MEETING: 1:03:17

ADJOURNMENT