

# DRAFT

## CITY OF SHORELINE

### SHORELINE PLANNING COMMISSION MINUTES OF REGULAR MEETING

July 16, 2015  
7:00 P.M.

Shoreline City Hall  
Council Chamber

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#### **Commissioners Present**

Chair Scully  
Vice Chair Craft  
Commissioner Maul  
Commissioner Mork  
Commissioner Moss-Thomas

#### **Staff Present**

Steve Szafran, Senior Planner, Planning & Community Development  
Paul Cohen, Planning Manager, Planning & Community Development  
Juniper Nammi, Planner, Planning & Community Development  
Lisa Basher, Planning Commission Clerk

#### **Commissioners Absent**

Commissioner Malek  
Commissioner Montero

#### **CALL TO ORDER**

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

#### **ROLL CALL**

Upon roll call by the Commission Clerk the following Commissioners were present: Chair Scully, Vice Chair Craft and Commissioners Maul, Moss-Thomas and Mork. Commissioners Malek and Montero were absent.

#### **APPROVAL OF AGENDA**

The agenda was accepted as presented.

#### **APPROVAL OF MINUTES**

The minutes of June 18, 2015 were adopted as corrected.

#### **GENERAL PUBLIC COMMENT**

No one in the audience indicated a desire to provide general comments.

**STUDY ITEM: CRITICAL AREAS ORDINANCE (CAO) UPDATE – STREAMS AND FISH AND WILDLIFE PROVISIONS**

**Staff Presentation**

Ms. Nammi advised that this workshop is the Planning Commission's fourth opportunity to review the draft changes to the CAO. Tonight's discussion will focus on Subchapter 3 – Fish and Wildlife Habitat Conservation Areas (SMC 20.80.260 through 20.80.300), Subchapter 5 – Flood Hazard Areas (SMC 20.80.360 through 20.80.410), Subchapter 6 – Aquifer Recharge Areas (SMC 20.80.420 through 20.80.450), Subchapter 7 – Streams (SMC 20.80.460 through 20.80.500), and associated definitions (SMC 20.20). She announced that an additional workshop on August 6<sup>th</sup> was added to the schedule for the Commission to discuss the General Provisions. However, staff believes there is enough time to compile the draft update and present it for public hearing as previously scheduled on August 20<sup>th</sup>. The public notice and State Environmental Policy Act (SEPA) Determination for the update is nearly ready to move forward and the complete hearing packet will be available shortly after the Commission's August 6<sup>th</sup> meeting.

Ms. Nammi referred to public comments received relative to the public hearing date and invited the Commissioners to comment. None of the Commissioners raised a concern about the public hearing date of August 20<sup>th</sup>.

Ms. Nammi also noted that the City received comments from citizens who are concerned about the implications of incorporating the updated CAO into the Shoreline Master Program (SMP). She confirmed that the City does not have to make changes to the CAO within the shoreline jurisdiction at this time. It is, and always has been, proposed by staff to simplify the regulations for management purposes. Having one set of critical areas regulations that can be applied citywide would make the code easier to administer. Staff also feels that the majority, if not all, of the proposed changes are beneficial to the shoreline jurisdiction. However, upon direction by staff and/or the City Council, this piece could be removed and still comply with the Growth Management Act (GMA). Doing so would mean that the shoreline jurisdiction (200 feet from the shoreline) would be subject to the current CAO and not the updated one.

Chair Scully noted that most of the comments from those affected by the SMP brought up concerns about what is changing. He suggested it would be helpful for staff to prepare a bullet-point list outlining the differences between the current and proposed CAOs as they pertain to the properties governed by the SMP.

Ms. Nammi said the City has also received public comments relative to geologic hazard areas. While she agreed to provide additional information, she does not yet have example maps to illustrate what areas of prior landslide activity might look like. However, she has confirmed that the City already has a budget planned for acquiring the data needed to complete the analysis, and her goal is to provide the requested information to the Planning Commission on August 6<sup>th</sup>.

Ms. Nammi requested further clarification on the amendment put forward by Chair Scully that would allow either reclassification or exemption of very high risk landslide areas if a site-specific study

demonstrates that they are safe or safer than what is typically allowed in the very high hazard category. She reported that she has done some preliminary work, but has been unable to come up with a good example from another jurisdiction. The alternative the Commission could consider is the language in the Department of Commerce's example code, which allows development of an area if a proposal meets a certain level of safety in the stability analysis. She discussed the concept of exempting or reclassifying the properties with the consultant, and he confirmed that the theoretical, rock-solid geology does not exist in the City. He said he would be hesitant to confirm whether or not existing geology could be determined to be stable because the stability of the soils is dependent on development on and around the subject property. When vegetation and hydrology is changed, the stability of the slope can change, as well. He was reticent to recommend reclassifying that would allow changes to happen without analyzing the slope stability. He noted that the City of Issaquah has a negotiated critical areas agreement for the Issaquah Highland Development, which allowed the developer to grade and redesign the existing very high risk hazard slopes so they were no longer hazards. This was a unique, large development situation that is unlikely to occur in Shoreline. She summarized that she is not sure that drafting language that allows for reclassification is the right approach for Shoreline.

Chair Scully recalled that public comment at the last meeting, as well as a letter from a resident of Innis Arden, talked about situations where development is safe and possible despite the classification of a very high landslide hazard area. He agreed with staff that it would not be appropriate to allow reclassification of the very high landslide hazard areas. Commissioner Maul said the bigger point is that just because a property is classified as a very high landslide hazard area should not close the door on the ability for the land owner to hire an expert to analyze the situation and propose a qualified solution that would allow for good development to occur. He pointed out that engineering can do a lot of things, and specific conditions on a property can be different.

Ms. Nammi clarified that the current regulations allow for development, through design, of properties that are fully encumbered by the very high landslide hazard classification. This provides a route for development if reasonable use of a property is denied based on the classification. However, the Commissioners are recommending an additional amendment, consistent with the example code, that would allow a developer to design to a certain safety factor even if it has been determined that there is already an opportunity for reasonable use of the property. Commissioner Mork clarified that a developer would submit a proposal and City staff would evaluate whether or not it meets the safety factor. Ms. Nammi explained that if they stick with their current approach for alteration of critical areas, anything involving the very high landslide hazard classification would require a third-party review to substantiate the proposal's safety, taking the current setting into consideration.

Ms. Nammi explained that, technically, both streams and wetlands are fish and wildlife habitat. However, the City's current stream regulations are expressly written with certain buffers and do not consider the types of species that might be in the habitat surrounding a stream. The current stream regulations focus primarily on salmon; and the Washington Department of Natural Resources (DNR) has directed the City to use its water-typing system, which asks for fish habitat potential more generally. In addition to fish that migrate from salt to fresh water, the intent is to identify and protect the fish habitat that might be resident populations, as well. Ms. Nammi outlined the key proposed changes as follows:

### **Subchapter 3 – Fish and Wildlife Habitat Conservation Areas (SMC 20.80.260 through 20.80.300).**

- Subchapter 7 (Streams) is proposed to be deleted and integrated into Subchapter 3 (Fish and Wildlife Habitat Conservation Areas).
- In SMC 20.80.270, rather than simply referring to the federal and state-listed habitats and species, the proposed update identifies the species that currently exist and have habitat in the City. The intent is to make it easier for property owners, developers and staff to be aware of the protected species. The same approach was used for the Department of Fish and Wildlife Priority Habitat and Species. Many are already identified and regulated through the SMP, and some are mapped as corridor or biodiversity areas (i.e. Boeing Creek, Innis Arden Reserve, etc.).
- The stream classifications were updated in SMC 20.80.270.G for consistency with the DNR’s water-typing system as recommended by state agency staff. A detailed description of the various water types can be found in the Washington Administrative Code (WAC) and the Revised Code of Washington (RCW). The stream types include: Streams inventoried as shorelines of the State (S), streams that contain fish habitat (F), perennial non-fish habitat streams (Np), seasonable non-fish habitat streams (Ns) and piped stream segments (P). She noted that no changes are proposed to the current buffer requirement for piped-stream segments (20-foot area clear of buildings). The buffers for the streams going in and out of pipes would be measured with a rounded end. Using a sample code from the City of Edmonds, staff is recommending separate definitions for anadromous fish bearing streams and non-anadromous fish-bearing streams, which is consistent with the State’s requirement that more emphasis be placed on protecting the anadromous fish and allows more flexibility when the fish habitat is not salmonids that migrate.
- A mapping section (SMC 20.80.272.A) was added to list out the places where information on fish and wildlife habitat, anadromous fish, etc. can be found. The state has already typed many of the streams in Shoreline, and the City also has a GIS layer that incorporates data from other maps.
- General development standards (SMC 20.80.274) were added to identify activities that are allowed in fish and wildlife habitat areas, those that require a reasonable use permit, etc.
- The model code from the Department of Commerce also identifies habitat specific standards, which are outlined in SMC 20.80.276 and are based on the specific management recommendations for that type of habitat. As per the Department of Commerce provisions, alterations that impact Types F and S anadromous fish-bearing streams and/or buffers would only be allowed if reasonable use is denied. Types F and Np non-anadromous streams cannot be modified unless reasonable use is denied, but the buffers can be modified through mitigation of the impacts. However, property owners must demonstrate they have done everything possible to avoid and minimize the impacts. No critical area reasonable use permit would be required for modifications that impact non-habitat streams (Ns) and/or their buffers. However, developers would be required to compensate for the loss. This section also provides specific standards that address stream crossings, relocation of streams, and restoration of piped-watercourses.
- In Table 20.80.280(1), the buffer requirement for type Ns (seasonal, non-fish bearing) is slightly higher (45 feet) than the current standard buffer for Type IV streams (35 feet) because Best Available Science (BAS) indicates that stream buffers become ineffective at less than 33 feet. The high standard would allow for a 25% reduction for buffer averaging without going below 33 feet wide.

- In SMC 20.80.280.C.3, provisions for buffer reductions were replaced with provisions for buffer averaging with enhancement. This allows for flexibility where the native vegetation buffer is located, but requires that the total area of the buffer is not reduced.
- The proposed stream buffer standards in Table 20.80.280(1) are basically the same as existing standards. The buffers are already well below what is ideal for the streams, and BAS indicates that much larger buffers are needed for streams. However, the City's current and proposed buffers are standard practice in the region, and increasing the buffers would result in many more properties requiring a reasonable use permit to redevelop or develop. Absent more clear direction from the State, staff is recommending that the current buffers be maintained, with the exception of what will be Type Ns.
- SMC 20.80.280.D.7 allows an exemption for development proposals within physically separated and functionally isolated stream buffers. This proposed provision is similar to the one suggested for wetlands. BAS from the Department of Ecology (DOE) concludes that buffer areas that are physically separated and functionally isolated for both stream and wetlands do not provide most of the functions and values assumed on contiguous buffers. Protection of these areas would not add to the protection of the critical area unless they are reconnected to the critical area.
- Critical area report requirements were added in SMC 20.80.290, similar to what was done with wetlands and geologic hazard areas.
- Definitions that were absent from the current regulations were added for clarity.
- Revisions to the mitigation performance standards and requirements (SMC 20.80.300) will be reviewed for applicability after revisions to the general provisions have been completed. The current text is combined from the fish and wildlife habitat provisions and the stream provisions.

#### **Subchapter 5 – Flood Hazard Areas (SMC 20.80.360 through 20.80.410)**

The only changes to this section is to add titles so that when you see a code section and the functional description, you will also know which type of critical area it goes with.

#### **Subchapter 6 – Aquifer Recharge Areas (SMC 20.80.420 through 20.80.450)**

This subchapter was amended to add descriptive information, as well as a provision that verifies there are no known critical aquifer recharge areas in the City of Shoreline. As per a recommendation from the State, staff is recommending that this section be retained in the event that the City needs to access ground water for public drinking water supply or in the event that a neighboring jurisdiction drills a new well that has a recharge area within the City of Shoreline.

#### **Subchapter 7 – Streams (SMC 20.80.460 through 20.80.500), and associated definitions (SMC 20.20).**

This section is proposed to be deleted and the provisions moved to Subchapter 3 (Fish and Wildlife Habitat Conservation Areas). The language will include edits to incorporate BAS.

#### **Public Comment**

**Christine Southwick, Shoreline**, related an event that occurred when the City of Seattle allowed engineered development on a steep, unstable hillside. The houses failed and slid down the slope, and then the developer sued the City of Seattle for allowing them to be built. If the City of Shoreline decides to permit engineered development in very high landslide hazard areas, it should do something to make sure it is not held liable if problems come up in the future. She also reminded the Commission that wetlands are very valuable to birds and suggested the City should encourage snags and fallen wood, along with various types of native vegetation in wetland areas.

**Jane Kiker, Attorney, Eglick Kiker Whited**, said she was present to represent the Innis Arden Club. She referred to two letters from Eglick Kiker Whited and Garry Horvitz, Senior Principal and geotechnical engineer at Hart Crowser, which were submitted to the Commission earlier in the day via email. Chair Scully noted that the letters were included in the Commission's desk packets. Ms. Kiker encouraged the Commissioners to review and carefully consider the two letters, particularly the letter from Mr. Horvitz who has specific expertise.

Mr. Kiker pointed out that the City's BAS memo prepared on the geologic hazard areas supports making determinations about allowed activities, mitigations, buffers, etc. based on a site-specific evaluation by a qualified professional. However, the proposed regulations deviate from that approach by including a blanket prohibition on all development in areas considered very high risk landslide hazard areas. As Mr. Horvitz wrote, this prohibition is arbitrary and is not based on BAS because, even as the City's consultant said, the BAS is the site-specific evaluation. Section 20.80.224 should be revised to apply the same standard to alterations in all geologic hazard areas. If a site-specific qualified evaluation supports the proposed activity, it should be permitted provided it complies with all recommended Best Management Practices (BMP's), mitigation, etc.

Ms. Kiker voiced concern about the number of times the proposed regulations say that the critical area reasonable use and special use permit processes will address any cases where a proposed development is not allowed. She explained that the Innis Arden Club is not so concerned about new construction, new impervious surfaces, etc. They need to manage vegetation in 50-acres of their forested reserves. In order to do that in an environmentally responsible way and to avoid hazards and provide the recreational use they are supposed to provide, they must do work in the critical area. It has become extremely burdensome to have to do site-specific evaluations over and over again. She said she has read through the special use and reasonable use permit processes; and in her experience in practicing in the area, she does not believe the provisions are designed to handle this sort of case. Special use permits are actually intended for public agencies or utilities to do pipelines in critical areas; and reasonable use permits are geared towards allowing reasonable economic use of a site. Neither permit specifically addresses vegetation management, and she questioned if there would be any opportunity, under such an arbitrary prohibition, for the club to do what they need to do.

Ms. Kiker also expressed her belief that applying a 15-foot rule to the definition of "distinct topographic break" for purposes of delineating the top and tow of hazard areas slopes is also arbitrary and inconsistent with BAS. She encouraged the Commission to review both of the letters regarding this issue. The boundaries of hazard areas, including "distinct topography break," are site specific and should be determined by a geotech report, as well.

Ms. Kiker expressed concern that the proposed regulations for streams and fish and wildlife habitat areas are based on the model provisions, as well as the existing stream provisions. Because there is no indication of what is new language, it is very difficult to read through the proposed changes. She also voiced concern that there are numerous overlapping restrictions. For example, there are at least two sections on buffers: general and specific to streams. She is concerned that this might cause confusion and make it difficult for a developer to identify when a project is within a fish and wildlife habitat area. She suggested that the proposed changes should be clearly identified.

Ms. Kiker reiterated that there should be a distinction in the code between site maintenance projects and site development projects. Site development projects involve cut, fill, impervious surfaces, buildings, etc. that really do interrupt the stability of the slope. The club's site maintenance projects involve the removal of a handful of trees and invasive vegetation and replanting, restoring and often enhancing the area.

**Leslie Frosch, Shoreline**, recalled that at previous meetings the Commission discussed the consultant's reasons for the very high risk and high and medium risk classifications. While multiple geotech experts will likely come up with different answers, she encouraged the Commissioners to consider their own consultant's recommendation.

Ms. Nammi referred the Commissioners to the public comments that were received in the last few days, which were included in their desk packets. The more detailed comments are currently under consideration with the City Attorney's Office, and staff will prepare a response in the next week or two.

### **Continued Commission Discussion**

Commissioner Moss-Thomas suggested that a definition for "marine environment" should be added. She noted that the term is used in several locations throughout the code. She also requested definitions for the terms "alluvial fan" and "talus." Ms. Nammi responded that "marine environment" is defined in the SMP, and she will research definitions for "alluvial fan" and "talus." She advised that "talus" is loose, unconsolidated rock on a steep slope.

Commissioner Moss-Thomas referred to SMC 20.80.274.I.3, which pertains to habitat buffer averaging. She asked if a proposal would have to meet all of the criteria or just one. Ms. Nammi said it would have to meet all of the listed criteria.

Commissioner Moss-Thomas referred to Table 20.80.280(1), which calls for increasing the buffer requirement for Type Ns Streams from 35 to 45 feet. She asked if the 15-foot buffer would be separate from the standard buffer for streams. Ms. Nammi said the 15-foot buffer that was previously discussed is specifically for very high risk landslide hazard areas. The stream buffers could not be reduced to 15 feet. However, the proposed regulations would allow each standard buffer, through averaging, to be reduced by up to 25%. A buffer on a more sensitive stream could not be reduced as far as a buffer on a less sensitive stream. The reason for increasing the standard buffer for Type Ns streams is that if buffer averaging is used at its narrowest point, the buffer would still have functional value.

Chair Scully referred to the letters and comments from Eglick Kiker Whited and other members of the public related to the Innis Arden Club's concerns. He agreed that the critical area reasonable use and special use permit processes do not really fit Innis Arden's specific circumstances. They have a single, large parcel that is not addressed by either the CAO or the tree code. Rather than trying to carve out an exemption within the language of these code sections, it would be better to develop a separate vegetation management plan section that lets a unique parcel come up with a way to comply with the code without getting buried in red tape. Ms. Nammi noted that neither the current nor proposed provisions would prohibit vegetation management plans. However, it is her understanding that the City does not have policies, procedures or permit categories in place to handle the concept well. This is a topic of consideration on next year's work plan.

Ms. Nammi acknowledged that the City does not currently have provisions for managing large, private open spaces. However, there are ways through that with a critical area report showing how the alterations are beneficial to the critical area. She advised that for the Commission's August 6<sup>th</sup> meeting, she is working to draft general provisions that would allow normal and routine maintenance of existing landscaping as an exempt activity. For example, an existing manicured lawn on a single-family parcel that is in a buffer can be maintained. She is also working on provisions for private property enhancement activities that would allow property owners to remove invasive species and plant native species in small areas without a critical area report. This activity would be considered normal and routine maintenance or stewardship of a critical area that would not require the same level of reports, bonding, etc. The City currently has an exemption for hazard tree removal, and she is considering whether there is science and language out there for allowing pruning of protected trees to facilitate view enhancement. While topping would not be allowed, perhaps there are opportunities to allow some limbing of protected trees to enhance the view through the trees.

Ms. Nammi said the science she has reviewed with regard to vegetation in geologic hazard areas makes it clear to her that large trees, in particular, are very important to slope stability. Not only do they impact the hydrology of the slopes by intercepting a large amount of water, they also provide stability through their interlocking roots. Science generally shows that after a tree is cut, even if the stump is left in place, the roots no longer function structurally after three years. It takes approximately 7 years for a new tree to replace the function. Lawns and other types of vegetation do not root deep and provide the same slope stability that trees do. She agreed to provide additional information in the Commission's next packet.

Chair Scully said his concern was more related to the Innis Arden Club's frustration about having to get permit after permit rather than coming up with one plan that addresses all of their maintenance needs, as well as the beneficial requirements outlined by the City, without having to obtain numerous permits.

Mr. Cohen emphasized that the City does allow for vegetation management, but it is done by parcel and not community wide. There are some examples of this concept being used in some of the reserves. While the process was difficult and contentious, the end result was good. He suggested that the real issue is about the process and its associated cost. He reminded the Commission that the vegetation management plan concept is on the City's work plan for next year, and staff believes the concept may be more relevant to the tree code than the CAO.



## **DIRECTOR'S REPORT**

Mr. Cohen did not have any items to report.

## **UNFINISHED BUSINESS**

There was no unfinished business.

## **NEW BUSINESS**

There was no new business.

## **REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS**

There were no reports or announcements from Commissioners.

## **AGENDA FOR NEXT MEETING**

Mr. Szafran announced that in addition to a continued discussion about the CAO Update, the Commission's August 6<sup>th</sup> agenda will also include a public hearing on a single Development Code amendment that addresses properties with split zoning. Mr. Cohen explained that there are a number of parcels in the City that have more than one zoning designation, and staff is preparing a code amendment to quickly fix the problem. The discussion will primarily focus on the types of land uses allowed on these multi-zoned parcels.

## **ADJOURNMENT**

The meeting was adjourned at 7:59 p.m.

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Keith Scully  
Chair, Planning Commission

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Lisa Basher  
Clerk, Planning Commission