CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
MINUTES OF REGULAR MEETING

August 20, 2015 Shoreline City Hall
7:00 P.M. Council Chamber

Commissioners Present
Chair Scully
Commissioner Maul
Commissioner Malek
Commissioner Montero
Commissioner Moss-Thomas

Staff Present
Rachael Markle, Director, Planning and Community Development
Paul Cohen, Senior Planner, Planning and Community Development
Juniper Nammi, Planner, Planning and Community Development
Julie Ainsworth Taylor, Assistant City Attorney
Lisa Basher, Planning Commission Clerk

Commissioners Absent
Vice Chair Craft
Commissioner Mork

Others Present
Todd Wentworth, AMEC Foster Wheeler

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, and Commissioners Maul, Malek, Montero and Moss-Thomas. Vice Chair Craft and Commissioner Mork were absent.

APPROVAL OF AGENDA

The agenda was accepted as presented.

APPROVAL OF MINUTES

The minutes of August 6, 2015 were adopted as presented.

GENERAL PUBLIC COMMENT

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

STUDY ITEM: CRITICAL AREAS ORDINANCE UPDATE – GENERAL PROVISIONS, RELATED TITLE 20 CHANGES AND FOLLOW UP ITEMS

Ms. Nammi reviewed that she has been meeting in study sessions with the Commission since May to discuss the Critical Areas Ordinance (CAO) Update, which is required by the State Growth Management Act (GMA).

Staff Presentation

Ms. Nammi advised that this study session will focus on the proposed changes to the General Provisions (SMC 20.80.010 through 20.80.130), related changes in other chapters of the Development Code (SMC 20.30, 20.40 and 20.50, and associated definitions (SMC 20.20). She will also address questions and requests made by the Planning Commission in past meetings. She recalled that tonight was originally scheduled as a public hearing for the CAO Update, but the schedule was adjusted in response to public comment asking for more time. The public hearing is now scheduled for September 17th, and the goal is to have the full draft available early next week for public and Planning Commission review in preparation for the public hearing. She referred to the draft language provided in Attachment A, which includes editing marks to identify new language, deleted language, and language that was moved for reorganization purposes. More details related to the proposed changes are provided in the Staff Report narrative. She reviewed the specific changes as follows:

Definitions (SMC 20.20)

Ms. Nammi advised that definition changes have been proposed that support the CAO, and the only definition that will be deleted is "substantial development," which is part of the Shoreline Master Program (SMP). The other changes are intended to clarify the regulations and their intent.

Ms. Nammi specifically referred to the proposed definition for "qualified professional" in **SMC 20.20.042**. She explained that this term is used in the current CAO, and the City uses qualified professionals to provide expert mapping, classification, assessment of impacts, and recommendations for mitigation for all types of critical areas. The term is also used in the Clearing and Grading Section of the code for some of the tree removal regulations. Because the term is used in more than one place in the Development Code, staff is proposing that the definition be included in the definition section rather than imbedded in the CAO. Currently, staff accepts applications for each field of expertise, reviews them for compliance or consistency with the minimum qualifications and adds them to an approved list. The proposed change would eliminate the need for maintaining the list and the requirement that professionals be pre-approved to do critical areas reports in the City. Instead, the administrative standards for minimum qualifications would be laid out in the definition, and qualified professionals would be required to include their proof of qualifications.

Ms. Nammi noted that some of the definitions were included in Attachment A because they inform the development review process with regards to critical areas. These items are highlighted in grey for the purpose of discussion, but no revisions are proposed and they will not be included in the final CAO Update.

Development Code (SMC 20.30, 20.40 and 20.50).

Ms. Nammi said most of the proposed changes in these sections are intended to update terms such as "steep slopes" and "sensitive areas" for accuracy and standardize how the critical areas regulations are referenced. She specifically noted the following changes:

- A cross reference to a new section in 20.80 was added in **SMC 20.30.080**The new section outlines the specific review direction for pre-application meetings that are required for projects in critical areas. The requirement was also broadened to include projects that could impact a critical area.
- **SMC 20.30.280** (Nonconformance) was amended to add a cross reference with **SMC 20.80.040**. It is important to clarify that modification to legally established, nonconforming structures in critical areas must comply with the standards in the CAO. There is one allowed activity provision that specifically addresses nonconforming structures.
- The terms used to cross reference the critical areas regulations are not consistent and are not included in all types of review decision criteria in Chapter 20.30. The proposed changes are intended to standardize so the code sections that apply are clear and consistent. Cross references to SMC 20.80 were added throughout this section.
- The Critical Area Special Use **(SMC 20.30.333)** and Reasonable Use **(SMC 20.30.336)** Permits are the variance process for the critical areas regulations. Special Use Permits apply to development by a public agency or utility. The terms in these two sections were changed to match updated classifications/ratings and for consistency with new applicability language in the CAO. Clarifying provisions regarding the decision criteria for this type of permit were also added. Language from the State example code was added to make it clear that when applying for a variance, applicants must do their best to comply with the CAO and mitigate for the impacts. The language also clarifies that the City has the authority to condition a project to mitigate the impacts, which is particularly important because most modifications in critical areas that require this type of process no longer require State Environmental Policy Act (SEPA) review.
- In **SMC 20.30.410**, references to "ravines" and "steep slopes" were changed to ""landslide hazards."
- Although no change is proposed in **SMC 20.30.560**, it was emphasized that the definition for "lands covered by water" applies to streams, wetlands, and tidelands. Therefore, wetlands are lands covered by water so any alteration in a wetland is subject to SEPA whether or not there is open standing water. Unless an application involves a subdivision development, some other higher level permitting process or SEPA is triggered, a critical areas review would not trigger public noticing; but a pre-application meeting would still be required.
- Staff is proposing that code enforcement provisions specific to critical areas be added to make it clear how critical area violations are enforced and to facilitate the restoration of the impacts. Reference to the new enforcement provisions in 20.80 was added to **SMC 20.30.770**. Because the language in **SMC 20.30.770** is not exclusive to critical areas, staff did not attempt to fully modify the section. However, because it is very difficult to calculate and defend a civil penalty that is equivalent to the economic benefit, staff is proposing alternative penalties for the critical areas regulations.
- A cross reference to SMC 20.80 was added in **SMC 20.40.230**.
- Although no changes are proposed for **SMC 20.50.020**, it was included for information only to clarify earlier questions about whether or not critical areas count towards the number of houses that

can be built on a property. As per existing language, the answer is yes, unless the critical area is classified as "submerged land." For example, for properties on Puget Sound that own tideland, the tideland portion west of the ordinary high water mark would not count towards the allowable density or the buildable lot area. The current language is consistent with the state requirements to protect submerged lands and consistent with the City's Comprehensive Plan guidance to balance private property rights with protection of critical areas.

- The clearing and grading regulations for tree removal and site clearing are incorporated by reference into the CAO. However, changes have been made to SMC 20.50 to strengthen its relationship with the language contained in the CAO. For example, an exemption was included in the 2006 CAO Update that allowed for the removal of invasive species in parks up to a limited amount of area without a clearing and grading permit as long as Best Management Practices (BMPs) were being followed. The exemption facilitates parks critical area restoration projects undertaken by volunteers. This activity is treated as minor conservation and enhancement that is exempt from the CAO and the clearing and grading permit. The provision will be moved from SMC **20.50.310** to the CAO.
- The language in **SMC 20.50.320** was amended to make it clear that any clearing, grading or land disturbing activity within a critical area or buffer of a critical area would require a clearing and grading permit unless otherwise exempted from the critical areas regulations.
- By definition, "protected tree" includes significant and non-significant trees within the critical areas, and **SMC 20.50.350.E** outlines provisions for cutting and pruning protected trees. As written, it allows for pruning that is consistent with BMPs for the health of the tree. Many jurisdictions require compliance with either the American National Standards (ANSI) for Tree Care and Operation or guidelines from the International Society of Arboriculture (ISA). Both require organizational memberships to be able to access the specific standards so staff is recommending adding them as examples of best practices rather than requiring specific adherence to either set of standards. Language was also added to allow protected trees to be pruned to enhance views in a way that is least likely to be detrimental to the health of the tree. However, excessive pruning or topping would not be allowed. Pruning trees for views is prohibited in the current CAO, and guidance from the Coastal Training Program outlines ways to manage vegetation to enhance views but still protect the stability of the slopes with the existing vegetation. She did not find another City with similar code language, so this will be a test to see if the proposed regulation provides flexibility that is compatible with both the private use of the property and the protection of critical areas.
- **SMC 20.50.350.K** in the tree removal section has financial guarantee and performance agreement requirements, as do the critical areas regulations. There is an exemption for single-family lots under the performance assurance section for trees. Where violations occur that need to be restored or where the tree removal is in critical areas, staff feels that the financial guarantee is needed to insure that the impacts are restored. This provision would not apply to the exemption for hazard tree removal and replacement. It only applies to permittable alteration of critical areas or code violations.

Commissioner Malek requested clarification of how development agreements pertain to development in critical areas. Ms. Nammi answered that the proposed language requires a development agreement to comply with the critical areas regulations.

Commissioner Montero asked Ms. Nammi to point to the specific amendments related to view preservation. Ms. Nammi clarified that the amendment in **SMC 20.50.350.E** is not intended specifically for view preservation, but it allows pruning of protected trees for views is a way that should not significantly damage the health of the tree. She explained that the language was crafted based on guidance she received from the Coastal Training Program's literature relative to shoreline management of vegetation. Chair Scully asked if most other cities prohibit any changes to trees for view, and Ms. Nammi answered that there is a wide range for how other cities address the issue. Some allow topping, and others allow complete removal. Some allow pruning, and others do not.

Commissioner Moss-Thomas asked if a permit would be required to prune protected trees for view. Ms. Nammi answered no, but noted that the work must be done by a qualified arborist and be consistent with the best practices and standards identified in the ANSI Standards or similar.

Critical Areas General Provisions (SMC 20.80)

Ms. Nammi explained that all of the existing general provisions sections are proposed for revision, and five new sections have been added. The terms throughout the chapter were updated for accuracy or clarity and cross references were added to relevant sections in other chapters of SMC 20. Also, the chapter was reorganized to group similar sets of regulations together and put the exemption language up front. She reviewed the new sections as follows:

- **SMC 20.80.045** was added to outline the purpose of the pre-application meeting and provide direction as to what an applicant can expect from the meeting.
- **SMC 20.80.060** clarifies what is meant by Best Available Science (BAS). It provides a basis for requiring a report to be redone because it does not meet BAS. The draft language came entirely from the State's model code, with a portion being referenced to the State regulations rather than written directly into the City's CAO.
- In **SMC 20.80.080** the critical areas report requirements were greatly expanded and a separate section was added for mitigation plan requirements **(SMC 20.80.082).** Technically, a mitigation plan is a kind of critical area report, but it is unique enough that it warrants its own section. It has been generally presented that way in other CAO subchapters and example codes, as well.
- **SMC 20.80.120** was added relative to financial guarantee requirements. The financial guarantee requirements that are scattered throughout various sections of the existing CAO will be eliminated, and the City will rely on this new provision to provide standard policies and procedures for financial guarantees.
- **SMC 20.80.130** is also a new section relative to unauthorized critical area alterations and enforcement of the critical areas regulations. This provision provides a stronger tie to restoration plan requirements and remediation of the impacts to the critical area. It also adds new penalties.

Ms. Nammi reviewed other significant changes as follows:

- Changes to the purpose statement (**SMC 20.80.010)** come from guidance she found on wetlands and prevention of net loss of critical areas. She has been advised by the attorney to delete the word buffer because the GMA does not require protection of the buffer functions. Buffers are a tool to protect the critical areas. The proposed changes would also remove references to "steep slope." The

new language in provision C is intended to clarify how to administer the critical areas regulations when interpretation or discretion is needed and is based on the Department of Commerce example code.

- **SMC 20.80.015** relocated to the beginning of SMC 20.80 to be grouped with other provisions that identify what is regulated and how it is regulated relative to other chapters in the Development Code. Some wording changes are intended to provide clarity.
- **SMC 20.80.020** is not new language (formerly in SMC 20.80.045), but it was moved to a new location in the chapter. The proposed changes include the addition of two provisions that clarify how the chapter relates to SEPA regulations, as well as other state and federal regulations.
- **SMC 20.80.025** was amended to add reference to new mapping sections and correct the Comprehensive Plan element reference. The section number was changed for reorganization.
- Currently, **SMC 20.80.030** does not apply in the shoreline jurisdictions, even though it exists in a different form in the ordinance that was adopted. Staff is currently working with the state to identify adjustments in wording in order to allow it to be incorporated.
- The intent of the language in **SMC 20.80.030.A** is to allow action, when needed, to address emergencies. However, it is not the intent to grant permission to alter the critical area and never fix it. Most importantly, the proposed language requires that impacts to the critical area be mitigated in a timely manner.
- The language in **SMC 20.80.030.B** was edited to suggest private connections to public utilities and permitted private stormwater facilities in critical areas and their buffers can be maintained and repaired without having to go through a complicated process.
- **SMC 20.80.030.C** was revised for consistency with state requirements. The language makes it clear that the exemption is not intended to allow for modifications of watercourses or wetlands. It also requires native vegetation when re-vegetation is needed to provide the best functions possible for the critical area. Commissioner Montero asked what is meant by a City authorized private roadway, and Ms. Nammi said these are private driveways and private roads. Based on current policy, the City does not assume ownership or responsibility for maintaining these roadways, but it didn't make sense to exclude property owners from the ability to maintain something the City previously allowed without requiring a critical area report every time. She noted that nothing would be gained from requiring a critical area report or otherwise restricting the ability to maintain the infrastructure.
- At the request of the Parks Department, **SMC 20.80.030.D** was revised to be similar to the exemption for utilities. As proposed, modification and replacement of recreation areas within critical areas and their buffers would be allowed in addition to maintenance, operation and repair, which are currently allowed. A permit would still be required, and BMPs would be reviewed at the time of application. However, financial guarantees and a review by a wetlands biologist would not be required because the impacts to the critical area would not change.
- As previously discussed, two provisions for wetland and geologic hazard specific exemptions are proposed for deletion and are replaced with revisions in the critical area specific subchapters.
- **SMC 20.80.030.E** pertains to small projects that make a critical area better. Specific activities are proposed to be added to minor conservation and enhancement activities to allow for invasive species removal and re-vegetation to a limited extent both on park property and on private property without requiring a permit, critical area report, monitoring, and financial guarantees that make this type of voluntary maintenance and restoration work cost prohibitive. The likelihood of adverse impacts from small-scale restoration projects is quite low, and nothing would be gained from requiring a

critical areas report or otherwise restricting the ability to maintain the infrastructure. Even if it is not 100% correct, the situation would likely be improved simply by replacing species that are not good for habitat with species that would normally be found.

- The changes to **SMC 20.80.030.G** include updating terms and making the language consistent with the forms, professionals, types of reviews, and replacement requirements. The proposed language would be consistent with the City's current policy of requiring replacement when a non-imminent hazard tree is removed. Provisions 6 and 7 will offset cumulative adverse impacts to critical areas consistent with BAS, while still allowing for removal of hazardous trees without extensive permitting and critical areas report requirements. If a tree to be removed provides priority habitat, a qualified professional must be consulted to determine timing and methods of removal that will minimize and mitigate the impacts.
- Language was added to **SMC 20.80.030.K** to specifically make it clear that tree pruning for the health of the tree and views, if not excessive and done correctly, will be considered normal and routine maintenance in critical areas.
- Most of the model codes and regulations from other cities use the term "allowed activities" rather than "partial exemptions" **(SMC 20.80.040).** This section is proposed to specifically exempt the listed activities from critical areas reports and to require that BMP's be used to protect the critical areas. The proposed changes in **SMC 20.80.040.C.1**, related to modifications to existing structures in critical areas, were previously presented as part of the wetland and geologic hazard discussions. The intent is to require mitigation of impacts. Provision C.2 related to demolition was added for clarity, as well.
- **SMC 20.80.045** was added to support and clarify the existing requirements in SMC 20.30.080 for pre-application meetings when a critical area might be impacted.
- **SMC 20.80.080** was amended to more accurately state when critical areas reports are required, who pays for them, and when the City may require a third-party review.
- The language in **SMC 20.80.082** specifically addresses mitigation plans. Any duplication between this section and other sections will be edited soon to eliminate redundancies.
- There was some public comment about the provisions for pesticides, herbicides, and fertilizers **(SMC 20.80.085)**. The proposed change would allow more flexibility where use of pesticides or herbicides have been scientifically determined to be the best method for managing invasive species when applied properly for the specific species and location. The provision was added at the request of the Parks Department. Pesticide use must be done by a licensed professional and must comply with the State aquatic resources regulations for pesticides. Commissioner Montero pointed out that Item C references the King County Noxious Weed Control Board's standards and asked if there is a difference between the King County Standards and the State Aquatic Resource Regulations. Ms. Nammi answered that they do cover slightly different weeds, and she agreed to research the differences relative to BMPs and report back.
- **SMC 20.80.100.A** (Notice to Title) would facilitate informing current and future property owners of the presence of critical areas and buffers. As currently drafted, notice to title would be required any time a permit is needed to develop on a property that has a critical area or critical area buffer, regardless of whether the development would alter it or not. Commissioner Malek commented that requiring a notice to title would make it transparent for future property owners, as well as insurers who evaluate the property. He asked if the notice would also be recognized by the County Assessor. Ms. Nammi said she did not know. She emphasized that the notice to title would not change the

regulations that apply to the property. Commissioner Maul asked how specific the notice to title would be. Ms. Nammi answered that for single lots, the notice to title would include a site schematic and other available information. If a delineation has been done, the site schematic would be more accurate, but the notice to title is not meant to be the mapping and delineation of the critical area.

- As per **SMC 20.80.100.B,** critical areas associated with subdivisions or other processes that modify the elements of the parcel or otherwise bind what can be done on the property must be put in their own tracts that are permanently restricted from construction.
- **SMC 20.80.100.C** addresses situations where there are increasing numbers of multi-unit developments that are condominium ownership rather than a subdivision process. To address these situations, staff added in the native growth protection area easement requirement. The provision is also an appropriate tool when the critical area can still be developed with appropriate limitations or when there is a very small portion of critical area and/or buffer on a parcel.
- **SMC 20.80.120** replaces provisions that are currently included in all subchapters for specific critical area types. The new provision incorporates the City's current policy and procedure for financial guarantee requirements into code for consistency and predictability.
- **SMC 20.80.130** is intended to better facilitate enforcement of the critical areas regulations by supplementing the provisions of Chapter 20.30 (Code Enforcement). Standards for restoration plans and performance standards are outlined in Items B and C, and Item D proposes new penalties to replace the current economic-benefit-based penalties in SMC 20.30.770.D when the violation is in a critical area or buffer. The City may want to consider creating a separate remediation permit for review of plans that correct code violations to facilitate application of code enforcement provisions. The City could also develop a program and fund for restoration of critical areas altered illegally or alternative replacement of functions and values that cannot be restored. Although both of these two options are outside the scope of the 2015 CAO Update, staff recommends they be explored as future Comprehensive Plan and City work plan items.
- The penalties outlined in **SMC 20.80.130.E** were drawn from the City of Edmonds' draft CAO based on information provided by their consultant in the 2015 BAS Addendum. It is estimated that $3 per square foot is the low end of what it would cost to restore a critical area that is damaged, but the penalty could be as much as $15 per square foot if grading is needed to resolve the situation. This approach is fairly easy to quantify and does not require an expert in the functions and values of critical areas. You simply need to measure the damaged area in order to assess penalties. The $3,000 to $9,000 per-tree penalty is also based on the City of Edmonds' code and was determined by their City Council to be reasonable and punitive. The penalty is not based on any particular valuation and is much greater than what it would cost to replace the tree, and the proposed language includes discretion that allows the Code Enforcement Officer to apply leniency if someone removes a tree from a critical area that they genuinely did not know existed.
- Commissioner Maul referred to **SMC 20.80.130.D** and asked if the City really has the ability to authorize site inspections. Ms. Nammi said the language was pulled from the model code, and she is currently seeking feedback from the City Attorney as to whether or not site inspections without owner permission are legal.

Ms Nammi specifically asked the Commission to provide feedback on the provisions relative to notice to title, particularly what the threshold should be for triggering the notice to title. Other comments and suggestions regarding the proposed changes would also be welcomed.

Public Comment

Elaine Phelps, Shoreline, indicated she was present to speak on behalf of the Shoreline Preservation Society. She observed that the basis for decision making required by SEPA is the current best science. Decisions about how to classify land must comply with this dictate, and science not politics should be the basis of the City's code. The CAO Update should not be rushed forward until competent and complete studies are performed. She reminded the Commission that the City Council is currently looking to create funding for stormwater improvements that are critically needed to insure the safety of citizens. The integration of stormwater and creek basins determines the type of development that can safely occur in an area. The City has not mapped or planned several of these basins, and parts of the City are not connected to the stormwater system. When it rains, flooding occurs, and the course the water takes undermines the use of existing structures, causing hazardous conditions in some neighborhoods.

Ms. Phelps also asked that historical use be considered. The area adjacent to 175th and the freeway where the current Ronald Bog sits is part of a much larger water drainage that extends to the east side of Interstate 5 and to an unknown distance north. In 2013, when Sound Transit first began looking at the rail corridor, then Mayor McGlashen sent a letter asking for a study to determine if the land would support the train tracks. She does know if the study was ever completed, but the City plans on allowing 14-story buildings to be constructed in the corridor. She said the City of Seattle has mapped an area of severe earthquake danger to the edge of 145th and Interstate 5, but no study of the area north, inside Shoreline, has been done. It is unlikely that the quake zone recognizes the border between the two cities.

Ms. Phelps summarized that if the community has learned anything from the Oso landslide, it is that the time to review conditions is before things are constructed and not after a major event. The City should slow down and do good science. Investigate the issues that challenge land use, identify problems, create solutions and designate areas where it is not currently safe to build. Creating new language to fix problems without first identifying the extent of the problem or danger will create foiled code that will not protect the citizens or the environment of the City and will lead to unanticipated costs and damage.

Ms. Phelps said it is essential to note that some communities within the City have their own rules and privileges under Washington State Regulations for Homeowners Associations. As a 50-year resident of one of them, she has watched as the association has challenged various aspects of government environmental regulations in order to create and/or enhance views of the sound and mountains for some of its residents. As a consequence, trees can be subject to alteration or removal regardless of their location such as in a critical area or obstructing another's access to sunlight; function such as containing surface water runoff, preventing erosion and/or providing wildlife habitat; and other factors such privacy, aesthetics, age, and species. The view of sound and mountains usually has a higher priority in association governance than preservation of any tree. Therefore, it should be common practice to make certain that the City completes on-site investigations and inspections of the types of critical areas and buffer, before considering any relaxation or inundation of the CAO.

Leslie Frosch, Shoreline, said she lives in the Richmond Beach area. She observed that the condominium process appears to skirt many issues because homeowners associations pay for and control the common areas. She suggested that condominiums should be better addressed in the CAO Update.

Continued Staff Presentation

Ms. Nammi recalled that a few items that were discussed at previous meetings related to geologic hazard areas need follow up discussion. For example, the Commission requested that an alternate amendment be provided in response to public comment asking whether some slopes meeting the criteria of a very high risk landslide hazard area might actually be safe to alter or develop. Staff drafted two alternatives (Attachment B and C), both of which represent higher risk acceptance than the current regulations and original draft changes. She emphasized that the provision prohibiting development in very high risk landslide hazard areas has been in place since the City adopted its original CAO. However, some cities do allow alteration in these areas, with standards similar to those used in the alternate amendments. For example, the City of Edmonds allows development, but it has already done a more extensive study of its most risky landslide area and adopted a separate set of regulations. The City of Shoreline does not have a citywide analysis of its most risky landslide areas, and it uses more generic criteria to make this distinction.

Todd Wentworth, **AMEC Foster Wheeler**, said he was hired to assist the City in updating its CAO to represent BAS; and science, as well as common sense, says that the best and easiest approach to reduce risk is to prohibit development in the very high risk landslide hazard areas. There is no science that suggests it would be safer to allow some development. He explained that, typically, cities that allow development in these areas require critical area studies by qualified professionals to determine if a proposed development meets or exceeds a certain factor of safety that has been previously established. Factor of safety is an engineering calculation that is not intended to represent statistics or probability of risk. It is simply a mathematical function; a ratio of what forces might cause the slope to slide versus the forces that are trying to resist and hold up the slope. If the safety factor is above 1.0, the slope is considered stable; if the safety factor is less than 1.0, the slope is moving. Through experience with building structures over the past years, it has been determined that a safety factor of 1.5 works very well and accounts for unknown conditions. For example, a safety factor of 1.5 may be established for the every-day conditions, but a potential earthquake could bring it down to just above 1.0. Mr. Wentworth summarized that when technical engineers create models of natural slopes, they are based strictly on physics and whether or not it is possible to build a structure and do not account for human error or unknowns circumstances. It is important for the City to weigh the risks and determine the level of risk they are willing to accept.

Ms. Nammi emphasized that the analysis is only as good as the models and/or equations that are being used. The moment you change the vegetation, move the soil around, build a new structure, etc, you introduce a design that, based on current practices, does not comprehensively look at the factors that affect slope stability such as the amount of development that might continue to occur or changes in precipitation or temperature. She acknowledged that there is always some risk of the natural slope sliding; but allowing alterations in these areas introduces new variables to the equation. The approach the City's CAO has taken, to date, says that unless reasonable use is denied, the protection of life and

property is more important. Unless the City takes the time to more specifically study the various areas of landslide risk, staff feels it is better to treat these areas with precaution based on the information and criteria they do have (percent of slope, height of slope, prior landslide activity and ground water).

Ms. Nammi referred to the alternative code language and explained that Alternative 1 would allow any type of development activity in any classification of geologic hazard area if the specified factors of safety can be met. This alternative is very similar to the proposed language put forward by the Innis Arden Club, but the Innis Arden Club's language does not include the design criteria from the model code that staff is suggesting. Alternative 2 would allow for review and potential approval of vegetation removal and replacement projects where the specific factors of safety can be demonstrated. Existing regulations allow alteration of very high risk areas when reasonable use is denied by strict application of the critical areas regulations. However, there is currently no process for vegetation removal or critical area enhancement projects in very high risk landslide hazard areas. Allowing for vegetation modification with a study would be a more limited approach that staff believes is worthwhile to put forward for consideration.

Ms. Nammi pointed out that the typical buffer for most jurisdictions is 50 feet, with the ability to reduce the buffer to 15 or 10 feet. However, many jurisdictions also have an additional setback requirement for all types of critical areas, and the City of Shoreline does not. For example, the City of Edmonds allows a buffer reduction down to 10 feet, but it requires an additional 15-foot building setback. The City is actually more permissive in that it allows buildings within 15 feet of the top of the slope, with no additional setback requirement.

Ms. Nammi advised that the 15-foot buffer distance was used by staff to make the recommendation for the distinct topographic break, which is a specific point addressed in the alternative language put forward by the Innis Arden Club. Mr. Wentworth explained that the current CAO does not provide a clear definition for identifying the top and tow of a slope. Planners need a method to easily measure and determine the top and tow of a slope to determine whether or not a critical area exists. He emphasized that the intent of the "distinct topographic break" concept is to clearly identify the top and tow of a slope, which requires looking an additional 15 feet beyond what might be the top of the slope. However, no changes are proposed to the amount of slope to be protected. He summarized that 15 feet is the minimum buffer requirement. If another slope rises above the top of the slope, the buffers from the upper and lower slopes will overlap. If the buffer is anything less, one of the slopes will not have the minimum buffer.

Ms. Nammi requested that the Commission provide clear direction on the alternatives put forward by staff. She emphasized that staff is recommending that the current language be retained, which would prohibit development in very high hazard landslide areas.

Ms. Nammi recalled that staff previously indicated that updates to the data layers used for identifying potential geologic hazard areas may be helpful to more accurately identify and protect the areas. Examples of potential improvements include:

- A new LiDAR layer for the City, which is currently budgeted and underway for this year as part of the regional consortium. Attachment H is an example of prior landslide activity mapping done for the City of Seattle.

- An updated percent slope layer. Attachment I is an example of an updated percent slope map that can be generated from a Digital Elevation Model using LiDAR information. The work could be done by the City's GIS specialist or by a qualified professional through a contract and would take approximately 40 hours to complete.

- Identification of areas of prior landslide activity through LiDAR interpretation could be done by a qualified professional consultant at a cost of between $8,000 and $10,000. Currently, the City uses a percent slope layer and soil layers to identify geologic hazard areas. However, there are likely areas where the City does not have adequate soils data or the slopes are not above 40% but they are areas of prior landslide activity. With updated LiDAR, a qualified professional could generate mapping of existing landforms that indicate prior landslide activity.

Ms. Nammi recalled that the Commission asked staff to provide a memorandum summarizing the pros and cons of not updating the SMP to incorporate the revised critical areas regulations. Contrary to what she advised at an earlier meeting, the City's current SMP does not include the 2012 update to the floodplain regulations. The current regulations that apply within the shoreline jurisdiction require compliance with the Endangered Species Act on a case-by-case basis rather than having specific regulations in place that comply with the act. This makes it more cumbersome for property owners to know exactly what must be done to comply with the State and Federal regulations. She acknowledged that incorporating the revised CAO regulations into the SMP would result in some increased protection (buffers) for the shoreline jurisdiction, but the impacts would be minimal because of the specific locations of the critical areas. She said she does not anticipate a major change in how a property can be developed or redeveloped, but she has not analyzed every single property. Incorporating the exemptions for small, steep slopes and the allowance for alteration of small, isolated wetlands into the actual regulations will make the provisions accessible to properties within the shoreline jurisdiction.

Chair Scully said his understanding is that the staff's memorandum was created based upon the public comments received from property owners on 27th Avenue, and no specific action is required by the Commission at this time. Ms. Nammi agreed, but cautioned that if the Commission does not support incorporating the revised critical areas regulations into the SMP, they should make this clear since it will change the work that staff must do in the next few days.

Ms. Nammi explained that the current draft wetland regulations do not include the options of wetland mitigation banks and fee-in-lieu-of programs for compensating for impacts to wetlands. It does allow for off-site mitigation when on-site mitigation is not possible and the impacts cannot be avoided or when permissible through the regulations. At this time, staff is not recommending that these two programs be incorporated into the CAO because known mitigation banks are located well outside of Shoreline and would not benefit the sub-basins where impacts to wetlands could be proposed. Excluding them means that the replacement of the functions and values will remain in Shoreline, ideally in the basins where the impacts are occurring.

Ms. Nammi advised that if the Commission supports an option that allows for increased alterations in the landslide hazard areas, staff recommends the City also require a waiver of liability, special inspections, and bonding. This would be similar to the approach used by the City of Seattle to better protect the property owners and the City. Staff has confirmed that the state would not likely allow for the language to be directly incorporated into the SMP, and it will take some additional work to determine what to incorporate into the shoreline regulations. Chair Scully asked if provisions related to a waiver of liability, etc. are already part of the City's current code. Ms. Nammi answered no and said new language would have to be added.

Public Comment

Richard Kink, Shoreline, said his biggest concern is that property owners still do not have enough information to identify potential impacts and be comfortable with the proposed amendments. It would be helpful for the City to provide literal examples to illustrate how the proposed amendments would impact properties, particularly in the shoreline jurisdiction. For example, are retaining walls located behind the bulkheads still considered steep slopes for setback purposes? Property owners have an exemption from the requirement of native vegetation in the 20-foot buffer area; and although concrete is not as environmentally pleasing, it helps prevent overtopping and undermining of the protective bulkheads that are necessary for the neighborhood. He has a one-story home, and his neighbor's homes are three stories. He asked if the proposed amendments would limit his home to one-story in the future. He referred to a report from 2011 that he submitted as an attachment to his public comment letter last month relative to floodplains and pointed out that the data models in the report doubled the height of the storm-driven waves on a 100-year flood plain according to the Federal Emergency Management Agency (FEMA) maps that were developed by King County. He summarized that property owners have real issues when it comes to BAS and common sense.

Commission Discussion

Commissioner Maul said he finds it interesting that the City staff and consultant had a hard time coming up with a definition for the top and tow of a slope, which reinforces the idea that it must be considered on a case-by-case basis. Over the years, he has seen properties with slopes on them denied the ability to develop only to have the regulations change ten years later to allow development. Prohibiting development on any slope greater than 40% seems overly limiting. He suggested that property owners should have an opportunity to study their properties, with the help of qualified professionals, to determine if development is feasible and safe. However, he acknowledged that it is also important to have requirements in place to protect surrounding properties.

Chair Scully agreed with Commissioner Maul and said he tends to support Alternative 1. The goal is not to open the flood gate and allow property owners to do anything they want on steep slopes, but he supports a provision that would allow the borderline properties to come forward with a safe plan for doing some development. He voiced concern that Alternative 2 would provide too much license for property owners to remove vegetation on steep slopes. Ms. Nammi explained that development includes any permitted activity, including vegetation removal, and Alternative 2 is a much more limited version of Alternative 1. It narrows the scope of what can be done and addresses the type of alterations that

cannot get permitted through a Reasonable Use Permit but are potentially less impactful than building a house three feet from the top of the slope or in the middle of the slope.

Chair Scully said he appreciates the dooms-day scenarios, but he assumes the City would not permit a house in the middle of a slope. Ms. Nammi said that, as per Alternative 1, if an engineer demonstrates that a project can meet the criteria, it can be permitted. She invited Mr. Wentworth to share his insight on how likely it is that a project could be designed that would alter any of the steep slope areas. Mr. Wentworth explained that even if a structure can be engineered or designed to meet the requirements for developing on a slope, the design is often cost prohibitive. He noted that any analysis provided by a developer would have to meet the standard practice, and a third-party review would be required. Because the City requires a minimum 15-foot buffer from the top of the slope, it would be highly unlikely that a structure would end up three feet from the top of the slope.

Commissioner Montero said he would like to see specific draft language related to waivers of liability, special inspections, bonding, etc. before providing additional direction on the two alternatives.

The Commissioners indicated support for incorporating the revised critical areas regulations into the SMP.

Commissioner Malek commented that requiring notice to title **(SMC 20.80.100)** could be complicated. It not only involves property owners, but lenders, insurers, etc. He requested more background on the proposed provision. Ms. Nammi explained that notice to title is a mechanism for informing current and future property owners of existing restrictions on properties due to environmentally critical areas. There must be a nexus to require a notice to title, and the nexus in the current code is development proposed within the critical area or critical area buffer. Staff is proposing that the trigger be broadened to include development permits on properties where critical areas area present. The notice to title is meant to be an information tool so that future buyers are aware of the special regulations that apply.

Commissioner Malek summarized that the notice to title requirement would be triggered by development permit applications. Ms. Nammi said the type of application could be narrowed or broadened, but the proposed language is broader to include any permit on the property. Mr. Cohen clarified that requiring a notice to title would not add any additional regulation to the property. Properties must meet the code requirements with or without the requirement. Commissioner Malek said he supports the transparency that a notice to title would provide, but it is important to understand how the requirement would impact other events associated with the development process. Mr. Cohen noted that the City already has a requirement for notice to title, but staff is recommending that the requirement be expanded to include all development permits on properties with critical areas and critical area buffers. She noted that most other jurisdictions require a notice to title, as well.

The Commission indicated general support for the notice to title provision as currently drafted, for public hearing purposes.

Chair Scully noted the significant changes proposed for penalties when unauthorized critical area alterations occur **(SMC 20.80.130).** He expressed his belief that a penalty of $3 per square foot seems too low. As currently proposed, remediation would be required, with separate penalties. However, the

penalties should provide a deterrent. Given that the average size of a single-family lot in Shoreline is about 7,000 square feet, the maximum penalty for trashing every critical area on the property would be $21,000. Ms. Nammi said a per tree penalty would also apply, as well as the intentional and severe violation penalties in the general provisions. Chair Scully said if the intent is to deter, property owners should be required to pay back everything that is gained. He suggested a sliding scale, with some discretion based on severity, would be more appropriate. Mr. Cohen said staff has discussed the distinction between repeat offenders and people who have no idea that a wetland exists. He acknowledged that the penalty is conservative, but the intent is to attach a dollar amount without overreaching.

Commissioner Moss-Thomas said she shares Chair Scully's concern. She pointed out that many of the properties with critical areas are also view properties. The intent is to create the best protection for the environment, as a whole, and not just for the neighbors. Destroying a wetland can create secondary effects that are not able to be fully mitigated. Ms. Nammi said it has been very difficult for the City to calculate value based on the current regulations. The one time she knows of it being pursued, it was not supported by the previous City Attorney. Chair Scully said he is not recommending that the current value-based regulations be retained, but $3 per square foot seems low and too limiting. Again, he suggested a sliding scale would be more appropriate. Ms. Nammi reviewed that the City of Edmonds' consultant indicated a range of between $3 and $15, with the $15 penalty being applied where grading is needed to rectify the damage. The model code includes an option for valuing the functions and values of the critical area that cannot be restored and charging a penalty, but it is similar enough to the current value-based provisions that she did not pursue it further. The penalties could be paid into a fund that could be used for restoration projects elsewhere in the City to try and compensate for the losses.

Director Markle said her interpretation of the proposed language does not provide discretion to not apply the penalties. Typically, they find that a lot of people do things accidentally and do not have large sums of money to pay the penalties. If the Commission wants to establish a greater fine, perhaps it should only be applied to repeat offenders. Commissioner Montero said he understands imposing a small fine for situations where someone unknowingly alters a critical area, as it will make them more cautious the next time. However, there should be a civil penalty, in addition to the monetary penalties, for willful destruction of a critical area. Ms. Nammi replied that this provision is already included in the current code enforcement standards. Ms. Nammi and Director Markle explained the code enforcement process.

The Commission directed staff to further amend **SMC 20.80.130** to create a sliding-scale penalty ranging from $3 to $15 per square foot for unauthorized critical area alterations. They agreed it was appropriate to allow discretion when applying the penalty to address those who unknowingly alter a critical area versus those that willfully do so.

DIRECTOR'S REPORT

Director Markle 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

Commissioner Moss-Thomas referred to the Planning Commission Quarterly Publication that was recently sent out with a survey attached. The survey return was fairly low (1%), but they learned that many people did not receive the publication. She asked the Commissioners to share ideas via email of what can be done to make the publication more valuable to Shoreline citizens.

AGENDA FOR NEXT MEETING

Director Markle said the September 3rd agenda includes a presentation on the 3rd set of Development Code amendments. A presentation on the 145th Street Corridor Study is also scheduled for that evening.

ADJOURNMENT

The meeting was adjourned at 9:06 p.m.

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Keith Scully	Lisa Basher
Chair, Planning Commission	Clerk, Planning Commission