



Memorandum

DATE: May 2, 2016

TO: City Councilmembers

FROM: Rachael Markle, Director of Planning & Community Development
Julie Ainsworth-Taylor, Assistant City Attorney

RE: Agenda Item 8(b) Selection of a Preferred Alternative to Study in the 145th Street Station Subarea FEIS

CC: Debbie Tarry, City Manager

Today there were several public comment requests asking Council to adopt an overlay zone instead of a planned action. The purpose of this memorandum is to provide Council with some background regarding Overlay Zones and Planned Actions.

Tonight's Action

Tonight's discussion and action is not about deciding whether to adopt a Planned Action Ordinance, an Overlay Zoning District, or the content of any development regulation relevant to the 145th Street Station Subarea Plan proposal. As the title for this agenda item denotes, tonight's discussion and action is on determining which, if any, of the alternatives presented to the City Council should be designated as the "Preferred Alternative" in the Final Environmental Impact Statement (FEIS) for the 145th Street Station Subarea Plan. Currently, there are four (4) alternatives before the Council: No Action, Connecting Corridors, Compact Community, and Compact Community Hybrid.

While SEPA does not require that the Council designate a Preferred Alternative, the benefit of selecting a Preferred Alternative is to make the public and interested agencies aware of which alternative the City feels is best or appears most likely to be approved in the future. The Preferred Alternative also gives staff direction on where to focus attention for the drafting of the Subarea Plan including development regulations. There is no obligation on the part of the Council to adopt the Preferred Alternative following the completion of the FEIS. The designation of a Preferred Alternative in no way restricts the Council's final decisions in regards to the 145th Street Station Subarea.

However, the Council should ensure that the range of reasonable alternatives to be studied in the FEIS includes the greatest level of possible change anticipated to insure that impacts associated with the land use and zoning ultimately adopted have been

identified, analyzed and mitigated. If, in September/October 2016, the Council chooses to adopt land use designations and zoning that exceed the impacts analyzed in the FEIS then a Supplemental Environmental Impact Statement may be required adding time and expense to the planning project.

Public comment has suggested that the Council adopt an Overlay Zoning District as opposed to a Planned Action Ordinance for the 145th Street Station Subarea. As noted above, this is not a decision that needs to be made tonight as it is not relevant to the designation of a Preferred Alternative for the FEIS. These are decisions independent of the FEIS process. However, Staff wanted the City Council to understand the distinction between two concepts – an Overlay Zone and a Planned Action – as they are not the same type of regulatory tools.

What is an Overlay Zone?

The public comments suggest an overlay zone to protect the wetland and streams in the 145th Street Station Subarea. An overlay zone is a regulatory tool that creates a special zoning district, placed over an existing base zone or zones, which identifies special provisions in addition to those in the underlying base zone. In essence, an overlay zone usually provides a higher level of regulation than that required by the existing zoning district. In regards to critical areas, an overlay zone can provide an extra layer of protection. The mere presence of an overlay zone does not exempt an otherwise non-exempt project application from compliance with the SEPA process.

Staff believes that the City’s Critical Areas Ordinance, SMC 20.80, serves as the necessary overlay to protect these critical areas and their buffers from development impacts. SMC 20.80 applies to **any** parcel within the City that contains critical areas when a non-exempt development activity is proposed regardless of any other regulation. **More importantly, SMC 20.80 prohibits development within wetland, streams, and their associated buffers** unless this would deny all reasonable economic use of the property. In accordance with both federal and state law, the City must allow for some “reasonable” use of the property. To determine the “reasonable use” of property, the City uses a quasi-judicial public permitting process called a Critical Area Reasonable Use permit, SMC 20.30.336. The Critical Area Reasonable Use permit requires public notice, a public hearing before the City Hearing Examiner, and compliance with identified criteria.

Therefore in relation to the 145th Street Station Subarea Plan, it would be important during the drafting of Development Code amendments to determine if there are specific special provisions (regulations) that go above or beyond the standards for the MUR zones and SMC 20.80’s Critical Areas regulations that warrant the creation of an overlay zone so as to enhance the protection of the critical areas.

What is a Planned Action Ordinance?

A Planned Action Ordinance is the legislative enactment that designates certain types of project actions within a delineated geographic area as Planned Actions. As was the case with the 185th Street Station Subarea Plan, an Environmental Impact Statement (EIS) must be prepared that provides for the up-front analysis of environmental impacts and mitigation measures. This shifts environmental review from the time of permit

application to an earlier phase in the planning process so as to ensure a more streamlined environmental review process and certainty for permit applicants.

One of the purposes of doing a Planned Action Ordinance is to develop an understanding of cumulative impacts of potential redevelopment, rather than performing this analysis only at the project level. Analyzing impacts and identifying mitigations for both 20 year and build-out timeframes allows the City to prioritize capital projects for the shorter timeframe, while also foreseeing what could be needed for the long-term. In some cases, when making improvements it is advisable to design for the long-term need.

A Planned Action Ordinance is also not an indefinite or unlimited pass for growth; it is not a SEPA exemption. The City must evaluate whether the impacts arising from the project were analyzed in the EIS, monitor actual projects against the level analyzed, and if this threshold is reached, either a developer would need to do perform independent environmental analysis, or the City could choose to develop a Supplemental Environmental Impact Statement to determine additional mitigations. Either option would be accompanied by new public process. If a proposed development application meets criteria established in the Planned Action Ordinance, it will be labeled as a “planned action” and will not be subject to further environmental review.

And, as was the case with the overlay zoning, without a Planned Action Ordinance, SEPA continues to apply to all non-exempt development and the FEIS developed for the 145th Street Station could be relied upon by applicants to satisfy their environmental review requirements.