Dear Planning Commission & City of Shoreline,

I am writing this letter to show my support of an amendment to the code, which would allow Animal Surgical Clinic of Seattle to use 1520 NE 148th Street as a parking lot to their business.

Since ASCS has moved on 148th street, they have been a compliment to the neighborhood. Parking has been a challenge, and I am in favor of this solution.

Sincerely,

Christy Nakamoto
1540 NE 148th Street
Shoreline, WA 98155

Joshua A. Whited
whited@ekwlaw.com

April 18, 2013

Via E-mail and Fax
(rmarkle@shorelinewa.gov; sszafran@shorelinewa.gov)

Rachael Markle, AICP
Planning Director and SEPA Responsible Official
Steven Szafran, Senior Planner
17500 Midvale Avenue North
Shoreline, WA 98133-4905

RE: Comments on City of Shoreline Development Code Amendments Application #301858 and on SEPA DNS Dated 4/1/2013

Dear Ms. Markle and Mr. Szafran:

The Innis Arden Club Inc. Board of Directors has instructed us to submit this letter commenting on recently proposed Development Code amendments, as well as the accompanying DNS issued April 1, 2013. Of particular concern to the Club is a proposed amendment that would arbitrarily single out and exempt "golf courses" from the Development Code's "Tree Conservation, Land Clearing and Site Grading Standards" leaving comparable large parcels of existing recreational property within the City of Shoreline, such as the Innis Arden Reserve Tracts, under far more onerous regulations.

Specifically, the special interest proposal would amend SMC 20.50.310 to exempt the following activity from the "Tree Conservation, Land Clearing and Site Grading Standards" contained in Subchapter 5 of the Development Code:

> 6. Normal and routine maintenance of existing golf courses, provided that the use of chemicals does not impact any critical areas or buffers. This exception shall not include clearing and grading for expansion of such golf courses, nor does it include any areas within a critical area or buffer.

The Department has proposed this amendment in response to an Amendment Request by the Seattle Golf Club ("SGC").[1] And, notably, the proposed amendment would apply to only one property owner: SGC.

[1] SGC's amendment request is Attachment 4 in the packet of materials provided for Agenda Item 6A for the April 18, 2013 Planning Commission meeting. Attachment 4 begins on page 85 of the packet.

SGC's amendment request explains its necessity as follows:

> See January 31, 2012 letter previously provided. Briefly though, the stated purpose of [the] Shoreline Development Code is to "reduce the environmental impacts of site development while promoting the reasonable use of land." SMC 20.50.290. Ordinary and routine maintenance of a golf course is not the same as development of a site, but is necessary for it to have the "reasonable use" of its land. [2]

SGC's January 31, 2012 letter further explains:

> Seattle Golf Club ("SGC") has resided in its current location since 1908 and is laid out over 155 acres in the South West Corner of Shoreline. . . . SGC's 155 acres (.611km^2) cover slightly more than 2% of the city of Shoreline. SGC's Course Superintendent estimates SGC to have more than 6,000 trees covering its acreage, which is almost certainly more than 2% of the trees in the city of Shoreline, given the fact this acreage has few structural improvements other than the golf course itself.[3]

In describing how the amendment will not adversely affect the public, health, safety or general welfare, SGC explains:

> See January 31, 2012 letter previously provided. Briefly though, if the Development Code does apply to ordinary and routine maintenance of golf courses like Seattle Golf Course (SGC), it would require it to obtain a permit to move more than 50 cubic yards of soil, as well as for removal of more than 6 "significant trees" in 36 months. If one assumes that an average private property owner's property is ½ acre, it is a useful exercise to extrapolate the 6 significant trees and 50 cubic yards of soil to SGC's 155 acres. One way to think of it would be that SGC's 155 acres are covered by 310 single family residences on ½ acre plots. In such a case, the residents of those imaginary residences would collectively be able to remove up to 1,860 trees in 36 months and move up to 15,500 cubic yards of soil without permit. While SGC has no desire to remove 1,860 trees, if its land were developed that many trees could be removed without a permit. Moreover, even if an exemption is granted, the removal of more trees in connection with any development or non-maintenance project would remain

[2] Attachment 4 at 88.
[3] Attachment 4 at 90.

> subject to the Development Code. As a result, there would be no adverse effect [sic] on public health, safety or welfare.[4]

The rationale for the Department's Seattle Golf Club amendment applies equally well to normal and routine maintenance activities on other large parcels of undeveloped property within the City of Shoreline such as the Innis Arden Reserve Tracts. In fact, the Innis Arden Reserve Tracts present an even more compelling case for exemption from the "Tree Conservation, Land Clearing and Site Grading Standards" in the Development Code.

Innis Arden has 50 acres of dedicated Reserve Tracts containing almost 8,000 trees. Per the Innis Arden Mutual Restrictive Easements, the Tracts must be used for parks, bridle trails, playgrounds, or other community purposes. For over half a century, long before incorporation of the City of Shoreline, the Innis Arden Reserves and their trees have been managed for environmental stewardship, hazard reduction, recreational use, and view preservation.

Applying the City's current code provisions, which limit tree removal to six significant trees per 36 months, to the Innis Arden Reserve Tracts which comprise 50 acres and contain approximately 8,000 trees is no less absurd than applying them to the Seattle Golf Club. This is why the Club has for many years requested that the City adopt a fairer, more rational approach to normal and routine maintenance activities in its Reserve Tracts.[5] However, the Club's requests have repeatedly fallen on deaf ears.

The rationale behind the Department's adoption of the Seattle Golf Club exemption is sound in the sense that owners of parcels of largely undeveloped land in recreational use should have the ability, without undue burdens and limits, to perform normal and routine maintenance activities. However, the execution reflected in the amendment is **un**sound -- and unfair. It is classic special interest legislation: it offers relief to one particular constituent rather than to all property owners in an objectively described situation.[6] There is no legally acceptable basis in this regulatory context to distinguish between a golf course which contains thousands of trees and other large, undeveloped recreational properties that contain thousands of trees, such as the Innis Arden Reserve Tracts.[7]

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[4] Attachment 4 at 89.

[5] See, e.g., the Club's January 17, 2012 letter to the City of Shoreline renewing the Club's 2008 proposal to restore the vegetation management plan framework to the City of Shoreline Development Code, a copy of which is attached.

[6] This is comparable to the specially created self-exemption for removal of noxious weeds and vegetation which applies only to "City-owned" property. See SMC 20.50.310(A)(6).

[7] The City's Environmental Checklist and DNS are also fundamentally flawed. In them, the City repeatedly refuses to consider the environmental impacts of the proposal, claiming that the proposal is a nonproject action with no specific project location. However, the proposed amendments target one very specific property. The City therefore can and must consider the environmental impacts of the proposal with regard to the SGC property specifically.

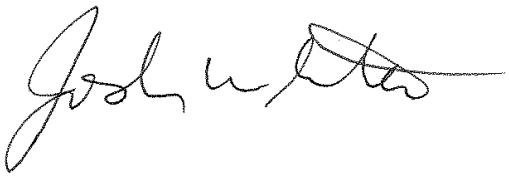
Accordingly, the Club respectfully requests that the following underlined language be added to the proposed amendment:

> 6. Normal and routine maintenance of existing golf courses, as well as other dedicated community parks, reserve tracts, trails and playgrounds, provided that the use of chemicals does not impact any critical areas or buffers. This exception shall not include clearing and grading for expansion of such golf courses, nor does it include any areas within a critical area or buffer.

The Club further requests that all past, current, and future communications concerning the proposed amendment, both internal (e.g. intra-City) and external (e.g. between the City and the proponent or other third parties) whether in electronic or tangible form be included in the Record for this matter as it proceeds through the Planning Commission and to the City Council.

Sincerely,

EGLICK KIKER WHITED PLLC



Josh Whited

Attachment (January 17, 2012 letter)

cc: Client
Planning Commission (plancom@shorelinewa.gov)
Jessica Smith, Planning Commission Clerk (jsmith@shorelinewa.gov)

EKW LAW
EGLICK KIKER WHITED PLLC

Peter J. Eglick
eglick@ekwlaw.com

January 17, 2012

Via E-mail and Fax
(junderwood@shorelinewa.gov)

Julie Underwood
City Manager
Shoreline City Hall
17500 Midvale Avenue N
Shoreline, WA 98133

RE: Innis Arden Club's Comments Re City of Shoreline Proposed Amendments to Critical Area Regulations

Dear City Manager Underwood:

Michael Jacobs, President of The Innis Arden Club Inc. Board of Directors, has instructed us to submit this letter commenting on a recent Department proposal for amendments to the City's Critical Area Regulations. The proposal was unveiled very late last year and came as an unwelcome holiday surprise to the public, as noted in a December 29, 2011[1] letter submitted on the Club's behalf. Therefore, your courtesy in allowing additional time for public review and comment was much appreciated.

The comments below, prepared by my partner Jane Kiker and me, are based on our independent expertise in land use and environmental law, including as outside counsel for various municipal clients. They are sponsored by and submitted on behalf of the Innis Arden Club, but would be appropriate regardless of whether we had been engaged by the Club, the City, or another client.

The sections below address specific proposed amendments. What is notable as a threshold matter, however, is that over-all the amendments are not rooted in cognizable scientific analysis or documentation. In some cases, they appear to be inappropriately reactionary. We suspect that, because they are dense and technical, your office cleared the amendment proposals for issuance without being aware of this. With that said, here are our specific comments, which make clear why these proposals should be withdrawn.

[1] A copy of the December 29, 2011 letter is attached for your convenience.

Geologic Hazard Area Definitions/Classifications -- SMC 20.80.220.A and .B

The proposed amendments would eliminate from the Shoreline Code "Definitions" chapter, SMC Ch. 20.20, the City's longstanding definitions of "landslide hazard areas", "steep slope hazard areas", and "erosion hazard areas". Although the report accompanying the proposal implies that these definitions have simply been moved, unaltered, to the Code's Critical Areas chapter, SMC Ch. 20.80, this is not the case. As explained below, these changes would result in confusing and contradictory standards for the Landslide Hazard Area classification in SMC 20.80.220.A, as well as unworkable rules for delineating steep slopes under Section 20.80.220.B.

For example, in SMC 20.80.220.A, ("Landslide Hazard Areas"), several new criteria for classifying 15 percent and greater slopes as landslide hazard areas are proposed, while former criteria have been eliminated. There is no explanation as to how these particular criteria were selected, or why they are suitable for Shoreline. Likewise, there is no discussion of why and on what basis other criteria previously included in the "Landslide Hazard Area" definition were removed. The criteria removed were ones that the Hearing Examiner's Bear Reserve Decision cited in concluding that Bear Reserve slopes did not meet the part of the current definition (now proposed to be deleted) for landslide hazard areas in SMC 20.20.014.

Further, the new criteria bear little or no correlation to the City's classification of "moderate," "high," and "very high" landslide hazard areas which under the amendment proposal would remain in SMC 20.80.220.A. For example, while one of the new criteria would include as "moderate landslide hazard areas" slopes of more than 15 percent "that have shown movement during the Holocene Epoch or that are underlain by landslide deposits," the proposed amendments retain SMC 20.80.220.A provisions to the effect that the "moderate hazard" classification is based on steepness of slope and soils types. Rather than providing "greater clarity" and "ease of use"[2] the amendments create confusion with potentially inconsistent standards for classifying landslide hazard areas regardless of whether the two different sets of "classification" criteria are to be read separately or concurrently. It would be unfortunate if this confusing insertion of new criteria turned out to be a reactive attempt to vindicate the Department's Bear Reserve approach, which the Hearing Examiner rejected.

The proposed amendments to SMC 20.80.220 contain <u>two</u> sections labeled "B": the first entitled "Steep Slopes"; the second purporting to address "Landslide Hazard Areas," even though those are the subject of SMC 20.80.220<u>.A</u>. The first Section B apparently attempts to "classify" steep slopes, with no explanation as to why. The attempt is unnecessary. Per the State's Growth Management Act (GMA) guidelines, WAC 365-190-120, the common definition for steep slope hazard areas – slopes of 40% or greater with a minimum vertical rise of 10 feet – is typically incorporated into a municipal code's criteria for classifying landslide hazard areas. A separate category of Geological Hazard Areas classified as "Steep Slopes" creates needless

[2] Department memorandum for January 5, 2012 Planning Commission Meeting Agenda Packet, at p.2.

confusion.[3] Consistent with this, SMC 20.80.220.A(3) as it now exists --and as proposed -- already calls out Steep Slopes as Landslide Hazard Areas, by including "all slopes 40 percent or steeper" as "Very High Hazard" areas.[4]

SMC 20.80.220.B -- Slope Delineation and Measurement

The Department memorandum on the proposal claims that [the second] "Section B is completely new language that defines what a landslide hazard area is." However, the definition in the section's introductory statement ("Landslide hazard areas are those areas in the City of Shoreline regulated as a landslide hazard area in SMC 20.80.220.A with slopes 15% or steeper within a vertical elevation change of at least ten feet") merely repeats the proposed definition in Section A and is not new. What is new is the section's methodology for slope delineation and measurement, reflected in the Department's proposed strike-out and underline revisions:

> 1. The toe of a slope is a distinct topographic break in slope which separates slopes inclined at less than 15 ~~40~~ percent from slopes that are 15 ~~40~~ percent or steeper. A distinct topographic break is an area that is at least 15 feet wide measured horizontally and slopes less than 10%. Where no distinct break exists, the toe of a steep slope is the lower most limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet; and
>
> 2. The top of a slope is a distinct topographic break in slope which separates slopes inclined at less than 15 ~~40~~ percent from slopes that are 15 ~~40~~ percent or steeper. A distinct topographic break is an area that is at least 15 feet wide measured horizontally and slopes less than 10%. Where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

These proposed SMC 20.80.220.B changes to the methodology for delineating and measuring slopes appear to be, like so many of the proposed amendments, without support from scientific or engineering data and unbiased analysis, or from reliable documentation of actual adverse results from application of the current methodology. Further, the proposed amendments would apply the methodology to all slopes in the City that are 15 percent or steeper. However, such a prescribed methodology is typically reserved for delineating "steep slopes" -- 40 percent

[3] For example, the City of Edmonds no longer regulates steep slope hazard areas separate from landslide hazard areas. King County similarly does not have a "steep slope hazard area" category. The State guidelines provide the following model for including certain steep slopes as a classification of Landslide Hazard Area:

> Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief.

WAC 365-190-120(6)(i).

[4] As amended, this subsection would read: "Very High Hazard: Areas with slopes steeper than 15 percent with zones of emergent water (e.g., springs or ground water seepage, areas of landslide deposits regardless of slope, and all slopes 40 percent or steeper." SMC 20.80.220.A(3) (emphasis added). The proposed amendments appropriately -- as in Bellevue's Code -- include within the "Steep Slopes" definition a 1000 square feet minimum area.

or greater -- which are the ones generally subject to more stringent restrictions. The Department does not cite any other jurisdiction in the state that applies such methodology to slopes less than 40 percent. Notably, the City of Bellevue's 2005-2006 "critical areas update" on which the Department apparently relied in drafting these Shoreline proposed amendments, focuses only on steep (40%) slope delineation, as evidenced by Bellevue's straightforward "top" and "toe" definitions:

> 20.50.048 T definitions.
> Toe of Slope. The lower boundary of the 40 percent slope as delineated on the slope category analysis; or in the case of landslide hazards, as delineated by the geotechnical report. [Emphasis added.]
>
> Top of Slope. The upper boundary of the 40 percent slope as delineated on the slope category analysis; or in the case of landslide hazards, as delineated by the geotechnical report. (Ord. 5683, 6-26-06, § 52; Ord. 4979, 3-17-97, § 23; Ord. 4302, 11-18-91, § 18). [Emphasis added.]

The Department's proposed language would, without acceptable explanation or precedent, and contrary to the Bellevue Code on which the Shoreline amendments are supposedly modeled, effectively eliminate recognition of a slope "top" and "toe" unless one slope is less than 15 percent. This is contrary to common sense as well as well-accepted surveying and engineering geological practice. For example, an objectively observable "distinct topographic break" between a 20 percent slope and 40 percent slope would apparently no longer be considered the top or toe of that 40 percent slope for purposes of "steep slope" delineation. Yet, such delineation is required in order to properly apply the City's different standards in SMC 20.80.240 and SMC 20.80.230 for critical area alteration and buffer provisions in "moderate", "high" and "very high" hazard areas.

The arbitrary nature of the proposed amendments' top and toe and distinct topographic break provisions is compounded by new language limiting recognition of such breaks to areas that are at least "15 feet wide measured horizontally with less than a 10% slope." There is no support for adopting such an extreme requirement in preference to site specific interpretation and scientific analysis provided by qualified experts. The Bellevue Code, cited by the Department as a model for some aspects of its proposed amendments, does not support this approach. The Department and the City Attorney tried to insist on such a 15 foot standard before the Hearing Examiner in the Bear Reserve appeal this past August. However, it soon became clear that the City's consulting engineer could not offer a scientific (as opposed to a support-his-client-the-City-regardless) basis for a flat 15 foot standard and the Hearing Examiner declined to adopt it.

In fact, as the Club's expert engineering geologist testified in the Bear Reserve hearing, proper determination of a distinct topographic break is based on direct observation of slope characteristics and load factors and the extent to which a "break" reduces the weight bearing on a given slope. If a topographic break on the slope removes significant weight from the lower portion of the slope, that break is considered a distinct topographic break, regardless of its

horizontal width. A minimum width of five feet (at the most) might conceivably be defensible, but only if coupled with a provision granting exceptions based on a professional evaluation of load factors.

The proposal requiring a topographic break to have a fifteen foot minimum width with a maximum 10% slope would lead to results that cannot be justified in terms of science or reasonably anticipated adverse impacts. For example, a 15 foot wide (or even much wider) area with a 12% slope would no longer be considered a "distinct topographic break" even where it separated, for example, a 60% slope from a 20% slope. What compelling objective data or analysis supports this approach and outcome?

Ironically, while the proposed amendments would tamper with and add a level of confusion and arbitrariness to various slope provisions, they retain one current, confusing provision from the former steep slope hazard area definition:

> Where no distinct break exists, the toe of a steep slope is the lower most limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of 25 feet.

This definition of the toe of the slope attempts to describe the exact point where a 40% slope becomes a slope of 39% or less. However, its application can be the subject of debate as occurred during the Bear Reserve appeal. The City of Bellevue does not attempt such a one size fits all approach and instead expressly relies on steep slope delineations in a site-specific professional geotechnical report ("in the case of landslide hazard areas, as delineated by the geotechnical report.")

Arbitrary Elimination of Small Natural Slope Exemption (SMC 20.80.030.F)

Current Shoreline Code section 20.80.030. F includes a small natural steep slope exemption. Previously, this exemption applied to certain activities proposed on small natural and engineered steep slopes with a vertical elevation change up to 20 feet. The proposed amendment would eliminate that exemption where such slopes are greater than 10 feet in height, purportedly leaving the exemption in place, but only for small slopes up to ten feet. However, the critical area regulations – even as revised – already expressly define regulated slopes as those in excess of 10 feet.[5] Therefore, in reality, the amendments do not just pare back the small natural slope exemption – they effectively gut it entirely without saying so.

In light of Shoreline's topography, the elimination would impact many properties within the City, which means the City's property owners as a whole, rather than Innis Arden in particular, will suffer from the consequences of this arbitrary amendment. Yet, here, again, there

[5] In the Bear Reserve decision, the Hearing Examiner found that many of the slopes at issue did not meet the 10-foot minimum height requirement in the critical areas regulations and therefore did not require "exemption" under this provision.

has been no explanation for or objective scientific analysis supporting elimination of the exemption for small natural slopes up to 20-feet high.

Proposed Critical Areas Report Procedures Would Add Bureaucracy and Expense and Create the Potential for Interference in Expert Consultant Analysis

As initially addressed in the Club's December 29, 2011 letter, the proposed changes to SMC 20.80.110 would require that all critical area reports, including geotechnical reports, be prepared only by experts controlled by the Department and working under a Department-dictated contract. The Department memorandum alludes vaguely to past experience supposedly prompting this proposal, but no specific, verifiable cases are cited. In contrast, as described in the Club's December 29, 2011, there is recent documented experience with overzealous Department staff attempting, "off the record," to pressure an independent expert engaged by the Club into recanting his expert conclusions. This occurred at a time when the Department knew that those conclusions had already been validated by the relevant expert at the Washington Department of Fish and Wildlife, with whom the Department had consulted.

In any event, the Department has cited no other jurisdiction that operates in the manner proposed in these amendments. Under them, the Department would inject itself into consultant contract terms, costs, and work, leaving taxpayers -- and applicants/property owners -- to pay for this expanded administrative undertaking. Citizens would be denied the opportunity to select and negotiate contract terms and specifications with their chosen consultant.

The City already has a "Qualified Professional" program which requires applicants to select their consultants from the City's list of approved professionals. The Department tries to justify the proposed significant revisions by complaining that it lacks authority to remove professionals from the approved list for cause, for example, where the City deems a professional's reports "routinely" inadequate, resulting in delay. However, such hypothetical delay, if really the consultant's doing rather than the result of shifting or redundant Department demands (such as Innis Arden Club experienced directly in Bear Reserve) would be a matter for negotiation between the applicant and the consultant. Its hypothetical occurrence does not justify inserting the Department as contract manager for every applicant and application -- an extreme "solution", offered without documented case histories demonstrating an actual recurrent problem.

If a recurrent problem truly exists and that problem is, as the Department suggests, attributable to the absence in the Code of explicit authority for removal for cause from the City's Qualified Professional list, then the straightforward solution would be to add that authority. Certainly, that would be much less overreaching than across-the -board injecting the Department into the contractual relationship between land use applicants/property owners and consultants.

The Proposed Amendments Perpetuate an Extreme Approach that Needlessly Pits Environmental Concerns Against View Covenants and Other Longstanding Property Rights

Innis Arden has fifty acres of dedicated Reserve Tracts containing almost 8000 trees. No other platted residential community in the City makes such a contribution to the "canopy." For over half a century, long before incorporation of the City of Shoreline, the Innis Arden Reserves and their trees have been managed for environmental stewardship, hazard reduction, recreational use, and view preservation.

The Club has always accepted reasonable municipal regulation as part of that management. However, in recent years, the Shoreline Code and those administering it have become progressively more antagonistic to the Club's core concerns and rights. Beneficial Code provisions -- for example, provisions authorizing large tract vegetation management plans ("VMP") -- have been arbitrarily eliminated. The ability to address in a timely fashion trees presenting imminent hazards was replaced with a cumbersome system that the Department administers with so little alacrity that one day it will inevitably result in City responsibility for a serious injury. Code provisions long applied to allow such measures as pruning and windowing to maintain and restore views have been re-interpreted to severely curtail such activities. Other cities and their codes attempt to accommodate longstanding property rights/amenities such as views and view covenants rather than treating them with unrelenting hostility.[6]

For example, the City of Mercer Island Code provides that a tree permit "will be granted" where the proposed removal is:

> [T]o enable any person to satisfy the terms and conditions of any covenant, condition, view easement or other easement, or other restriction encumbering the lot that was recorded on or before July 31, 2000; and subject to MICC 19.10.080.A(2) [imposing special procedures for tree pruning/removal in "critical tree area"].

Mercer Island §19.10.040.B .

[6] The City of Clyde Hill Code includes a good summary of why such accommodation makes sense, acknowledging the value in both trees and views:

> It is recognized that trees and views and the benefits derived from each, may come into conflict. Tree planting locations and species selections may produce both intended beneficial effects on the property where they are planted, and unintended deleterious effects on neighboring properties. Trees may block light, impinge upon the utilization of solar energy, cause the growth of moss, harbor plant disease, retard the growth of grass, harbor rodents, interfere with snow and ice removal, as well as interfere with the enjoyment of views, including the undermining of property values. It is therefore in the interest of the public welfare, health and safety to establish standards for the resolution of view obstruction claims so as to provide a reasonable balance between tree and view related values.

CHMC 17.38.010.D.

The City of Bellevue also acknowledges the importance of such covenants, and requires that they be given consideration in City review of Vegetation Management Plans:

> In determining whether the vegetation management plan should be approved, the Director shall take into consideration any applicable neighborhood restrictive covenants that address view preservation or vegetation management if so requested in writing.

BMC 20.25H.055.C (3) (i) (vi). Bellevue's Vegetation Management Plan provisions are worth consideration by Shoreline in their entirety. They allow for vegetation management and replacement in a critical area buffer or within a geologic hazard critical area. And, in addition to requiring that its Department "take into consideration" view preservation covenants, the Bellevue Code further recognizes that a VMP can include tree removal and replacement with native tree species that do not grow as tall:

> Short- and long-term management prescriptions, including characterization of trees and vegetation to be removed, and restoration and revegetation plans with native species, *including native species with a lower growth habit*. Such restoration and revegetation plans shall demonstrate that the proposed Vegetation Management Plan will not significantly diminish the functions and values of the critical area or alter the forest and habitat characteristics of the site over time.

Id. (Emphasis added).

There is a More Constructive Approach Available Involving Appropriate Code Amendments

As noted, many of the December, 2011 proposed amendments appear to be focused on changing those portions of the Code on which the Hearing Examiner ruled against the City in the recent Bear Reserves appeal. That focus is shortsighted. The amendments themselves do not reflect mature consideration. They will foster more litigation, ill will, and expense for the City.

An alternative, constructive path is available. Four years ago, in 2008, Innis Arden proposed language to restore a vegetation management plan framework to the Shoreline Code after the then-Planning Director Joe Tovar took steps that had the effect of eliminating authority for their use. At the same time, the Club also proposed revisions to the cumbersome hazard tree requirements adopted two years earlier, in 2006, as part of another Tovar initiative.

Mr. Tovar treated the Club's reform proposals with barely concealed contempt. They received no serious consideration in 2008 or in any ensuing year. 2012 should be different. The draft of the Club's 2008 proposal is attached as an appendix to this letter. It would make a good starting point for Code amendments that are actually needed in contrast to the ill-advised ones floated by the Department in December, 2011 and analyzed in detail in this letter.

In the event that the City determines nevertheless to proceed with the Code critical area amendments released in late December, 2011, we have attached for your consideration, as another appendix to this letter, an alternative version with much more limited and moderate revisions. We request that you distribute this letter and attachments to all appropriate recipients to ensure that the Club's comments are fully considered.

Meanwhile, the Innis Arden Club would welcome the opportunity to work constructively with you and the Department on these important matters.

Sincerely,

EGLICK KIKER WHITED PLLC

Peter J. Eglick
Attorney for The Innis Arden Club Inc.

cc: Client

Enclosures:
Club's 12/29/11 letter to Ms. Underwood
Club's 2008 proposal
Proposed Code Language

December 29, 2011

INNIS ARDEN

Via E-mail and Fax
(junderwood@shorelinewa.gov)
(206) 546-2200

Julie Underwood
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133-4921

Re: Proposed Development Code Amendments on Planning Commission January 5, 2012 Agenda

Dear Ms. Underwood,

The Innis Arden Club has appreciated your recent efforts to reach out and include important stakeholders in discussion before undertaking significant legislative initiatives. We had thought that our recent meeting and various discussions with you and your staff were frank and open exchanges. The Club was therefore extremely surprised and disappointed when on December 22 at 5:30 pm the City distributed a January 5, 2012 Planning Commission agenda that includes a proposal for changes to the Development Code that would have significant implications for the Club. Such substantial proposed changes were not mentioned in any of our communications from the City.

The lapse is unfortunate because the schedule announced allows little time before the matter is taken up by the Planning Commission. This is particularly inappropriate when one considers that the intervening twelve days (December 23 through January 4) are holiday time when Shoreline families are focused on family, friends, and vacations, rather than on analyzing Shoreline legislative proposals and preparing for a Planning Commission Study Session.

Worse yet, on an initial read, many of the proposed amendments appear to target applications such as that approved by the City's Hearing Examiner in her carefully reasoned Bear Reserve decision. This is unwarranted, especially in light of the Examiner's independent determination that there are no adverse hazards or impacts associated with the Bear Reserve project.

For example, the Development Code amendments propose a significant change in the system for obtaining expert environmental reports. The sparse explanation accompanying the proposed change suggests that it is necessary because of adverse City experiences. However, none are identified, and more important, documented. To the contrary, for example, the Hearing Examiner decision in the Bear Reserve matter confirms that there was never an instance in which the applicant experts did not respond fully and promptly to the City's repeated, redundant requests for information.

In fact, the City files reflect that the current system has served objective review well despite unfortunate detours by City staff. For example, in the Bear Reserve matter, an initial report from the Watershed Company, on the City's list of qualified experts, concluded that a drainage channel on site could be construed as a stream. The Club, however, was very aware that any indicia of a "stream" in Bear derived from the City's unlawful discharge of storm water drainage into the Reserve through a City pipe at the head of the Reserve. The Club therefore asked for a closer look. In a subsequent report, documenting its further study including site investigation, the Watershed Company concluded that no stream was present. This did not fit City staff preconceived notions. The City therefore requested an independent review by the Washington Department of Fish and Wildlife's (WDFW) in-house stream expert. The WDFW confirmed the "no stream" determination.

Although City staff had that independent WDFW confirmation in hand, the City's project manager for the Bear Reserve application then called the Watershed Company expert, failed to disclose the WDFW confirmation of the "no stream" conclusion, and attempted to pressure the Watershed Company expert into withdrawing his "no stream" conclusion. See attached January 28, 2011 letter from Club counsel to City Planning Director and City Attorney. This unfortunate episode provides a good illustration of why it is <u>not</u> appropriate to amend the Development Code to place experts engaged by applicant under the direction and control of City staff. In fact, based on another documented occurrence in the Bear matter, when staff has control over experts, it can unfortunately succumb to the temptation to manipulate them to reach "predetermined" conclusions. This is illustrated by the Hearing Examiner's extraordinary Conclusion (Number 22) in the Bear matter:

> In fact, no such [environmental] impacts are identified in the environmental documents. The only documents prepared for the proposal were prepared by the Club. <u>The "independent geotechnical evaluation" cited in the MDNS was a short, conclusory e-mail from the City's consulting engineer that appears from the record to have been solicited [by City staff] as support for a predetermined but unsupported condition in the MDNS.</u> The opinions expressed in the email, which were given before the consulting engineer had reviewed the Club's geotechnical reports, are addressed above. The e-mail did not purport to evaluate the proposal pursuant to SEPA, and <u>at hearing, the consulting engineer testified that the only adverse impacts of the proposal were speculative, i.e., the "potential impacts" that would occur if the trees were cut without all geotechnical recommendations being followed.</u> [Interlineations and emphasis added]

The current system includes checks and balances. The current system should not be altered absent a <u>compelling demonstration</u> of an actual <u>pervasive</u> problem.

As quoted above, the City's own consulting engineer in the Bear Reserve matter acknowledged that the only conceivable adverse impacts from the Bear Reserve project would be if the Club did not follow the "best practices" independently offered by the Club itself as specified by the Club's own geotechnical consultant. This reflects on another proposed Development Code

change that the City unveiled for Christmas. The change would require for the first time that, in order to be cognizable, a "topographic break" must be 15 feet wide.

This 15 foot minimum is what the City argued for unsuccessfully in the Bear Reserve matter. In response, the Club pointed out that the Code did not require such an extraordinary "minimum" before a topographic break could be recognized. Equally if not more important, Ron Free, the Club's expert engineering geologist, testified that such an across-the-board standard was unwarranted on an engineering and geological basis. The Examiner held for the Club on the basis of both the Code and the absence of demonstrated impacts. Now the City is proposing to impose such a fifteen foot minimum anyway.

The concerns outlined above just scratch the surface of the fundamental changes to the Development Code announced after hours on December 22 with no forewarning, discussion, or analysis. The Club is concerned both for the substance of what has been proposed and because the proposal over-all is inconsistent with what we understood to be a City commitment to "reset" relations with the Club.

Changes to the Development Code should not be re-active or put on a fast track. Therefore, we request that consideration of the Development Code amendments be postponed to permit prior consultation, analysis, and review, including with stakeholders.

I would appreciate hearing back from you on this before New Year's.

Sincerely,

Michael L. Jacobs
President - The Innis Arden Club, Inc.

Peter J. Eglick
eglick@ekwlaw.com

January 28, 2011

By E Mail and Fax

Ian Sievers, City Attorney
Flannary Collins, Assistant City Attorney
Joseph Tovar, PADS Director
Scott Passey, City Clerk
City of Shoreline
17500 Midvale Ave. N.
Shoreline, WA 98133

RE: Innis Arden Club Bear Reserve Application File No. 115423

Dear Mr. Sievers, Ms. Collins, Mr. Tovar, and Mr. Passey:

In a letter dated October 21, 2010, Brian Lee, the City's Project Manager on the above application asked as follows:

> c. Clarify the conclusions of reports prepared by the Watershed Company, in which a report dated October 15, 2008 states "the drainage feature passing through the Bear Reserve at Innis Arden is a regulated, City of Shoreline Type IV stream" and a report dated December 18, 2009 states "the drainage feature passing through the Bear Reserve at Innis Arden does not have the characteristics necessary for categorization as a regulated stream according to the definition provided by the City of Shoreline Municipal Code."

This question had already been answered in depth in the Watershed Company's December 18, 2009 report. Nonetheless, the Watershed Company, through Greg Johnston, the scientist who had prepared the report, responded again, in detail, in a letter dated October 26, 2010 to Richard Leary of the Club which was provided to the City on October 27, 2010. In all of the many, many weeks since, the City did not follow-up with the Club or with the Watershed Company at all on the detailed analyses provided.

Then, on January 25, 2011, Project Manager Lee telephoned Mr. Johnston out of the blue to essentially reiterate the same question and also asked whether or not the conclusions stated in Mr. Johnston's December 18, 2009 report were the result of Club pressure, implying that they might not be based on best professional judgment and expertise. Mr. Johnston, while attempting

to be polite, rejected Mr. Lee's suggestion and confirmed that his December 18, 2009 conclusions were based on his best professional judgment and expertise and that he stood entirely behind them. It was stated within the text of the December 18, 2009 letter report that it superseded the one dated October 15, 2008.

These questions by City staff to Mr. Johnston were not in writing, in contrast to all other communications by the City concerning questions about the experts' analyses in this matter. And, the Club was not informed of what could readily be construed as an intimidating contact prompted by the fact that the Watershed Company conclusions are "inconvenient" to the City's biases.

Even if charitably viewed by the Club, the City appears to have attempted, off-the-books, to confuse and compromise Mr. Johnston's December 28, 2009 and October 26, 2009 written analyses and conclusions and, as noted above, there are less charitable interpretations of the City's actions as well. All raise serious ethical and legal questions about the City's actions. The Club reserves all rights in this regard.

Further, in light of this incident, you are advised that all communications with the Club and its experts concerning this matter must be in writing (e-mail will suffice). This letter should therefore be placed in the application file as part of the application record.

Finally, you should consider this letter as requesting ("trolling" as Director Tovar chooses to demean Public Record Act requests in internal Department e-mail) all records, including electronic ones, concerning or relating in any way to this unfortunate incident.

Sincerely,

EGLICK KIKER WHITED PLLC

Peter J. Eglick

cc: Client

LOG

Planning and Development Services
17544 Midvale Avenue North,
Shoreline, Washington 98133-4921

Please complete the following:
Applicant for Amendment: *Innis Arden Club, Inc*
Address: *PO Box 60038*
City: *Shoreline*
State: *WA*
Zip: *98160*
Phone - Day: (206) 547-1105
Please specify:
Shoreline Development Code--Chapter 20.80
Amendment Proposed: Please describe your amendment proposal.

The Innis Arden Club Inc. proposes two related amendments. One is to add a new section to SMC Chapter 20.80 authorizing Critical Areas Stewardship Plans to allow for management on a long term and systematic basis of larger critical areas without the delays and duplicative expense inherent in piecemeal review. The second, related proposal is to modify the hazardous tree exemption provisions in SMC 20.50.310 A 1 d which have proven to be unworkable since their adoption in 2006. In proposing these amendments, The Innis Arden Club Inc. requests that they be considered in full and in full compliance with GMA public participation requirements by the Planning Commission and the City Council.

20.80.xx Critical Areas Stewardship Plans.

A. Management including pruning, removal, replacement, and related mitigation and restoration of vegetation in critical areas and their buffers shall be permitted pursuant to Critical Areas Stewardship Plans prepared to (1) maintain or ensure the safety of pre-existing recreational and/or access trails; (2) enable the preservation and restoration of views of Puget Sound and Olympic Mountains in neighborhoods where rights to such views have been judicially recognized; or (3) for analogous purposes.

B. Critical Area Stewardship Plans may be submitted to the Director by an owner or owners(s) of the parcels proposed to be included within the scope of the Plan and shall include the following:

1. An inventory of known watercourses, significant vegetation, and physical improvements (including but not limited to trails and underground and overhead utilities lines); identification of soils conditions, areas with slopes in excess of 15% and of 40%, and fish or wildlife habitat associated with significant species that are present on site. Said inventory may be based in whole or in part on publicly available reports,

delineations, or other records.

2. An assessment by a qualified expert or experts of significant ecological functions and values in the designated management zones including recommendations for preservation of such functions and values under the proposed Stewardship Plan.

3. A narrative describing applicable principles, methodologies and vegetation management practices that will be employed to achieve the stated objectives in the delineated management zones.

4. Other graphic or narrative information necessary in the expert or expert's opinion to provide reasonable assurance that the significant functions and values of the designated management areas will be maintained consistent with reasonable application of the law and recognition of pre-existing legal rights. Such maintenance may be demonstrated through, among other things, phased mitigation or restoration measures.

C. The Director shall review and issue his or her recommendation on a proposed Critical Area Stewardship Plan within 30 days of its formal submission for approval. The proposed Plan and the Director's recommendation shall thereafter be scheduled for public hearing and decision before the Hearing Examiner. The Examiner shall approve the proposed Plan unless he or she affirmatively concludes that, when considered in light of the factors set out in subsection A, the proposed Plan does not provide sufficient assurance that significant functions and values of the designated management areas will be maintained including through proposed mitigation/and or restoration measures. The Examiner may also approve the Plan with conditions or may remand the proposed Plan for provision of additional information followed by a continued public hearing.

D. Once approved, a Critical Areas Stewardship Plan shall be effective for and authorize the activities and actions it describes for a period of ten years from the date of its final approval, notwithstanding any other provision of this Chapter or Title.

As noted above, the Innis Arden Club Inc. also proposes related amendments to the Development Code's hazardous tree exemption provisions that were adopted in 2006. These have proven unworkable. Requests for exemption approvals since the time of the code amendment's adoption have languished at the City. In some instances, hazardous trees for which removal exemptions have been requested have since fallen, as evaluations obtained by the Club suggested might occur. In another instance in which no response has been forthcoming, failed trees that actually threaten the stability of stream banks and slopes <u>and</u> a private home adjacent to a Club Reserve tract and which should be removed for that reason have remained in place while a request for hazardous tree removal exemption has lain stagnant at the City. No one has yet been hurt and no homes have yet been lost, but if the present trend continues, a serious incident is bound to occur. The Club therefore proposes the following amendment, presented in strike-out and underline format for ease of

comparison to the current provision with explanations for the changes made bracketed and highlighted in yellow:

20.50.310 A 1 d. For trees that pose an active and imminent hazard to life or property, such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines, or are uprooted by flooding, heavy winds or storm events, the Director may verbally authorize immediate abatement by any means necessary.

e. For hazardous circumstances that are not active and imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks, a permit exemption request form must be submitted by the property owner together with a risk assessment form. Both the permit exemption request form and risk assessment form shall be provided by the Director who shall require that the risk assessment be signed by a certified arborist or professional forester. However, notwithstanding the foregoing, if the Director has not made such forms generally available both electronically and by hard copy within fifteen days of the date of these amendments, exemptions may be requested through submission of a hazardous tree assessment on a form such as that circulated by the International Society of Arborists ("ISA") signed by a certified arborist or professional forester. The arborist shall include an assessment of whether a portion of the tree suitable for a snag for wildlife habitat would be useful and may safely be retained. [If the forms called out by the 2006 code amendment even exist, they are not generally available, making citizen compliance with the 2006 amendment technically impossible. The amendments to this section are meant to address that problem.]

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f. Submission of a ~~The~~ permit exemption request to the Department ~~form~~ shall be deemed to ~~include~~ a grant of permission for the Director and/or ~~his~~ staff or qualified professionals engaged by and under the supervision of the Department to, at an agreed time and date, make a site visit in the company of the applicant and/or its qualified professionals to evaluate the specific circumstances that are the subject of the exemption request. Such permission is limited strictly to the exemption matter prompting the site visit and neither the City nor its consultants may utilize the site visit for any other purpose. Further, in requiring such a site visit, the City shall hold the exemption applicant harmless from any liability, damages, or claims arising out of injuries suffered by City personnel or consultants in the course of or related to the site visit. ~~. Attached to the permit exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist or professional forester.~~ [The changes here address the presumably inadvertent effect of the 2006 amendments turning a specific tree exemption request into a general search warrant, contrary to Washington law. The changes here also ensure that when a site visit occurs in "rough" terrain including in the vicinity of hazardous trees, the applicant does not end up with personal injury claims against it from City staff or consultants who may be injured in connection with the site visit.]

g. No permit exemption request shall be approved until the Director reviews the submitted forms and either conducts a site visit or reviews the record and makes such inquiries as are

determined necessary . The Director ~~may direct that a peer review of the request be performed at the applicant's cost, and~~ may require that the subject tree(s) vegetation be cordoned off with yellow warning tape during the review of the request for exemption. Notwithstanding any other provision of this Chapter or Title, a request for exemption in connection with removal or reduction of a hazardous tree shall be deemed approved if the Director has not provided to the applicant a written decision approving or denying the request within ten days of the date of its submission. [As written in 2006 the exemption required a site visit by the Director himself, virtually unprecedented in the Code. The amendments here take a more regular approach allowing but not requiring such a personal site visit. The language concerning "peer review" has been deleted as redundant, unclear, and potentially overly burdensome. An applicant must already obtain a formal report by a certified arborist at some considerable expense. The City has the ability to engage its own qualified professional to "peer review" an applicant's submission. However, the applicant should not have to pay twice. If this provision remains, it will be one of several that place a strong **dis**incentive on eliminating hazardous tree situations. That is an unwise and adverse consequence-laden policy for any city to adopt, including Shoreline.]

h. Approval to cut or clear trees ~~may only~~shall be granted ~~given upon recommendation of the City- approved arborist that~~if it is determined that the condition constitutes an actual threat of injury to persons ~~to life~~ or property in homes, private yards, buildings, public or private streets and driveways, recreational areas or access trails, sidewalks, improved utility corridors, or access for emergency vehicles. ~~and any trail as proposed by the property owner and approved by the Director for purposes of this section.~~ [This provision as written in 2006 eliminated injury – as opposed to death – as a basis for hazardous tree abatement. Presumably, the error was inadvertent, since risk of injury is well-recognized – and appropriately so – as a basis for action (did the City really mean to say that a limb that might paralyze but not kill was acceptable?) The strike-outs and additions here therefore restore injury as a basis for exemption. They also restore explicit recognition of the risks associated with recreational areas and access trails, two heavily used features that have characterized Innis Arden for half a century. If the Director wishes to contest whether a particular tree represents a hazard, that is one thing. But, the suggestion in the 2006 amendments that the Director can in his discretion decide that a particular area or trail is not entitled to be hazard free in the first place is an entirely different matter, crossing the line between reasonable regulation and a taking or arbitrary restriction on use. The City should therefore take this opportunity to correct this obvious error.]

i. The Director shall authorize only such alteration to existing trees and vegetation as may be necessary to eliminate the hazard and shall condition authorization on means and methods of removal necessary to minimize environmental impacts, including replacement of any significant trees. ~~The arborist shall include an assessment of whether a portion of the tree suitable for a snag for wildlife habitat may safely be retained. All work shall be done utilizing hand-held implements only, unless the property owner requests and the Director approves otherwise in writing.~~ The Director may require that all or a portion of cut materials be left on-site. [The language concerning arborist evaluation of snag potential is stricken here and moved to subsection "e" above. The 2006 ban on elimination of hazards except by "hand held implements only" has been deleted as unreasonable and, in some instances, contrary to sound environmental practice. For example, ladders, cranes, or "buckets" are not handheld

implements, but may sometimes be used to good effect. If the City is concerned about damage from a particular form of machinery, it would do better to specify performance standards for its use rather than impose a vague limitation to "hand held implements only" as a further burden on abating hazards.]

Reason for Amendment:

Please describe why the amendment is necessary.

With Regard to the proposed amendment for Critical Areas Stewardship Plans: Twenty years ago, the Washington Court of Appeals explicitly held that Innis Arden was platted and developed to capture sound and mountain views and therefore rejected attempts to prevent enforcement of the Innis Arden covenants requiring that trees be maintained in keeping with that purpose. Long before the City of Shoreline came into being, Innis Arden lots were oriented and homes were built in keeping with that purpose. The Innis Arden Reserves were planned and "developed" with trails and recreational features that were well-established by the time the City of Shoreline first came into being. Now, however, the City's critical areas regulations fail to appropriately balance the property rights and obligations of owners of large parcels of open space as well as covenanted communities vis a vis the City. Such a balance must be restored and it is not impossible to do so. It occurred successfully in the Vegetation Management Plan prepared for Innis Arden's Grouse Reserve and approved by the City several years ago. The proposed amendment provides a means of repeating that success, protecting Critical Areas while respecting pre-existing private property rights, and previous government approvals (the Innis Arden plats and covenants were all approved by King County).

With Regard to the proposed Hazardous Tree Exemption amendments: The necessity for these amendments is explained in the bracketed/highlighted annotations above.

Decision Criteria Explanation:

1. Please describe how the amendment is in accordance with the Comprehensive Plan.

The Comprehensive Plan, as does the GMA, encourages protection of critical areas in the context of existing property rights and the requirement for reasonable use. At this point, the City's critical areas regulations are not informed by that context. Again, the proposed Critical Areas Stewardship Plan mechanism would advance Comprehensive Plan policies while striking a reasonable balance.

With Regard to the proposed Hazardous Tree Exemption amendments: These amendments are more consistent with the Comprehensive Plan and the GMA that the current provisions which are not informed by individual property and recreational/open space area policies and principles.

2. Please describe how the amendment will not adversely affect the public health, safety or general welfare.

The purpose of the amendments is to reduce environmental impacts while promoting reasonable use of critical areas. The amendments would not as a practical matter reduce environmental protections. They would, on the other hand, enhance safety in some areas (presumably a public benefit) and ensure that regulations in the City's code were workable rather than aimlessly burdensome.

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

While the vagueness of this inquiry is apparent, the Club believes that the Amendments will enhance the interests of these two groups. Clarification and streamlining of regulations is a public benefit as is modification of regulations that overly burden longstanding private uses and property rights. Further, failure to bring some semblance of balance to the situation will likely foster continuing controversy, which is also not n the public interest. Finally, adoption of the common sense remedial action requested by the Club will diminish the likelihood that a solution will be dictated by some outside body or tribunal.

Please submit your request to the City of Shoreline, Planning and Development Services Department.

SMC 20.80.030.F.

Activities occurring on small slopes with a vertical elevation change of up to but not greater than 20 feet such as a natural slope, berm, retaining walls or excavations may be exempted based upon City review of a geotechnical report prepared by a qualified geologist or geotechnical engineer as described in SMC 20.80.110 which demonstrates that no adverse impact will result from the exemption.

SMC 20.80.110

If uses, activities or developments are proposed within critical areas or their buffers, an applicant shall provide environmental reviews including site-specific information obtained by expert investigation and analysis presented in a report that conforms with the specific critical areas report guidelines approved by the Director. This provision is not intended to expand or limit an applicant's other obligations under WAC 197-11-100. Such site-specific reviews shall be performed by qualified professionals, as defined by SMC 20.20.042, who are approved by the City or under contract to the City.

SMC 20.80.220

A. Landslide Hazard Areas.

1. Landslide hazard areas are classified as follows:

    a. Moderate Hazard: Areas with slopes between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till

    b. High Hazard: Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.

    c. Very High Hazard: Areas with slopes steeper than 15 percent with zones of emergent water (e.g., springs or ground water seepage), areas of landslide deposits regardless of slope, and all steep slopes 40 percent or greater.

2. Steep Slopes are defined as follows:

    Slopes of 40% or more that have a rise of at least 10 feet and exceed 1000 square feet in area. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.

    a. The toe of a slope is a distinct topographic break in slope which separates slopes inclined at less than 40 percent from slopes that are 40 percent or steeper. Where no distinct break exists, the toe of a steep slope will be determined by a qualified geologist or geotechnical engineer based on an examination of the site and relevant survey data. In the case of landslide hazard areas, steep slopes will be delineated in a geotechnical report prepared by a qualified geologist or geotechnical engineer as described in SMC 20.80.110; and

    b. The top of a slope is a distinct, topographic break in slope which separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the top of a steep slope will be determined by a qualified geologist or geotechnical engineer based on an examination of the site and relevant survey data. In the case of landslide hazard areas, steep slopes will be delineated in a geotechnical report prepared by a qualified geologist or geotechnical engineer as described in SMC 20.80.110.

From: Arthur I. Peach [arthurpeach@hotmail.com]
Sent: Thursday, April 18, 2013 5:33 PM
To: Plancom; City Council
Subject: Rezoning on 148th and 15th in regards to a Comprehensive Plan Ammendment

To the City Council and Planning Commission,

I am sorry this comment letter has come in late I am sending it from outside the US, I hope you receive it on time. I will provide the maps at the public hearing in May. This letter includes the Council for the preparation of when the item does go on their agenda.

04/16/2013

To Planning Commission, Council and City Staff,

My name is Arthur Peach, I live on 148th and 15th in Briarcrest. In 2008, I served on the SE Subarea Planning Committee as Chair, it was designed to help neighborhoods and the City develop compliance for the GMA act of the State of Washington. After an almost 4 year commitment and receiving the adoption by Planning Commission and City Council; we now have our 20 year plan for the subarea area.

I was first contacted by the Animal Surgical Clinic of Seattle in December 2012 about a potential zoning change from R-48 to NB(it might be different now). The ACSS held a public meeting that I was told no one went to, and I did not attend. I did contact Russ from the Clinic. We spoke about the area, and I mentioned that we had already changed the property designation zoning in the SE Subarea Committee process; he told me it was not modified. I called Miranda Redinger in Planning Department to see what the parcel was designated as for verification. This parcel was not changed and it was overlooked by the SE Subarea Committee, Planning Commission and the Council. There is no one to blame it was just an over looked parcel in a very long process. We should fix this; and the ACSS property should be an expedited adjustment without cost. The maps provided by the City during the SE subarea process show the parcel as one(but split into 2 zones), but as you will see it is easy to mistake it as an adjacent residential property. I am suggesting to have the property that the ACSS owns today rezoned completely as CB(MUZ) since the parcel should be one zoned as one. They purchased the property with the expectation of growth in an area designed for it.

The second item that was brought to the neighbors attention was the rezoning of 1520 NE for use of a future parking lot. I do not have issue with this conversion, the property there is a disaster. Considering parking is at a premium this would solve a lot of the parking issues as you proceed further East on 148th. The property itself has some significant trees that I recommend have an arborist check the health, but it does not appear that they are diseased in any way or in the way of a parking lot development.

The ACSS has been a good neighbor and has be very instrumental in a continuous conversation between all of us on 148th. I hope that their communication with neighbors and the city will increase the chances of their proposal proceeding quickly. This won't be the first time we will have these issues but property owners should have a right to get these clerical errors fixed in a cost free and timely manner. Delays in developing property cost jobs, potential business and delays in business planning. For us to develop area designated for businesses and density we need to identify issues like this and act.

Sincerely,

Arthur Peach

1522 NE 148th St

Shoreline Wa 98155

206-412-3198