EKW LAW
EGLICK KIKER WHITED PLLC

Jane S. Kiker
kiker@ekwlaw.com

April 28, 2014

Via E-mail
(council@shorelinewa.gov)
(jsmith@shorelinewa.gov)

City Council
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133

RE: Comments by the Innis Arden Club, Inc. re Proposed *Urban Forest Strategic Plan*

Dear Members of the Council:

The Council is scheduled to discuss at this evening's regular meeting a proposed *Urban Forest Strategic Plan* ("UFSP"). The Innis Arden Club Inc. has been participating actively in the review of this plan before the Tree/PRSC Board. In doing so, the Club has urged that the UFSP be guided by the following key tenets:

1 Promoting Right of Way ("ROW") tree canopy must be in the context of planting and maintaining only site-appropriate trees;

2. Determination of site-appropriate trees must be guided by potential impacts on public and private infrastructure, solar access, and legally established (including covenanted) views;

3. The Draft UFSP's emphasis on amendments to the approved list of ROW trees is premature and not supported by actual data and studies;

4. Staff is currently preparing a proposal to the Planning Commission for a Code exemption regarding trees, tailored to benefit one narrow special interest. Such a piecemeal approach is inappropriate. Instead, the City should as a priority re-establish a regulatory framework for flexible stewardship plans for large private tracts;

5. The City's UFSP and other policies should be drafted and adopted in a manner that does not result in needless legal disputes (e.g. with the Club) that should be left in the past.

To provide additional background and greater detail on these tenets, I have attached to this e mail the Club's February 7, 2014 and April 14, 2014 detailed comment letters submitted to the Parks, Recreation and Cultural Service/Tree Board.

The Club appreciates the Council's consideration of the foregoing tenets and the attached comments and would be happy to answer any questions Councilmembers or Staff may have about them.

Sincerely,

EGLICK KIKER WHITED PLLC

Jane S. Kiker
Attorneys for The Innis Arden Club Inc.

cc: Mayor Shari Winstead (swinstead@shorelinewa.gov);
Deputy Mayor Chris Eggen (ceggen@shorelinewa.gov);
Councilmember Keith McGlashan (kmcglashan@shorelinewa.gov);
Councilmember Will Hall (whall@shorelinewa.gov);
Councilmember Doris McConnell (dmcconnell@shorelinewa.gov);
Councilmember Jesse Saloman (jsalomon@shorelinewa.gov);
Councilmember Chris Roberts (croberts@shorelinewa.gov);
Director Dick Deal- Parks, Recreation and Cultural Service (ddeal@shorelinewa.gov);
Client

Enclosures: (1) April 14, 2014 Letter to Ms. Colaizzi re Supplemental Comments re Draft Urban Forest Strategic Plan
(2) February 7, 2014 Letter to Mr. Deal & Ms. Colaizzi re Preliminary Comments on City Tree Board's Draft Urban Forest Sustainability Matrix

Jane S. Kiker
kiker@ekwlaw.com

April 14, 2014

Via Facsimile (206-801-2780)
and Email mcolaizzi@shorelinewa.gov

Maureen Colaizzi
Parks Project Coordinator
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133

RE: Supplemental Comments by The Innis Arden Club, Inc.re Draft Urban Forest Strategic Plan

Dear Ms. Colaizzi:

Thank you for the opportunity at Tuesday night's (April 8) Urban Forest Strategic Plan ("UFSP") Open House to engage members of the PRCS Board and the City's consultant, Ms. Walker, in discussion on behalf of The Innis Arden Club, Inc. about the key priorities identified in the draft plan.

The comments below supplement but do not replace the Club's February 7, 2014 written comments and April 8th Open House comments on the Draft UFSP ("Draft Plan"). The focus below is on: (A) Species Suitability/Street Trees ("Key Priority" #2); (B) clarification regarding the Plan's purported scope; and (C) the urgent need to re-establish a framework for long-term Stewardship Plans for large private tracts such as the Innis Arden Reserves.

A. Species Suitability for Urban Environment / Street Trees

The Draft UFSP's "Key Priority No. 2" calls for updating the City's Right of Way ("ROW") Tree Species List. According to the Plan, this update would address a perceived need for additional "age and species distribution" among publicly owned and managed trees. This perception is apparently based on the City's 2013 Street Tree Inventory. However, that inventory was not based on a complete assessment, but was limited to ten City corridors. It therefore does not represent a thorough investigation into existing street tree age and diversity

distribution across the City. In addition, it does not take into account the existing age and species distribution for trees on other types of City properties, including but not limited to parks.

The Innis Arden Club agrees that the City should prudently manage its public trees. One goal of such management would be achieving healthy age and reasonable species distribution. However, management based on assumptions would be imprudent. A street tree inventory of just ten City rights of way is not a reasonable baseline from which to draw conclusions regarding the age and species distribution of all City trees, let alone to formulate goals and strategies for "improvements." The scarcity of funds for UFSP projects makes it all the more important that "improvement" projects are first supported by thorough research. Completing a comprehensive assessment of public trees should therefore be the first task under the "Species Suitability" goal/strategy. The tree list should only be amended if the *city-wide* research discloses a significant deficiency in public tree age/species distribution overall.

As discussed at the Open House, the Innis Arden Club agrees with the City that, if the City's tree list will be amended, two distinct lists must be established — one for street trees and one for all other City properties. This concern was echoed by advisory Tree Board members at the April 8 session and should be clearly called out in the next draft plan.

Promoting the public tree canopy should not eclipse the importance of planting site-appropriate trees, particularly in the ROW. The UFSP should explicitly recognize that a sustainable urban forest, with adequate diversity in tree species and age/size, can be achieved without allowing large trees on ROWs, where they will interfere with public/private infrastructure, solar access and legally protected (including covenanted) views. Even if the desired "age/species distribution" on improved ROWs were to fall short of over-all diversity targets (there is no indication it will), these targets can still be achieved, city-wide. The Plan should include -- as a top priority -- establishment of criteria for "site appropriateness" for ROW trees that recognize these principles.

The April 8 Open House, was encouraging in this regard in the sense that assurances were offered that strategies for species and age diversity would be subject to such considerations. In particular, there were assurances that the Plan would not permit potentially view-blocking trees to be planted in areas such as Innis Arden where they would create conflict with, *inter alia*, view covenants. However, upon review, the draft Plan language cited in support of this assurance is too vague:

> For species suitability and distribution, use of a diverse and appropriate species list for all community plantings.

Neither "appropriate" nor "species suitability" clarify that ROW trees will be chosen with regard to avoiding conflict with longstanding view covenants. While the Open House verbal assurances were a good first step, the written Plan must clearly acknowledge that a threshold criterion for a ROW street tree will be avoidance of conflict with longstanding community view covenants.

Large conifers and deciduous trees such as Douglas Fir, Western Red Cedar, oaks, big leaf maples, and others have their place in the City, but not in rights of way. Expansion of the ROW tree list to include such species would result in damage to utilities, block solar access and impair protected views. The public and private financial burden of dealing with such trees in the ROW should be avoided by keeping them off the ROW tree list in the first place. While such species can be sited elsewhere in the City, there is no public imperative for allowing them in rights of way.

A "compromise" was reached by the City and Club two years ago with the establishment of the current process for removing street trees. SMC 12.30.040. It is not ideal, but there since have been no new conflicts regarding street trees. However, any proposal allowing potential increase in ROW trees, adding problematic species to the ROW tree list, or making it more difficult to remedy impairment of covenant-protected views by ROW trees would be counter-productive and potentially reopen a legal discussion that both the City and the Club were glad to put behind them two years ago.

B. UFSP Plan Requires Further Clarification Respecting Its Limited Scope

The Draft Plan's "Executive Summary," "Introduction," and "Conclusion" still blur the line between management of public versus private trees, e.g., through general references to City management of the "Urban Forest". References to the Plan as "liquid" and amenable to expansion have contributed to concerns about its current scope. Nonetheless, the consultant and Board members have verbally assured that this strategic planning process is only about management of rights of way and publicly-owned portions of the over-all "urban forest," public education, and the creation of certain incentives for private tree management. What remains, therefore, is for the written product to explicitly spell out that, with the exception of education and incentive programs, the overall UFSP process is limited to addressing the urban tree canopy through goals and strategies for rights of way and publicly-owned areas.

C. Prioritizing Re-Establishing a Framework for Large Tract Stewardship Plans

As noted above, the current draft Plan is supposed to assess and address "public" trees. That said, a City planning initiative to re-establish a framework for private large tract tree stewardship would be a constructive corollary. Such an initiative would require leadership by the Planning Department, but the UFSP prepared under Parks Department auspices could usefully call for its initiation. In particular, UFSP Appendices C and D should place a high priority on fostering of "stewardship" or "vegetation management" plans for large private tracts, with the private burden and expense of individual plans, if approved by the City, supported by City incentives (e.g. streamlined permitting and exemptions).

Thank you for your consideration of these comments. We look forward to reviewing the next draft of the Plan.

Sincerely,

EGLICK KIKER WHITED PLLC

Jane S. Kiker
Peter J. Eglick
Attorneys for The Innis Arden Club Inc.

cc: Client

Jane S. Kiker
kiker@ekwlaw.com

February 7, 2014

Via E-mail and US Mail

pks@shorelinewa.gov

Mr. Richard Deal (*ddeal@shorelinewa.gov*)
Director, Parks, Recreation & Cultural Resources
City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133

Ms. Maureen Colaizzi (*mcolaizzi@shorelinewa.gov*)
Park Project Coordinator
City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133

RE: The Innis Arden Club, Inc.'s Preliminary Comments On City Tree Board's Draft Urban Forest Sustainability Matrix

Dear Mr. Deal & Ms. Colaizzi:

The Innis Arden Club Inc. submits these preliminary comments on the City's proposed Draft Urban Forest Sustainability Matrix ("Matrix").

The Urban Forest Strategic Plan (""UFSP") materials' announced purpose is to "guide the community over the next five years regarding planning, management and maintenance of public trees." UFS Planning Process Overview (emphasis added). However, throughout the Matrix there are references – particularly in the "key objectives" column – to a "city-wide urban forest management plan" with repeated references to "private property" and "private land" in addition to public trees. See, e.g., Matrix, at 8 ("Develop and implement a comprehensive urban forest management plan for private and public property"); and at 10 ("Integrated municipal wide policies that ensure the protection of trees on public and private land are consistently enforced

and supported by significant deterrents..."). Thus, the Board has failed to adequately describe the scope and objectives of this planning process.

There is a critical distinction between a planning effort to better manage the City's own trees on City property and one contemplating imposition of additional burdens and standards on private property. The latter requires candid public notice that the planning process underway is not in fact limited to City-owned trees.

1. Tree Canopy Should Occur On City Property Such As Parks

Per the City's own studies, its tree canopy has not been shrinking but in fact has been stable at over 30% over the past two decades, even increasing slightly since 1992. March, 2011 Urban Tree Canopy ("UTC") Assessment Project by Amec Earth and Environmental, Inc., at 2 ("Major Findings"). Therefore, the "Urban Forest Strategy Plan" should not be a vehicle for increasing tree canopy burdens on private property owners as part of a strategy to "up" the percentage of urban forest canopy from that which has historically existed in the City. The focus of this planning effort must be on City-owned property, with an emphasis on parks. Residents -- particularly in single family neighborhoods such as Innis Arden, which already account for the lion's share of the City's tree canopy -- can be encouraged to increase canopy on private property, but cannot be required to do so. Further, any measures to increase canopy should address areas where canopy is currently below the historic City average starting with commercial and business districts and properties which contribute as much or more to storm water and carbon problems as residential neighborhoods do.

2. The City Should Adopt Code Amendments Crediting Private Stewardship Efforts And Eliminating Regulatory Disincentives

Innis Arden has 50 acres of dedicated private Reserve Tracts containing almost 8,000 trees. Per the Innis Arden Mutual Restrictive Easements, these open space Reserves 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. In 2013 alone, the Innis Arden Natural Reserves Committee kept EarthCorps personnel fully employed for at least 25 days, planting 278 trees, 495 shrubs, and 137 ground covers (all native species).

City Code should facilitate such management rather than hamper it. The Club has always accepted reasonable municipal regulation as part of its Reserves management. However, beneficial Code provisions -- for example, provisions authorizing large tract vegetation management plans ("VMP") -- have been arbitrarily eliminated. 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. Private property owners must now undergo an expensive and burdensome permit process in order to remove one or two unhealthy trees. That

such regulatory zealotry is unnecessary is demonstrated by the Code's selectivity: it currently exempts removal of invasive species from permitting requirements only when removal is undertaken on City-owned property. Private property owners must go through the City's notoriously dysfunctional and expense-generating processes to obtain a permit to remove noxious vegetation -- while the City has exempted itself from such rigors. This does not foster healthy forests.

Rather than inserting into a plan supposedly addressing City trees suggestions for new burdens and tasks to impose on private treed open space such as the Innis Arden Reserves, the City should include a mandate to ease the regulatory expense and burden of managing such tracts. Normal and routine maintenance of the Reserves should be exempted from City "tree conservation and land clearing" standards in Subchapter 5 of the Development Code which generally presumes that tree removal is occurring in connection with development or site preparation activities. The City should re-establish the former Code provisions for long-term vegetation management plans that permit ongoing stewardship of open space tracts without the need for piecemeal permitting. At least twice in the past six years the Club has provided the City with proposed legislation that would achieve this goal. See, e.g., attached January 17, 2012 letter (at 8), re-forwarding the Club's 2008 proposed legislation. The City has failed to take action on this in the past: the current planning effort provides a key opportunity.

3. City Management of Public Trees Should Respect Private Property Rights

a. Respect Private Covenants

The City cannot forcibly enlist homeowners in a crusade to re-forest the City when current homes and developments were sited, permitted, and constructed under different rules. These development decisions, which took into account solar access, light and air availability, horticulture and views, are now vested and cannot be undone by City fiat. In the case of Innis Arden, its Covenants and the directions they set for construction of homes and preservation of views long pre-date the City of Shoreline. The Washington Courts have recognized the continuing existence and authority of the Innis Arden Covenants and of private covenants in general. They have never endorsed municipal *de facto* abrogation of such covenants except when the covenants were constitutionally repugnant (e.g. discriminatory). The principle involved in the requirement for municipal respect for the private property rights inherent in private covenants need not be tested judicially so long as the City refrains from overreaching and instead seeks a *modus vivendi* with long-established covenants such as Innis Arden's.

Other cities have successfully acknowledged the balancing that must occur and accommodate longstanding property rights/amenities such as views and view covenants rather than treating them with unrelenting hostility. 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.

Clyde Hill Municipal Code §17.38.010.D. Other cities similarly recognize the importance of views, and the private covenants adopted to protect them. 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 Municipal Code §19.10.040.B.

b. Balance Goal of Increased Tree Canopy With Other Essential Municipal Goals And Private Rights Such as Solar Energy And Home Horticulture

"Urban forestation" efforts cannot trump Shoreline residents' statutory and common law right to solar access. The State legislature has recognized a strong public interest in guaranteeing direct solar access for purposes of energy generation. See, e.g., RCW 64.04.140. Allowing large trees or placing restrictions on tree removal in the right of way or on other City-owned property can interfere with the installation or operation of solar electric or solar heating/cooling technologies. The urban forest strategy plan should, at minimum, permit removal of public trees where they would interfere with generation of electricity from solar panels, existing or potential. The plan should also explicitly recognize solar access necessary for horticulture, including home gardening, and provide for exempt tree removal where private residential gardens (or community gardens) are threatened by inadequate solar access.

c. Continue To Limit Street Trees By Size and Species To Avoid Needless Public Expense And Harm To Private Property

When it comes to creating and managing the "urban forest" through street trees, Shoreline is one of many municipalities which recognize that such vegetation must be carefully regulated to protect urban infrastructure, such as streets, sidewalks and utilities (above and underground). Based on this, the City has adopted a tree list reflecting site-appropriate trees for

public rights of way. The City should reject any proposals to expand the City's current street tree list to include larger varieties of trees such as Douglas Firs, Western Red Cedars and Big Leaf Maples. These species--and many others that have been after review excluded from the list--are not appropriate for rights of way due to the damage their large root systems and/or branches typically cause to public improvements, as well as to private driveways, landscaping and drainage facilities. Species allowed on rights of way should be limited to a 40-foot maximum height, to avoid such interference.

The current tree type and removal regulations for so-called right of way trees are not perfect from the Club's perspective. But they have been the basis for accommodation of the Club's interests in covenant enforcement. In 2012 the Club filed a lawsuit against the City over this issue which it subsequently, voluntarily dismissed without prejudice when the City approved removal of the trees at issue and established a new process for removing street trees going forward. The Club continues to reserve all rights in this regard. Any proposal to increase the potential height of right of way trees, add problematic species to the street tree list or make it harder to remove trees found to violate the covenant, would be a counterproductive step backward and potentially re-open a legal discussion that both the City and the Club were glad to put behind them. Further, there is no need to re-open that discussion: the current regulations have not been shown to have significantly impacted over-all tree canopy.

d. Recognize Alternate Means Of Achieving Municipal Stormwater Management Goals And Reducing Greenhouse Gases

The UFSP draft vision statement includes two very broad municipal objectives -- "environmental enhancement" and "community livability" -- for urban forest management. The City has provided little concrete explanation of what these specifically mean, but there are some signs that they relate generally to reducing greenhouse gases and better controlling stormwater runoff. These vague goals may be enough to justify (with little specific documented nexus) a program to increase City-owned tree canopy. They don't provide a fair or legal basis for adding to private tree owners' burdens – particularly in a City whose canopy is not in decline. Further, to the extent that better, more efficient stormwater management is desired, the UFSP planning process should recognize that increasing the tree canopy is only one means of achieving this goal. Public and/or private roof gardens ("green roofs"), right of way bioswales and/or recycled roof runoff (e.g., rain barrels, cisterns) and other low impact development practices, are viable, legal alternatives to increasing the tree canopy, particularly in residential neighborhoods.

Finally, an agenda focused on "urban tree canopy" in an oversized sense is not appropriate. The benefits of vegetation and canopy are provided by trees (and shrubs) of <u>all</u> heights and varieties. Increasing the size and diversity of the urban canopy can be achieved without expanding the City's established right of way tree list to include the largest firs, cedars and maples. Promoting the tree canopy should not eclipse the importance of planting site-appropriate trees, particularly in the right of way. A primary focus of the urban forest strategic plan should be to develop policies for incorporating a broad variety of native trees and shrubs

that provide canopy diversity without interfering with public or private infrastructure, solar access or views.

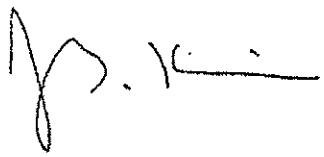
e. *The City Should Lift Overburdensome Restrictions On Removal Of "Non-Imminent" Hazard (i.e., Non-healthy) Trees*

If the City is to consider measures to promote the health of the urban forest, it must recognize that it is sometimes necessary to proactively remove damaged or diseased trees that have not yet become "active and imminent hazards." Recently, the City made it far more costly and time-consuming for citizens to carry out this task by eliminating a former permit exemption that allowed removal of an unhealthy tree that posed a "non-imminent hazard", based on an arborist's report. Requiring a permit to remove such trees creates an economic incentive for property owners to overlook diseased or damaged trees, discouraging the removal of such trees before they spread disease to other trees and/or they became imminent hazards themselves. Any strategy that demands increase in canopy on private property while inhibiting hazard tree removal as in the current Code is certain to increase risk to public health and safety in addition to putting the urban forest at risk.

The Innis Arden Club appreciates the opportunity to comment and will watch the ongoing planning with interest because significant rights are at stake.

Sincerely,

EGLICK KIKER WHITED PLLC



Jane S. Kiker

Attachment: January 17, 2012 letter

cc: Client

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 two 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.A. 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

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 and 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.]

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.