PLANNING COMMISSION
REGULAR MEETING
AGENDA

Thursday, January 7, 2016
7:00 p.m.

Council Chamber · Shoreline City Hall
17500 Midvale Ave North

		Estimated Time
1.	**CALL TO ORDER**	7:00
2.	**ROLL CALL**	7:01
3.	**APPROVAL OF AGENDA**	7:02
4.	**APPROVAL OF MINUTES** a. December 17, 2015 Meeting Minutes - Draft	7:03

Public Comment and Testimony at Planning Commission

During General Public Comment, the Planning Commission will take public comment on any subject which is not specifically scheduled later on the agenda. During Public Hearings and Study Sessions, public testimony/comment occurs after initial questions by the Commission which follows the presentation of each staff report. In all cases, speakers are asked to come to the podium to have their comments recorded, state their first and last name, and city of residence. The Chair has discretion to limit or extend time limitations and the number of people permitted to speak. Generally, individuals may speak for three minutes or less, depending on the number of people wishing to speak. When representing the official position of an agency or City-recognized organization, a speaker will be given 5 minutes. Questions for staff will be directed to staff through the Commission.

5.	**GENERAL PUBLIC COMMENT**	7:05
6.	**STUDY ITEM** a. Sound Transit Permitting – Special Use Permits and Legislative Processes • Staff Presentation • Public Comment	7:10
7.	**DIRECTOR'S REPORT**	8:30
8.	**UNFINISHED BUSINESS**	8:35
9.	**NEW BUSINESS**	8:40
10.	**REPORTS OF COMMITTEES & COMMISSIONERS/ANNOUNCEMENTS**	8:41
11.	**AGENDA FOR JANUARY 21, 2016** a. Sound Transit Permitting Development Code Amendments Public Hearing	8:45
12.	**ADJOURNMENT**	8:45

The Planning Commission meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 801-2230 in advance for more information. For TTY telephone service call 546-0457. For up-to-date information on future agendas call 801-2236

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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
MINUTES OF REGULAR MEETING

December 17, 2015 Shoreline City Hall
7:00 P.M. Council Chamber

Commissioners Present
Chair Scully
Vice Chair Craft
Commissioner Malek
Commissioner Maul
Commissioner Montero
Commissioner Mork
Commissioner Moss-Thomas

Staff Present
Rachael Markle, Director, Planning & Community Development
Steve Szafran, Senior Planner, Planning & Community Development
Paul Cohen, Senior Planner, Planning & Community Development
Alex Herzog, Management Analyst
Lisa Basher, Planning Commission Clerk

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 Malek, Maul, Montero and Mork. Commissioners Moss-Thomas arrived late.

APPROVAL OF AGENDA

The agenda was accepted as presented.

APPROVAL OF MINUTES

The minutes of October 15, 2015 were adopted as submitted.

GENERAL PUBLIC COMMENT

Janet Way, Shoreline, thanked the Commissioners for their service and for allowing a free exchange of ideas between the public and the Commission.

PUBLIC HEARING: Proposed Changes and Additions to Shoreline Municipal Code Regarding Cannabis (Marijuana)

Chair Scully briefly reviewed the rules and procedures for the public hearing, and then opened the hearing.

Staff Presentation

Mr. Herzog reviewed that over the years, there have been several cannabis-related measures and legislation that have created the State's current two-system process for regulating medical and recreational marijuana. Overshadowing these new laws is the Federal environment where all forms of cannabis are illegal. New legislation in 2015 was aimed at meeting the Federal government's concerns regarding cannabis enforcement, including preventing distribution to minors, preventing criminal enterprises from benefitting from marijuana sales and use, and ensuring public health and safety. Another notable change was the abolishment of collective gardens as a means to grow, process, buy and sell cannabis for medical use. He reviewed each piece of new legislation as follows:

- **Senate Bill 5052** contained significant changes, including moving the medical cannabis system under the jurisdiction of the Liquor and Cannabis Board (LCB), and state licenses will now be required for anyone making retail sales of medical cannabis or producing or processing medical cannabis for retail sales. In addition, businesses that are now operating as medical cannabis collective gardens (2 in Shoreline), will have to make the shift to operating as licensed cannabis businesses or shut down completely. As per SB 5052, medical cannabis has been combined with recreational cannabis businesses and collective gardens that are not operating as licensed cannabis businesses will be prohibited effective July 1, 2016. The legislation also provides for LCB-certified cooperatives with a maximum of four patients or designated providers. The changes to the medical cannabis system are intended to mitigate some of the problems associated with collective gardens that were, in practice, operating as storefronts for patients prescribed cannabis as treatment. To address the changes to the medical market, the LCB reopened the license period for retail stores on October 12, 2015.

- **House Bill 2136** extended to cooperatives some of the requirements of Initiative 502, which set parameters around recreational cannabis. The cooperatives are intended to bridge the gap for the medical cannabis patients who currently purchase products from collective gardens. Specifically, cooperatives will be required to be at least 1,000 feet from special facilities (recreational centers or facilities, child care centers, public parks, public transit centers, schools and playgrounds). Recreational cannabis businesses have been subject to this requirement for years through I-502. In requiring cooperatives to abide by this constraint, the bill also granted cities the power to reduce buffer zones around some special facilities, but all cannabis businesses must remain at least 1,000 feet from schools and playgrounds. The bill also revamped the tax structure so that a 37% excise tax is imposed at the time of cannabis retail sale instead of there being an excise tax of 25% at production, processing and retailing. Medical cannabis sales are now included in this tax structure, as well.

Mr. Herzog reported that there are currently six licensed collective gardens, two recreational retailers, and one processor in the City. In addition, the City has received two notices of application since the LCB reopened its licensing window: one for a cannabis retail license and another for a cannabis retail license with a medical cannabis endorsement. In recent months, the City's Customer Response Team inspected all six collective gardens in Shoreline for compliance with existing City code requirements. Most of the six had various minor violations but none were majorly non-compliant. Between mid-May and the end of June, LCB staff who were under age 21 went into all recreational cannabis stores statewide and either presented their true identification or none at all. A variety of stores, including one in Shoreline, sold to these minors. He noted that the State has done similar checks for liquor sales, and found the compliance rate to be comparable.

Mr. Herzog provided a map showing the geographic dispersion of marijuana-related businesses in the City, noting that most are clustered around the Aurora and 15th Avenue Corridors. The two new applications are also in these areas.

Mr. Herzog reviewed the ways that local municipalities can impact cannabis businesses and cooperatives:

- **Zoning and Prohibition.** The City may prohibit production, processing and/or retail outlet and sales of cannabis through zoning and outright prohibition, and several cities in the State have taken this approach. The City can also limit cannabis entities to certain zones in the City. Currently, cannabis producers and processors are restricted to zones where light manufacturing is permitted, and cannabis retailers are permitted in commercial zones. One change this year is that the new cooperatives must be located in residential zones, within the domicile of one of the participants.

- **Buffer Zones.** The City may reduce the 1,000-foot buffer requirement around certain types of facilities to as little as 100 feet, but the authority to adjust buffer distances does not apply to schools or playgrounds. Cooperatives must be at least one mile from licensed retail stores.

- **Individual Notice.** The City may adopt an ordinance requiring that cannabis license applicants provide individual notice of their application to special facilities within 1,000 feet of the proposed location. The City can require that the notices be sent at least 60 days before the license is granted. This requirement would provide special facilities that receive the notice an opportunity to comment to the LCB before the license is issued.

- **City Enforcement.** Local governments can adopt additional requirements and/or restrictions on cannabis-related businesses. While the LCB will have the primary enforcement role, the City will be responsible for the enforcement of any additional requirements that are implemented.

Mr. Herzog reviewed that the City Council had a robust discussion about this issue on November 9th, and considered policy questions about prohibition, zoning, and lowering the buffer zone. They expressed an interest in providing access to medical marijuana for patients who found the treatment useful and thought that prohibiting cooperatives was not in the City's best interest. They did not want to pursue decreasing the buffer zones around special entities or limiting the number of cannabis entities. They discussed the City's current code provisions for collective gardens and gravitated towards adopting

a 1,000 foot buffer zone between retail cannabis locations as a good way to ensure geographic disbursement and prevent clustering.

Mr. Herzog summarized that staff recommends the Commission recommend to the City Council adoption of Ordinances 734 and 735. Ordinances 734 will help clean up the provisions that relate to collective gardens, which will be prohibited after July 1, 2016, by removing all applicable provisions effective June 30, 2016. Ordinance 735 will require 1,000 feet between retailer locations to prevent clustering and will seek to limit the impact of vehicular and pedestrian traffic on the surrounding community. He advised that the Commission's recommendation would be presented to the City Council in late January, with the goal of adopting regulations in February.

Commissioner Moss-Thomas asked if people who grow cannabis in their personal residences must obtain a license. Mr. Herzog said the LCB has taken the lead role in licensing and growing, and the current provisions that allow medical patients to grow will remain in effect. Patient who elect to grow can choose to join a database run by the state, which will provide extra protection in the eyes of the law if they were to be prosecuted.

Vice Chair Craft requested more details about medical cooperatives and how they differ from collective gardens. Mr. Herzog explained that collective gardens are essentially storefronts for anyone who would benefit from consuming medical cannabis as a treatment, and cooperatives more clearly speak to the intent of the collective gardens. Cooperatives would have a maximum of four members, whereas collective gardens can have a maximum registry of 10. Each member of a cooperative must contribute to the production of the cannabis. Cooperatives must also be located within the domicile of at least one member, and the product cannot be sold to anyone outside of the cooperative membership.

Public Testimony

No one in the audience indicated a desire to comment.

Commission Deliberation and Action

COMMISSIONER MOSS-THOMAS MOVED THAT THE COMMISSION RECOMMEND THE CITY COUNCIL ADOPT ORDINANCES 734 AND 735 AS PRESENTED BY STAFF. VICE CHAIR CRAFT SECONDED THE MOTION.

Commissioner Moss-Thomas said that, overall, the proposed changes are appropriate. However, she questioned the fairness of prohibiting cooperatives from locating within 1,000 feet of a retailer. She felt this could create an unfair burden for people who require medical cannabis by requiring them to buy from a retailer if they live within 1,000 feet of a retail business.

COMMISSIONER MOSS-THOMAS MOVED THAT THE 6TH "WHEREAS" STATEMENT IN ORDINANCE 735 BE AMENDED, STRIKING "NO CLOSER THAN 1 MILE FROM A MARIJUANA RETAILER", TO READ,

"WHEREAS, the new legislation for Medical Cannabis Cooperatives establishes criteria for the location and operation of the cooperative including that it must be located in a participant's domicile and only one cooperative per tax parcel."

COMMISSIONER MORK SECONDED THE MOTION.

Chair Scully asked the intent of the 1,000 foot buffer requirement between retail businesses and cooperatives. Mr. Herzog said he is not positive of the intent, other than to break away from the idea of collective gardens. Commissioner Moss-Thomas pointed out that cooperatives would be much different than collective gardens, in that all members must participate and they cannot sell the product to others. The membership would also be limited to four. Vice Chair Craft pointed out that cooperatives would be governed by the State and the City would not have any enforcement ability. Mr. Cohen referred to the land use charts, which list the four types of marijuana uses, and pointed out that medical cooperatives would be allowed in all zoning categories but a 1,000-foot buffer could limit the number of cooperatives that could locate in any given area.

Commissioner Mork asked if a cannabis-related business would be required to relocate if a special facility such as a school locates closer than the 1,000-foot buffer. Mr. Herzog answered that a special facility would be allowed to move within a buffer zone, but the existing cannabis business would not be reprimanded or lose its license. The buffer requirement cannot be enforced after the fact.

Commissioner Malek agreed with Commissioner Moss-Thomas' concern about disenfranchising a group that is disadvantaged. They should not be obligated in a way that results in a financial detriment. However, he asked if there is evidence of collective gardens undermining the retailers by misappropriation. Mr. Herzog answered that cooperatives are much different than collective gardens. Cooperatives are aimed to benefit just the patients who are involved. The change that prohibits collective gardens and allows cooperatives, as well as the change that allows retailers to apply for an endorsement to sell cannabis, reduces some of the gray areas and better serves the medical community.

Commissioner Malek summarized that there does not appear to be an issue with retail and cooperatives being near each other. He asked if the proposed ordinances are intended to address the issues that currently allow for medical marijuana to be distributed in the State or is it a hybrid of something that the State couldn't quite get its arms wrapped around. Mr. Herzog answered that, as per the two ordinances, Medical marijuana can be purchased from retail businesses or obtained via cooperatives. The intent is to provide patients with access to medical marijuana from both angles.

Commissioner Moss-Thomas said she knows citizens in Shoreline who have basically formed a cooperative to provide medical marijuana to patients who do not have the physical means or ability to grow for themselves. These patients either help grow the product or contribute to the cost of growing the product. Most people she knows who use medical marijuana consume it as an edible, tincture, cream, etc., and more than half use it for pain as an alternative to narcotics. Making it into an ingestible form requires a more raw product than if you are smoking it.

Commissioner Montero said he understands that a 1,000-foot buffer might be too much, but he is concerned that eliminating the buffer zone in its entirety could result in abuse.

THE MOTION TO AMEND THE MAIN MOTION WAS APPROVED 6-1, WITH COMMISSIONER MONTERO VOTING IN OPPOSITION.

Commissioner Moss-Thomas noted that marijuana can be used in Washington State for both recreational and medical purposes. She referred to Table 20.40.160 (Station Area Uses), which indicates that cooperatives would be allowed in all station area zones, but retail, processors and producers would be prohibited. She voiced concern that this could create a hardship for people who use the product for medical purposes and must depend on a retailer because they do not have the ability to grow it themselves. These people may also be dependent on public transportation. She is not opposed to buffer requirements, but outright banning the use is not appropriate. She pointed out that, as currently proposed, medical office, nursing and personal care facilities are allowed in an MUR-70' zone, with certain criteria. She questioned why processors and producers, who also have to follow state regulations, would not also be permitted in an MUR-70' zone.

Mr. Cohen recalled that prior to the recent adoption of the Station Area Development Code, there was a long discussion and a consensus that smoke shops, arcades, and some other uses were undesirable in the station areas. To be consistent with this direction, staff recommended that marijuana retail, processing and producing should also be prohibited in the station areas.

COMMISSIONER MOSS-THOMAS MOVED THAT TABLE 20.40.160 (STATION AREA USES) BE CHANGED TO ALLOW CANNABIS OPERATIONS-RETAIL, CANNABIS OPERATIONS-PROCESSER, AND CANNABIS OPERATIONS-PRODUCER AS PERMITTED USES IN THE MUR-70' ZONE AND AS PERMITTED USES WITH CONDITIONS WHEN ADJACENT TO AN ARTERIAL STREET IN THE MUR-45' ZONE. COMMISSIONER MAUL SECONDED THE MOTION.

Commissioner Moss-Thomas suggested that all references to "marijuana" should be changed to "cannabis." Secondly, she said that while she understands concerns that cannabis-related business might attract unsavory people, it is important to keep in mind that these businesses must follow very stringent State guidelines. They can also be lucrative and provide additional tax revenue for the City. She felt the product should be available to people living in the station areas who are unable to go to collectives. While retail uses would not be appropriate in residential areas, they should be allowed in the MUR-70's zone, as well as the MUR-45' zone when adjacent to an arterial street. The 1,000-foot buffer will ensure that the businesses are not clustered together.

Chair Scully said he does not support the proposed amendment. He recalled that in their discussions about the light rail station areas, the Commissioners talked about residential being the focus. In addition, they heard a lot of public concern about the types of uses that would be allowed. He felt that there are already a lot more allowed uses than what many of the citizens would want. He noted that the table could be changed in the future as the City gains more experience with cannabis-related businesses; but for now, he does not believe they know enough about the impacts to allow the uses in residential areas. Vice Chair Craft concurred.

THE MOTION FAILED 1-6, WITH COMMISSIONER MOSS-THOMAS VOTING IN FAVOR OF THE MOTION.

Commissioner Moss-Thomas referred to Table 20.40.130 (Nonresidential Uses) and asked if "collective gardens" would be eliminated. Mr. Cohen said the use would remain on the table for the time being but would be removed once the new state law becomes effective on July 1, 2016.

Commissioner Montero requested a definition for the term "processer." Mr. Herzog said the State has defined this definition, but he does not have the exact language available. Generally speaking, it is one who takes the grown product and produces it into an edible, cream, solution, etc.

THE MAIN MOTION, AS AMENDED, WAS UNANIMOUSLY APPROVED.

Chair Scully closed the public hearing.

STUDY ITEMS: Development Code Amendments – Engineering Development Manual and Light Rail Systems and Facilities, Permitting Process and Regulations

Staff Presentation on Proposed Amendments to the Engineering Development Manual

Mr. Szafran explained that the language in Shoreline Municipal Code (SMC) 20.70.020 refers to SMC 12.10.100 for the processes, design and construction criteria, inspection requirements, standard plans, and technical standards for engineering design related to development. However, SMC 12.10.100 does not exist. The proposed amendment would change the reference to SMC 20.70.015, which is a new provision that will be added to the Engineering Development Manual. The proposed amendment would also strikes out all of the specifications of the Engineering Development Manual (Items A through G), which staff does not feel belong in the Development Code. A public hearing on the proposed amendment is scheduled for January 21, 2016.

Staff Presentation on Proposed Amendments Related to Light Rail Systems and Facilities

Director Markle explained that the purpose of the proposed amendments is to identify the development standards that would apply to the design of light rail facilities/systems and to create a permitting process to review and approve the design of light rail facilities/systems. She reminded the Commission that they discussed the proposed amendments in September, but staff delayed further consideration until additional staff analysis and coordination with Sound Transit could occur. While doing this additional analysis, staff found there was a gap in the City's existing development regulations and the ability to apply said regulations to areas of the City that are not zoned and uses that do not clearly fall into design categories.

Ms. Markle explained that most of the land in which the light rail facilities/systems would be located is in un-zoned public rights-of-way that are not zoned. Because the City's use table relies on a property's zoning to determine where uses are allowed, the light rail use is essentially not allowed or would have to be interpreted by an administrative decision. In addition, the City's current design standards are determined by the type of development (single-family, multifamily, and commercial). Because light

rail facilities/systems will not fall cleanly into these development types, it will be difficult, if not impossible to determine what standards for development will apply. The proposed amendments are intended to identify where the light rail facilities will be allowed to locate and outline what regulations would apply.

Ms. Markle advised that the regulations are largely modeled after the commercial sections of the code. She recalled that the 185th Street Station Subarea Plan includes regulations and design standards specific to parking garages, which would fall primarily within the Mixed Use Residential (MUR) zones. However, the code is not clear if parking garages are located in areas that are not zoned. The proposed amendments clearly link the design standards to the light rail facilities, regardless of what zone they are located in.

Ms. Markle said it is also important to create a process that would apply when the existing regulations do not quite fit an essential public facility, such as the light rail facility. She explained that, currently, light rail facilities/systems are only allowed in the MUR zones with a development agreement. However, most of the light rail facilities/systems will be located on R-6 zoned property or in the right-of-way adjacent to R-6 zoned property and will not be able to comply with the current standards. In addition, Development Agreements do not allow for deviations from code standards that are necessary to allow light rail facilities/systems. For example, the stations and garages will exceed the 35-foot height limit in the R-6 zone. While the City could create an entire chapter that is devoted just to light rail facilities, staff is proposing to use the SUP (SUP) process as a mechanism to approve modifications from the Development Code. This will allow the City the ability to apply reasonable conditions for compatibility with adjacent land uses. The SUP process would allow for public comment, public notice and public hearing, as well as an appeal avenue for either Sound Transit or the public, if necessary.

Ms. Markle referred to information provided by the City Attorney and included in the Staff Report explaining the differences between the Development Agreement and SUP Processes and providing information about why the City must amend its current code to remove the Development Agreement process. She explained that the City currently uses four types of processes (or permits), and the actions are based on who makes the decision, the amount of discretion exercised by the decision-making body, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. Development Agreements are legislative decisions, which are not typically associated with a specific project or a single applicant. Legislative decisions apply to area or citywide concepts. The permitting associated with Sound Transit light rail facilities/systems will be project specific, so the legislative decision-making process associated with a Development Agreement would not be appropriate. A quasi-judicial decision-making process is intended to be used for project-specific applications. It allows for discretionary judgment in the review of the applications and includes a public hearing and notice, as well as an appeal process.

Again, Ms. Markle said staff is recommending the SUP for siting light rail facilities/systems using the quasi-judicial process currently outlined in the Development Code, which identifies the Hearing Examiner as the review and decision-making authority. However, she acknowledged that there are other options, as outlined in the Staff Report, that the Commission could consider as a unique process specific to the siting of light rail facilities/systems.

Ms. Markle explained that the purpose of moving ahead with the proposed amendments is that Sound Transit will begin the design of Shoreline's stations and garages sometime between January and March of 2016. Designers will need to know which development standards apply to the design in order to meet local codes. There must also be a process in place to allow light rail facilities/systems as a use in all zones in which they will be located.

Ms. Markle advised that the proposed amendments are scheduled for public hearing before the Planning Commission on January 21st, and it is anticipated the City Council will take action on February 29th. Additional amendments related to trees, parking, multi-modal access, and construction management will come before the Commission in early 2016. However, they are not crucial to the early design work and can be delayed to allow for more coordination with Sound Transit. These amendments will come before the Commission in February, with a goal of having them adopted by the end of April.

Ms. Markle requested feedback from the Commission regarding the proposed SUP Process, with the Hearing Examiner being the hearing body and decision maker. She also requested feedback on the proposal to use the commercial design standards as the starting point for regulating light rail facilities/systems, with the SUP being used to deviate from the standards if necessary to accommodate the essential public facility.

Public Comment

Janet Way, Shoreline, said she was present to speak on behalf of the Shoreline Preservation Society. She expressed her belief that the City Council should be both the hearing and decision-making body on matters related to the light rail station facilities/systems. She referred to the chart provided in the Staff Report to outline the different options and voiced concern that the cons that were listed for Option 3 (open record hearing before City Council) are a mischaracterization of the public interaction. The majority of the public comments have been extremely respectful, thoughtful and honest. She emphasized that Sound Transit coming to Shoreline is a big deal, and the public should have an opportunity and be invited to participate in the process. She felt Option 3 would be the best process for allowing this to occur. Another option would be for the Planning Commission to hold the public hearing.

Planning Commission Discussion

Commissioner Montero commented that the parking garage and station will have a fairly small footprint, and the process should be no different than for any other commercial development. Typically, when a SUP is required, the application goes before the Hearing Examiner, who takes public comment and makes the final decision. He does not believe the Planning Commission and/or City Council have the tools or the necessary background to make these decisions. It would also slow the process down considerably. Commissioner Moss-Thomas also voiced support for the SUP requirement, but said she does not yet have an opinion about which process model would be most helpful.

Chair Scully said another option would be to make light rail facilities/systems a conditional use within the existing zoning categories through which the light rail area runs and then rezone the un-zoned lands to R-6 and treat the development like any other structure. Commissioner Maul pointed out that the bulk of the issue will be the design of the station and garage, both of which would be located in the MUR-70'

zone. He said he supports using the commercial design standards as a starting place, with the flexibility to deviate as necessary via a SUP.

Commissioner Maul said it seems logical that there needs to be the ability for public input, and the Hearing Examiner process can be intimidating. He is not sure allowing the Hearing Examiner to make the final decision makes sense, and the application should end up before the City Council at some point. However, he cautioned against a process that takes longer than necessary.

Vice Chair Craft asked if it would be possible to do an overlay that would allow the City to use the Commercial Design Standards that have already been adopted. This could also include flexibility to deviate from the standards, as necessary. Chair Scully cautioned against creating a drawn-out process for a garage and station that should be treated like any other building. An open record hearing before the City Council will take considerable time, and it will not necessarily be a constructive process. He expressed his belief that the City can obtain better input from the public by simply having conversations rather than a legal proceeding.

Commissioner Maul commented that the Commercial Design Standards are good and could be directly applied to the design and construction of a parking garage, but the station may have other issues that need to be addressed via a SUP. Chair Scully concurred. Commissioner Moss-Thomas pointed out that the garage and station will be different than standard commercial development because they will generate a high volume of vehicular traffic that may not be adequately addressed by the existing parking standards for commercial design. She agreed that it is important to have citizen input, and she is concerned about having the Hearing Examiner make the final decision. While the station and garage will be commercial buildings, they will also be public facilities, which put them into a slightly different category than other commercial development.

Commissioner Mork referred to the chart listing the pros and cons of each of the process options and requested clarification about why the Council would be prohibited, under the Appearance of Fairness Doctrine, from discussing the matter with citizens or Sound Transit outside of the hearing process. Chair Scully explained that because the process would be quasi-judicial, the Council would be similar to a court, and everything that happens has to be on the record and no outside conversation would be allowed. He expressed his belief that the more formal the process, the harder it is to get citizens engaged.

Chair Scully suggested that another option would be to build criteria into the code for light rail facilities/systems, and then use the Development Agreement process for specific applications. Director Markle reminded the Commission that the City Attorney has advised against using the Development Agreement process. She emphasized that they are working on a different and larger public process with Sound Transit for the design of the station, which will start in January with a local event. This is a legislative type of process where citizens can talk about whatever they want in terms of how the stations, garages and facilities will look and feel. Sound Transit will conduct three open houses where they will show the station, garages and facilities at 30%, 60% and 90% completion and solicit feedback from the public. The City Council will be able to make a recommendation to Sound Transit by letter relative to the design based on citizen input.

Director Markle explained that using an overlay approach does not allow the City the ability to condition the project to address issues that may or may not be covered in the City's existing code. It would be very difficult and time consuming to write language that would allow to the City to condition the project using current code. Chair Scully summarized that the overlay approach would be impractical given the timeframe. Director Markle said staff has spent considerable time exploring a variety of options with the City Attorney.

Commissioner Moss-Thomas said she supports a type of SUP process that would follow some type of standards, but also allow for some deviation. Sound Transit is planning to have a fair amount of public engagement and opportunities for open houses, and Planning Commissioners could attend and consider submitting their own comments to Sound Transit. The Planning Commission is not the group that knows all of the ins and outs of how to build a rail station effectively, and neither is the City Council. She would like the public engagement to continue, and the SUP allows the City to impose important conditions.

Commissioner Maul agreed that public input in the design process is important, and the SUP seems a logical tool to allow flexibility to take public comment on Sound Transit's design and morph it into something that is a compromise. He asked if the station and garage projects could be approved by staff, just as any other building permit or design approval process. Director Markle answered that an "administrative review" was one of the options identified on the chart in the Staff Report. However, because an administrative procedure does not require a public hearing, staff is not recommending that option. Commissioner Maul asked if it would be possible to implement an administrative process that includes a public hearing.

Commissioner Maul summarized that it appears the Commission is supportive of staff's recommendation to make the light rail stations and their facilities approvable in un-zoned areas, starting with the Commercial Design Standards as a foundation and using the SUP process to establish additional criteria. Commissioner Moss-Thomas said the bigger question is how best to engage the public in the process. While Sound Transit will have its own public process, what they take away from it may be different than what the citizens of Shoreline see as important. The City has no way of knowing if Sound Transit's public process will be adequate to address the City's concerns.

Commissioner Malek expressed his belief that Sound Transit's public process should not exclude the City. Director Markle clarified that Sound Transit, as the applicant, would present its proposal to the hearing body and explain how it meets the criteria for an SUP that would allow it to deviate from the code requirements. The public would have an opportunity to participate and give testimony, as well. Regardless of who hears and decides the application, the public could still be engaged as much as they want to be. The question is whether the Hearing Examiner, Commission or Council should be the hearing body.

Director Markle recalled that after a lengthy discussion, the City Council decided to utilize the three public open houses that Sound Transit does for all of their projects at 30%, 60% and 90% design, as well as a Shoreline "kick-off" open house that would be led by City staff with support from Sound Transit. The City-sponsored event is scheduled for January 27th from 6:00 to 8:30 p.m. in the common area of Shorewood High School, and will provide citizens with an opportunity to share their ideas and concerns.

The City's open house will be followed by three open houses sponsored by Sound Transit, at which the designs will be updated and presented for additional feedback. Each of Sound Transit's presentations will be followed by a three week comment period, and it is likely the City Council will write a letter to Sound Transit after each of the public meetings, outlining how the project does or does not meet the mark of the design principles.

Commissioner Moss-Thomas suggested that the Commission could host a public comment period following each of Sound Transit's three presentations. She felt that citizens might be more comfortable presenting their concerns and ideas to the Planning Commission, and the comments received could help inform the City Council of what letter they would want to send to Sound Transit.

Director Markle briefly reviewed the SUP process and agreed to provide additional background information. She explained that the SUP typically occurs early before the design is set in stone, and the applicant is required to submit a preliminary site plan that identifies building squares, parking location, and the proposed uses. The applicant must identify the code requirements they cannot comply with and explain how their request for deviation is compatible with the decision criteria. The decision maker would then assess whether or not the application hits the mark. Staff will prepare a report that looks at the details of the application and provides information to the Hearing Examiner relative to how the application meets or does not meet the criteria and what conditions should apply. Staff usually works with the applicant to align on the conditions, but sometimes staff proposes conditions that the applicant finds onerous. The City should not lose sight of its opportunity to condition a project as necessary in order to provide buffers, amenities, etc.

Commissioner Mork asked what options are available if the final decision made by the Hearing Examiner does not address the City and/or citizen's concerns. Chair Scully said the only option is to appeal the decision to the court. Director Markle emphasized that the SUP must occur early in the design process and typically takes place right after the 30% design, which will provide enough information for the Hearing Examiner to see where the buildings will be located, the type of landscaping, materials, parking, etc. However, staff is also working on a code amendment that would tie at least one of the subsequent permits to some concurrence by the City to ensure that the project meets the design guidelines to some degree.

DIRECTOR'S REPORT

Director Markle announced that the City is collecting applications for the Planning Commission until December 31, 2015.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

Terms Expire for Three Commissioners

Chair Scully announced his resignation effective December 18, 2015. He encouraged those whose terms expire soon to reapply and continue to serve on the Commission. He also encouraged them to invite other citizens to apply for the vacant positions.

Commissioner Moss-Thomas asked if the City Council has provided any feedback on her suggestion that they appoint an alternate member to the Commission. Director Markle said she has not received any further direction.

Last Planning Commission Meeting for Council Member Scully

The Commissioners thanked Commissioner Scully for his service and leadership on the Commission and wished him success as he serves as a City Council Member. It was noted that Vice Chair Craft would serve as Chair until elections for new officers can occur.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

There were no reports or announcements by Commissioners.

AGENDA FOR NEXT MEETING

There was no discussion about the next meeting's agenda.

ADJOURNMENT

The meeting was adjourned at 8:50 p.m.

_____ _____

Keith Scully
Chair, Planning Commission

Lisa Basher
Clerk, Planning Commission

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Planning Commission Meeting Date: January 7, 2016 **Agenda Item**

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	**Continued Study of Special Use Permit, Legislative Process for Sound Transit Light Rail Stations, Garages, and Facilities and Applicable Development Regulations**
DEPARTMENT:	**Planning & Community Development**
PRESENTED BY:	**Rachael Markle, AICP, Director**

☐ **Public Hearing** ☒ **Study Session** ☐ **Recommendation Only**
☐ **Discussion** ☐ **Update** ☐ **Other**

INTRODUCTION

The purpose of tonight's meeting is to continue the discussion from December 17th, debating the various options for processing permits related to Sound Transit's light rail facilities in Shoreline. We will explain the differences between Special Use Permits and Legislative Decisions and how these two processes apply to Sound Transit. We will also explain how the Commission can be involved in the regulation and design of the stations and the garages.

Light rail service is scheduled to begin in 2023. Based on Sound Transit's latest schedule, review of architectural and engineering designs for the stations, garages and other associated light rail facilities will start as early as 2016. When the City adopted the 185th Street Light Rail Station Subarea Plan, a permitting process was put in place in the Development Code to review the stations, garages and associated facilities for compliance with Shoreline's goals, policies and regulations. Further legal review, revealed that process, Development Agreement, is not the appropriate mechanism to approve the use of a light rail system and facilities.

Additionally, the City augmented the existing Commercial design regulations to implement the 185th Street Light Rail Station Subarea Plan. These regulations include building materials, colors, textures, openings, and modulations.

The purpose of this study session is to:

- Provide additional information to the Commission about the Special Use Permit process
- Provide the Commission with more information about the differences between Legislative, Quasi-Judicial, Administrative and Ministerial decision making

- Have a collaborative discussion with the Commission about proposed amendments
- Receive additional feedback from the Commission
- Identify if there is a need for additional amendments
- Develop a recommended set of Development Code Amendments for the Public Hearing

DISCUSSION

At the December 17th meeting, the Commission raised concerns regarding the use of a Special Use Permit process to locate the light rail facilities and systems. The main concern seemed to be that a Special Use Permit is determined using a quasi-judicial process instead of a legislative process. At tonight's study session, staff will:

- Explain the statutory reasoning for using a quasi-judicial process instead of a legislative process;
- Explain the different land use decision making models used by government (See Attachment B); and
- Walk the Commission through an example of a Special Use Permit processed to locate North City Water District's new facility maintenance yard in a R-6 zone. The purpose of this discussion will be to learn about the level of detail needed to process a Special Use Permit (site plan level, not detailed architectural or engineering plans) and what SUP decisions typically include.

Special Use Permit
The following is the City's definition of a Special Use Permit:

The purpose of a special use permit is to allow a permit granted by the Hearing Examiner to locate a regional land use, not specifically allowed by the zoning of the location, but that provides a benefit to the community and is compatible with other uses in the zone in which it is proposed. The special use permit is granted subject to conditions placed on the proposed use to ensure compatibility with adjacent land uses.

To put it simply, the SUP is the mechanism to allow the use of a light rail transit facilities and system in the City of Shoreline.

The Special Use Permit process would be used to:

- Locate the light rail systems/facilities as an essential facility in zones where this use would be prohibited;
- Through the application of criteria, condition the light rail systems/facilities to be more compatible with adjacent land uses;
- Establish which regulations apply to Sound Transit projects, especially when the project is located in unclassified land. Unclassified land, is land that is not zoned which is primarily various types of right of way; and
- Approve deviations from the regulations as appropriate to accommodate the light rail systems/facilities as essential public facilities.

The City's Comprehensive Plan includes an Interim Essential Public Facility "EPF" siting Process in Land Use Policy LU62. No new process has been established to replace this interim process, so this process is still valid. LU62 reads as follows:

LU62: Use this interim Siting Process to site the essential public facilities described in LU60 in Shoreline. Implement this process through appropriate procedures incorporated into the SMC.

Interim EPF Siting Process

1. Use policies LU60 and LU61 to determine if a proposed essential public facility serves local, countywide, or statewide public needs.

2. Site EPF through a separate multi-jurisdictional process, if one is available, when the City determines that a proposed essential public facility serves a countywide or statewide need.

3. Require an agency, special district, or organization proposing an essential public facility to provide information about the difficulty of siting the essential public facility, and about the alternative sites considered for location of the proposed essential public facility.

4. Processing applications for siting essential public facilities through SMC Transfer of Development Rights (TDR) allows property owners in environmentally or historically significant areas to transfer their right to develop to property owners in areas more suitable for urban development. A successful transaction benefits the seller, who sells the development rights for financial considerations; the buyer, who is able to use the TDR on his/her property; and the public at large, which gains a permanent open space, recreation area, or historically significant site. Section 20.30.330 — Special Use Permit.

5. Address the following criteria in addition to the Special Use Permit decision criteria:

a. Consistency with the plan under which the proposing agency, special district or organization operates, if any such plan exists;

b. Include conditions or mitigation measures on approval that may be imposed within the scope of the City's authority to mitigate against any environmental, compatibility, public safety or other impacts of the EPF, its location, design, use or operation; and

c. The EPF and its location, design, use, and operation must be in compliance with any guidelines, regulations, rules, or statutes governing the EPF as adopted by state law, or by any other agency or jurisdiction with authority over the EPF.

Therefore, staff has indicated that a Special Use Permit is the most appropriate method of approving Sound Transit's light rail system/facility. Further, Washington State Law directs the City to use a quasi-judicial process such as a Special Use Permit process when making decisions in regards to a specific party. RCW 42.36.010 states:

> *Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.*

The Special Use Permit is a quasi-judicial decision. The decision to approve, approve with conditions or deny a Special Use Permit is made by the Hearing Examiner and involves the use of discretionary judgment in the review of each specific application.

Quasi-Judicial decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision made by the Hearing Examiner.

A Quasi-Judicial process resembles a court or a judge who must act in a manner similar to a judge in a court of law. In a quasi-judicial proceeding, the Hearing Examiner is not setting new policy but is making a decision based on set criteria (SCM 20.30.330) at a hearing. In other words, much like a court, the Hearing Examiner is applying the law to facts gathered at the hearing to arrive at its decision.

Quasi-Judicial decisions also require the Hearing Examiner not to consider any information received outside the record (this is called "ex parte communication"). This is so everyone has a fair opportunity to hear the information and provide testimony in response. This includes written and verbal communication, from any source, including residents, other Planning Commission, and City Council members.

A public commenter, voiced concern about using a quasi-judicial hearing process in terms of the effect of the formality on public participation. It could also be the case that more formality could be welcomed by some in regards to maintaining decorum during comment on potentially contentious land use issues (note: staff is not suggesting that a SUP for light rail facilities and systems will be contentious). Further, the Commission could recommend that instead of the Hearing Examiner being the body to hear the Special Use Permit that the Planning Commission or Council could assume that role. The same quasi-judicial rules would apply regardless of the hearing body.

Therefore, granting the right to locate a use that is not allowed in a zone to accommodate an essential public facility, specifically a light rail transit system and

facilities for a specific party, Sound Transit should be accomplished using a quasi-judicial process.

Legislative Decisions

The following is the City's definition of a Legislative Decision (Type L Permit):

These decisions are legislative, nonproject decisions made by the City Council under its authority to establish policies and regulations regarding future private and public developments, and management of public lands.

Type L actions include Development Code Amendments, Comprehensive Plan Amendments, and Development Agreements. Type L actions do not benefit one specific property owner but usually applies area or city wide. Typically the Commission gathers information at public hearings, from informal conversations with citizens and others, from memoranda prepared by City staff, and from other sources. The Commission typically holds a public hearing and forwards a recommendation to the Council. The Council then deliberates and implements a policy by enacting an ordinance. This is a legislative process by which the Council creates policies or regulations that apply to the whole City, entire zones or to multiple properties.

The Commission has much experience with Legislative actions as the Commission just recently considered the 185th Street Light Rail Station Subarea Plan. Within the Plan were Development Code regulations such as dimensional standards for development in the Mixed Use Residential (MUR) zones, density, site design standards, and building design standards.

The Commission is being asked as part of this amendment package (Attachment A) to gather community input and determine the specific Development Code regulations that will apply to light rail systems and facilities. This is how we are also addressing the design of stations, garages and associated facilities through a legislative process in addition to the quasi-judicial Special Use Permit process. Staff has identified existing regulations that should be applicable to light rail stations, garages and associated facilities. If the Commission feels that additional regulations are needed to ensure that the design of the stations, garages and associated facilities meets Shoreline's expectations then now is the time to suggest amendments. If it would be helpful, staff could walk the Commission through the list of Code sections proposed to apply to light rail facilities and systems at the meeting.

Staff will also present to the Commission the kick-off, 30%, 60% and 90% Open House concept approved by the Council to provide specific input to Sound Transit on the designs of the stations, garages and associated facilities. This process will involve the greater community of Shoreline so that everyone can participate in the design process of the stations, garages and associated facilities. The public is invited to open houses to give input on the proposed station design and parking structures. The public is free to meet with staff, Planning Commissioners, and the City Council to make sure that their

voice is being heard in the process. If you want additional information on the open house concepts please refer to the November 11, 2015 City Council Memo.

TIMING AND SCHEDULE

- January 21, 2016 - Planning Commission Public Hearing
- February 8, 2016 - City Council discussion
- February 29, 2016 - City Council adoption

RECOMMENDATION

No recommendation is provided for this study session.

ATTACHMENT

Attachment A – Draft Development Code Amendments related to Light Rail Systems/Facilities
Attachment B – Types of Land Use Decisions

20.30.330 Special use permit-SUP (Type C action).

A. Purpose. The purpose of a special use permit is to allow a permit granted by the City to locate a regional land use on unclassified lands, unzoned lands, or when not specifically allowed by the zoning of the location, but that provides a benefit to the community and is compatible with other uses in the zone in which it is proposed. The special use permit ~~is~~ may be granted subject to conditions placed on the proposed use to ensure compatibility with adjacent land uses.

B. Decision Criteria (applies to all Special Uses). A special use permit shall be granted by the City, only if the applicant demonstrates that:

1. The use will provide a public benefit or satisfy a public need of the neighborhood, district or City or region;

2. The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas;

3. The special use will not materially endanger the health, safety and welfare of the community;

4. The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity;

5. The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;

6. The special use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts;

7. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties;

8. The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title; and

9. The special use is not in conflict with the standards of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, or Shoreline Master Program, SMC Title 20, Division II.

Table 20.40.140 Other Uses

NAICS #	SPECIFIC USE	R4-R6	R8-R12	R18-R48	TC-4	NB	CB	MB	TC-1, 2 & 3
.....									
REGIONAL									
	School Bus Base	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	
	Secure Community Transitional Facility							**S-i**	
	Transfer Station	**S**	**S**	**S**	**S**	**S**	**S**	**S**	
	Light rail transit facility/system	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**	**S-i**
	Transit Bus Base	**S**	**S**	**S**	**S**	**S**	**S**	**S**	
	Transit Park and Ride Lot	**S-i**	**S-i**	**S-i**	**S-i**	**P**	**P**	**P**	**P**
	Work Release Facility							**S-i**	

P = Permitted Use	**S = Special Use**
C = Conditional Use	**-i = Indexed Supplemental Criteria**

20.40.160 Station area uses.

Table 20.40.160 Station Area Uses

NAICS #	SPECIFIC LAND USE	MUR-35'	MUR-45'	MUR-70'
...				
OTHER				
	Animals, Small, Keeping and Raising	**P-i**	**P-i**	**P-i**
	Light Rail Transit System/Facility	~~**P-i**~~ **S-i**	~~**P-i**~~ **S-i**	~~**P-i**~~ **S-i**
	Transit Park and Ride Lot		**S**	**P**
	Unlisted Uses	**P-i**	**P-i**	**P-i**

Supplemental Index Criteria

20.40.438 Light rail transit system/facility.[1]

A. A light rail transit system/facility shall be approved through a ~~development agreement~~ Special Use Permit as specified in SMC 20.30.355. (Ord. 706 § 1 (Exh. A), 2015).

B. A Light Rail Transit System/Facility stations and parking garages shall conform to the required standards below:

1. SMC 20.50.020(2) - Dimensional standards of the MUR-70' Zone;

2. SMC 20.50.220 through 20.50.250 – Commercial design standards;

3. SMC 20.50.290 through 20.50.370 – Tree conservation, and clearing and site grading standards;

4. SMC 20.50.380 through 20.50.440 – Parking, access, and circulation;

5. SMC 20.50.450 through 20.50.520 - Landscaping;

6. SMC 20.50.530 through 20.50.610 – Signs for the MUR-70' Zone;

7. SMC 20.60 Adequacy of Public Facilities;

8. SMC 20.70 Engineering and Utilities Development Standards; and

9. SMC 20.80 Critical Areas.

C. The Light Rail Transit System/Facility improvements located between the stations shall comply with the applicable sections below:

1. SMC 20.50.290 through 20.50.370 – Tree conservation, and clearing and site grading standards;

2. SMC 20.50.450 through 20.50.520 – Landscaping;

3. SMC 20.60 Adequacy of Public Facilities;

4. SMC 20.70 Engineering and Utilities Development Standards; and

5. SMC 20.80 Critical Areas.

D. **Modification of 20.40.438 (B) and (C) Requirements.** If the applicant demonstrates that compliance with one or more of the requirements set forth in this Section 20.40.438(B) and (C) is impracticable, would result in reduced public benefits, or alternative actions could meet or exceed the intended goals of such requirements, then the City may waive or modify such requirements as part of the Special Use Permit process.

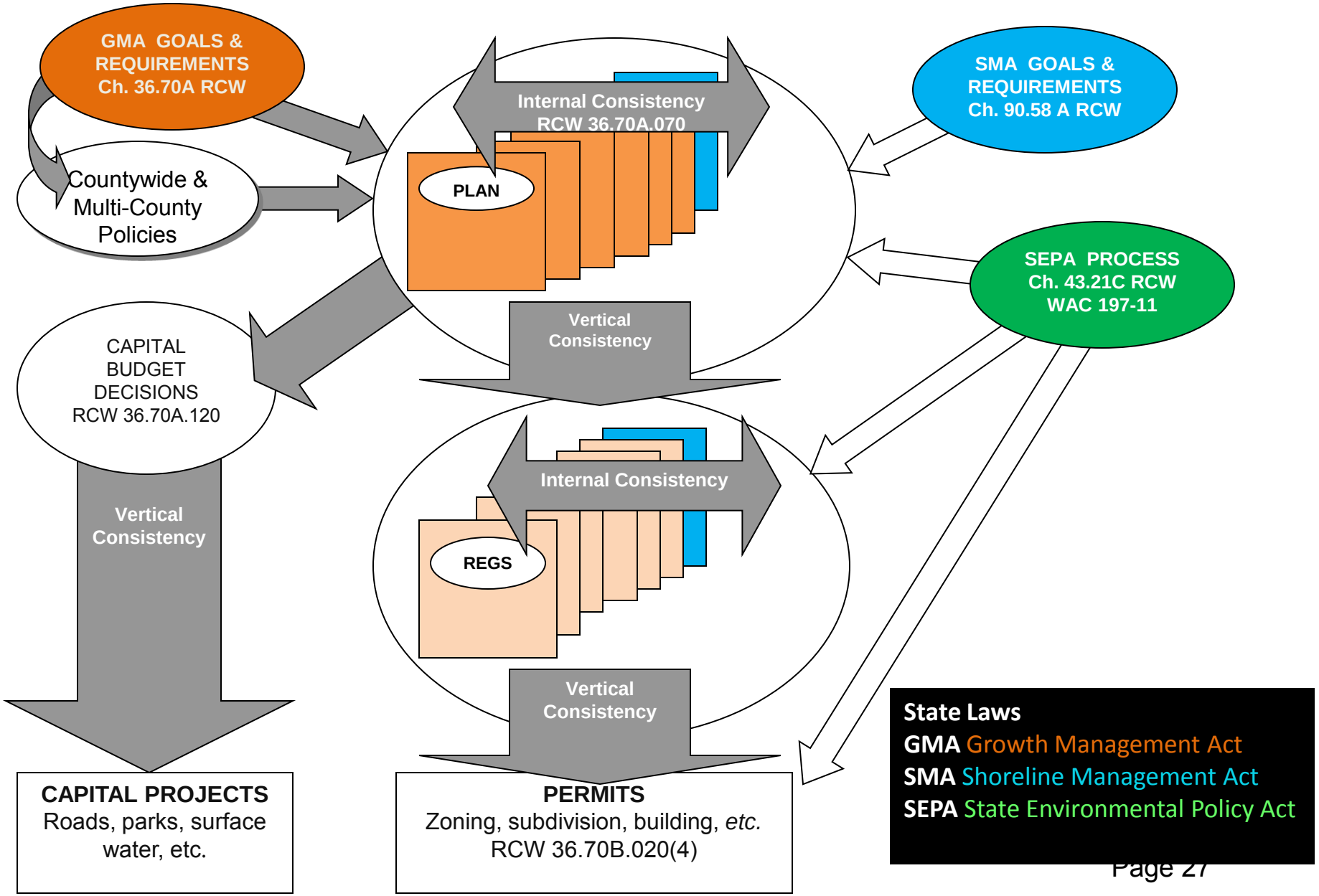
20.50.480 Street trees and landscaping within the right-of-way – Standards.

A. When frontage improvements are required by Chapter 20.70 SMC, street trees are required ~~in~~ for all commercial, office, public facilities, industrial, multifamily ~~zones~~ developments, and for single-family subdivisions on all arterial streets.

B. Frontage landscaping may be placed within City street rights-of-way subject to review and approval by the Director. Adequate space should be maintained along the street line to replant the required landscaping should subsequent street improvements require the removal of landscaping within the rights-of-way.

C. Street trees and landscaping must meet the standards for the specific street classification abutting the property as depicted in the Engineering Development Guide including but not limited to size, spacing, and site distance. All street trees must be selected from the City-approved street tree list. (Ord. 581 § 1 (Exh. 1), 2010; Ord. 406 § 1, 2006; Ord. 238 Ch. V § 7(B-3), 2000).

State laws, Comprehensive Plans, Regulations, Permits, Capital Budgets and Projects



TYPES OF LAND USE DECISIONS

MORE ← Degree of discretion in making decision → LESS

MORE ← Impact of public comment → LESS

LEGISLATIVE DECISIONS

- Comprehensive Plan
- Shoreline Master Plan
- Development Regulations
- Rezone (Area-Wide Map Change)

Policy Decisions

"The Rules"

QUASI-JUDICIAL DECISIONS

- Rezone (Site-Specific Map Change)
- Master Development Plan Permit
- Subdivision (10 or more lots)
- Special Use Permit
- Street Vacation Application

MINISTERIAL & ADMINISTRATIVE DECISIONS

- Variance
- Conditional Use Permit
- Administrative Design Permit
- Substantial Development Permit
- Short Plat (9 or fewer lots)
- Right of Way Permit
- Building Permit

Project Permits or Permissions

Must be consistent with adopted Policies and Regulations