

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

July 21, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro
Commissioner Kuboi
Commissioner Hall
Commissioner McClelland
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services

ABSENT

Commissioner MacCully
Commissioner Phisuthikul
Commissioner Sands

1. CALL TO ORDER

The regular meeting was called to order at 7:05 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners Kuboi, Hall, McClelland and Broili. Commissioners MacCully, Phisuthikul and Sands were excused.

3. APPROVAL OF AGENDA

Chair Harris asked that Item 9—Public Comment, be combined with Item 6—General Comment, since the Commission already conducted a public hearing on the Critical Areas Ordinance Update. He invited the public to make comments on any issue as part of the general public comment period. The agenda was approved as amended.

4. DIRECTOR'S REPORT

Mr. Stewart reported that on July 18th the City Council unanimously adopted the Planning Commission's recommendation to extend the moratorium until February. However, at the end of their debate, Councilmember Fimia presented the Council with a proposed process (see pink handout) of how to move the issue forward. At the conclusion of the Council's debate, two Council Members requested that the process question be placed on their August 22nd agenda for further discussion. He reminded the Commission that they would be discussing the Cottage Housing Ordinance after they complete their review of the Critical Areas Ordinance. He noted that many of the steps outlined on the pink document have already been completed. However, the big issue would be whether or not a citizen advisory task force would be established, and would likely be the main topic of the City Council's discussion.

Commissioner Kuboi asked if it would be appropriate for Commissioners to offer comments regarding the outlined process that was put forth by Council Member Fimia. Mr. Stewart said that the Commission could comment on the document, but they have no obligation to do so at this point.

Commissioner McClelland referred to the outlined process and questioned why the City would be interested in obtaining appraisals for all of the existing cottage housing units. Mr. Stewart recalled that members of the public raised the issue that cottage housing had a detrimental impact on property values. One way to answer this concern would be for the City to spend a significant amount of money doing appraisal for properties around the cottage housing developments.

5. APPROVAL OF MINUTES

There were no minutes available for approval.

6. GENERAL PUBLIC COMMENT

Elaine Phelps, Vice President of the Association for the Responsible Management of Innis Arden, said she has been authorized by the Association to represent them regarding environmental issues. She advised that at the April 11th City Council Meeting, she referred to the Planning Commission's meeting of April 7th, at which Tim Stewart and Matt Torpey advised the Commission that they found nothing in any of the more than 600 pages of public comment that would cause them to change any of their recommendations. She said it is her hope that the Commission would take a different view of the public input that was provided, and pay attention to the hard work the citizens put into making positive and creative suggestions for improvement.

Next, Ms. Phelps referred to the Planning Commission Minutes of April 14th. At this meeting it was stated that there were some technical findings in the provisions contained in the Innis Arden Vegetation Management Plan that prohibited it from ever being used or implemented. Ms. Phelps said she was very much involved in the creation of the Management Plan, and their intent was to reach a compromise amongst the community. The plan was never implemented because the people who could have done so chose to follow a different route.

Ms. Phelps said she is also very concerned about the proposal that was recommended by staff to allow cutting in critical areas for the purpose of views even if the critical areas are not on the property of the person who wants the cutting done. For example, she referred to the reserves in Innis Arden, which must be preserved and no development is allowed to occur on them. The committee in charge allows individual shareholders of Innis Arden to cut in the reserves to preserve views. She suggested that the provision to allow cutting in critical areas is much too general and vague. The stewardship plan that is envisioned to be part of the ordinance is inadequate. She said that if the City is going to create a vegetation stewardship plan, there must be greater detail as to what goes into it, who is responsible for keeping track of it, and who is allowed to rescind, change or alter it.

Commissioner McClelland inquired regarding the relationship between the Association for the Responsible Management of Innis Arden and the Innis Arden Board. Ms. Phelps said members of both groups are shareholders who live in Innis Arden. The Association disagrees with a lot of the Board's decisions, so they decided to form their own group.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Hall reported that he attended the City's 10-year celebration event on July 14th. The turnout was not quite as strong as some people would have liked, but it was great to see the more than 130 citizens who came out to participate. He reported that the event was well done. He advised that at the event, his wife questioned if the City staff had a plan for recycling the bottled water containers. He commended the staff for responding on the spot and quickly taking responsibility for collecting the containers. He commented that this high-caliber of staff is all part of what creates the wonderful sense of community that exists in Shoreline. Chair Harris reported that he attended the event, as well.

Chair Harris reported that he attended the July 18th City Council Meeting, at which they adopted the Cottage Housing Moratorium as recommended by the Commission. He said he came away feeling like the Commission and staff were being chastised for not getting through the process in a timely manner.

8. STAFF REPORTS

a. Critical Areas Ordinance Update Deliberations

Mr. Torpey referred to the large set of information the Commissioners received prior to the meeting regarding the Critical Areas Ordinance Update. The documents were compiled to represent all of the information the staff has collected on the issue to date, and no new information was provided. He referred to Attachments V and VI of the Staff Report. He advised that Attachment V is titled "Critical Areas Review," and outlines the staff's responses to questions posed by the Commissioners. Attachment VI is titled, "Proposed Changes to the Draft Critical Areas Ordinance," and outlines the proposed amendments that have been proposed to date by staff, state agencies, and Commissioners. He reminded the Commission of the State Community Trade and Economic Development Department's December 1st deadline for having the update approved by the City Council.

Mr. Torpey reminded the Commission that at their last deliberation of the proposed amendments, they started with a page-by-page review of the Critical Areas Ordinance. However, they were only able to get through 4½ pages in about 1½ hours. He suggested that a better approach would be for the Commission to focus their deliberations on the proposed amendments. Commissioners could also bring up additional amendments as they see fit during deliberations, or they could be provided to staff to be placed in the matrix for deliberation at the next meeting.

Mr. Torpey said Commissioner Hall requested that staff inform the Commission that there was a case before the Central Puget Sound Growth Management Hearings Board between Pierce County and several citizen groups regarding their critical areas ordinance. The Hearings Board ruled that Pierce County had failed to provide best available science when they conducted their review on how to protect marine waterways. He said he could provide each of the Commissioners with a copy of the Hearings Board ruling upon request. He referred to the proposal put forth by Commissioner Hall (Item 5 on Page 177 of the Staff Report), which designates streams, wetlands and the Puget Sound as fish and wildlife habitat conservation areas. He noted that this is something that Pierce County did not do, and staff feels this would provide additional protection that is solid under best available science.

Mr. Stewart pointed out that the City Attorney has yet to review the Hearings Board ruling on Pierce County's critical areas ordinance. Staff would consult with him and solicit any additional information he is aware of. He advised that staff could also forward Commission questions to the City Attorney.

Commissioner Hall recalled that at the end of their last deliberation of the Critical Areas Ordinance, the Commission had a main motion on the table, and they had already acted on at least one amendment that he proposed. Mr. Torpey explained that Attachment V represents the draft critical area ordinance that was released in December of 2004. Attachment VI identifies the original draft critical areas ordinance amendments in the left hand column and the later recommended changes by the staff and Commission in the right hand column.

Because no minutes were available from the April 7th meeting, the Commission had difficulty identifying where they left off in their deliberations. Therefore, they discussed options for how they would proceed. Vice Chair Piro asked if the main motion currently on the table would have an impact on both Attachment V and Attachment VI. Mr. Torpey answered that Attachment V simply outlines the staff's response to questions that were raised by the Commissioners. Commissioner Hall noted that Attachment V predates Attachment VI by a few months. Therefore, he said he would prefer not to go back through Attachment V. Instead, he would prefer to review and act on the amendments that have already been identified in Attachment VI. If there is time, the Commission could bring up additional amendments. He suggested that the Commission conduct their review on an amendment-by-amendment basis rather than a line-by-line review of the entire ordinance. The Commission agreed that they would work with Attachment VI (starting on Page 175 of the Staff Report), and that Commissioner Hall would add his additional amendments that were discussed the last time the Commission deliberated the Critical Areas Ordinance Update.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND ADOPTION OF THE CRITICAL AREAS ORDINANCE AS AMENDED BY THE STAFF AND SUBJECT TO FURTHER DELIBERATIONS AND AMENDMENTS. VICE CHAIR PIRO SECONDED THE MOTION.

Amendment 1 (Section 20.20.046.S – Definitions)

COMMISSIONER HALL MOVED THAT THE COMMISSION AMEND THE DEFINITION IN SECTION 20.20.046.S FOR “STREAMS” AS SHOWN ON THE HANDOUT TITLED, “PIPED-STREAM SEGMENT AMENDMENTS INTRODUCED APRIL 7, 2005 BY COMMISSIONER HALL.” VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall explained that the staff’s proposal inserted the word “open” between “artificial” and “watercourse.” By definition, this would eliminate any piped watercourse from being a stream. He recalled the testimony that was provided regarding an appellate court case on this particular issue. The court indicated that they found it obvious that Thornton Creek would not cease to be a stream simply because it flows into a culvert. In addition, numerous citizens expressed concern about treating something that is in a pipe as not being a stream. He said he was persuaded by their arguments and by the court case and feels it is very important for the Commission to recognize that just because a waterway flows from an open channel into a culvert, does not mean it ceases to be a stream. He said his proposed amendment would not include the word “open.”

Commissioner Hall said he plans to introduce additional amendments later in the Commission’s deliberations, including a definition for a piped stream segment and a level of protection for piped stream segments that is consistent with the protection the City would require if someone were restoring or daylighting a stream segment. Regardless of the stream classification, it is unnecessary to protect functions and values such as shade, microclimate, litter and insect fall, etc. when a stream segment is underground in a culvert. Placing a minimum 10-foot buffer on each side of the stream would prevent any development on top of the piped-watercourse that would foreclose a future opportunity to restore the stream.

Vice Chair Piro asked if there has been any precedent for using the word “open” in any of the City’s neighboring jurisdiction or in King County. If the terminology of just using “surface water” seems to be the most common use and something they inherited from King County, he sees no problem continuing the terminology without adding any qualifying language.

Commissioner McClelland said another option would be to define a stream as simply an area where surface waters produce a defined channel or bed. She suggested that the second sentence in this section could be changed to read, “It would not include an irrigation ditch, a canal, a storm or surface water runoff device, or another entirely artificially open watercourse.” She pointed out that artificial means something that does not occur naturally. She suggested that the word “open” belongs in the second sentence because it states that open streambeds that do not occur naturally would not be included in the definition of a stream. As written, when something man made becomes fish bearing, it would no longer be considered artificial. It would be considered a stream. Commissioner Hall said it would still be

considered artificial, but it would also be considered a stream. Commissioner McClelland suggested that perhaps the word “artificial” is problematic. Commissioner Hall agreed that perhaps “artificial” might not be the best term, but he felt the intent was clear enough.

Commissioner Hall emphasized that he absolutely does not want to use the term “open” in the first sentence of this section. Using the term “open” in the first sentence would immediately eliminate everything that is in a pipe. Commissioner McClelland agreed that “open” could be removed from the first sentence, but its use in the second sentence provides further clarification. Mr. Stewart agreed with Commissioner McClelland’s analysis of the structure of the definition for “streams.” He said it is also important to recognize that once the City declares something a stream, they must classify the stream in order to identify the required buffers and setbacks. He said one of the stream classifications is “intentionally created streams.” Even artificial open watercourses can be declared streams and be regulated as an “intentionally created stream.” This would further qualify and exclude some types of streams from regulation.

Mr. Stewart said the most contentious item has been the “classification of piped streams.” The amendments proposed by Commissioner Hall would clarify this issue by declaring that piped watercourses are critical areas that are entitled to a 10-foot buffer. Staff believes this amendment offers a good solution because there should normally be at least a 20-foot drainage easement over a pipe. The setback requirement recommended by Commissioner Hall would also serve to encourage the option of daylighting piped-watercourses. He explained that, as the code currently exists, if a property owner wants to daylight an unregulated piped watercourse that is located in his backyard, it would become a Class II Stream and would require a 100-foot buffer. This serves as a disincentive for daylighting streams. Commissioner Hall’s proposed amendments would encourage daylighting streams, recognizing that a property owner would only be required to provide a 10-foot buffer. He added that Commissioner Hall’s amendment would also bring the proposed regulations into compliance with the recent appellate court case (Gaston Case).

Commissioner Kuboi said that when he read the proposed language for Amendment 1 several months ago, he thought it meant that a stream going into a pipe would be considered a stream. The term “unless they are used by salmonids” was the qualifying statement that would restore the status of the piped watercourse as a stream. Mr. Stewart explained that there are two issues at play in the proposed definition: whether the watercourse is open or closed and whether or not it is a stream. Commissioner Kuboi said he supports Commissioner Hall’s proposal to amend the language in this section to provide further clarification regarding its intent.

Commissioner Hall clarified that the term “intentionally created streams” referred to by Mr. Stewart was deleted in the staff recommended amendments because it creates confusion and conflict with the definition of streams (See Item E on Page 73 of the Staff Report). Commissioner Hall further clarified that the current Development Code defines streams as those areas in the City of Shoreline where surface waters produce a defined channel or bed. Staff proposed to insert the word “open,” which by definition would mean that a piped watercourse would not be considered a stream. He pointed out that public sentiment was strong in opposition to the staff’s recommendation, and his proposed amendment was an attempt to resolve the concern. As per his proposed language, a stream would be any area where surface

waters produce a defined channel or bed, except for the things that are listed in the second part of the sentence.

COMMISSIONER HALL MOVED TO AMEND HIS MOTION TO CHANGE THE LANGUAGE HE PROPOSED FOR SECTION 20.20.046.S TO READ AS FOLLOWS: “THOSE AREAS WHERE SURFACE WATERS PRODUCE A DEFINED CHANNEL OR BED, NOT INCLUDING IRRIGATION DITCHES, CANALS, STORM OR SURFACE WATER RUNOFF DEVICES OR OTHER ENTIRELY ARTIFICIAL WATERCOURSES UNLESS THEY ARE USED BY SALMONIDS OR ARE USED TO CONVEY STREAMS NATURALLY OCCURRING PRIOR TO CONSTRUCTION. A CHANNEL OR BED NEED NOT CONTAIN WATER YEAR-ROUND, PROVIDED THAT THERE IS EVIDENCE OF AT LEAST INTERMITTENT FLOW DURING YEARS OF NORMAL RAIN FALL.” VICE CHAIR PIRO AGREED TO THE AMENDMENT.

Commissioner Broili said he would support Commissioner Hall’s proposed amendment, but he has a problem with not including irrigation ditches, canals and storm or surface water runoff devices in the definition of a stream. He suggested that this could serve to violate the integrity of all of the streams because whatever happens in these waterways eventually ends up in the streams. He concluded that perhaps his concern could be addressed some other way.

Vice Chair Piro said he is not fully settled on taking “intentionally created streams” out of the ordinance. He said he believes that some distinction between the types of artificial watercourses would need to be made at some point in time.

Commissioner McClelland pointed out how long the Commission has spent dealing with just the first amendment on the matrix. She suggested they focus on the real issue of whether or not the City will state, once and for all, in plain English, that if a fish swims through a watercourse, it is a stream. Once it is declared a stream, the City must protect and regulate it, and that is where the trouble begins.

THE AMENDED MOTION CARRIED 6-0.

Amendment 2 (Section 20.80.030 – Exemptions)

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF PROPOSED AMENDMENT 2 (SECTION 20.80.030) AS PRESENTED ON THE MATRIX. COMMISSIONER MCCLELLAND SECONDED THE MOTION.

Commissioner Hall explained that the intent of this proposed amendment was to recognize that the City is balancing environmental protection with other goals of both the Growth Management Act and the Shoreline Management Act. The Commission also recognizes that public beach access is extremely important to the community, as voiced in public testimony regarding the critical areas ordinance and the Echo Lake proposal. He summarized that the proposed amendment would clarify the Critical Areas Ordinance so it is understood that certain water recreation related activities would be allowed in critical areas.

THE MOTION CARRIED 6-0.

Commissioner Broili pointed out that since a motion is on the table to approve the amendments identified in the matrix, it is not really necessary for the Commission to take a separation action of approval for each one. The remainder of the Commission agreed.

Amendment 3 (Section 20.80.080 – Alteration or Development of Critical Areas)

COMMISSIONER HALL MOVED THAT THE COMMISSION ACCEPT PROPOSED AMENDMENT 3 (SECTION 20.80.080) AS PRESENTED ON THE MATRIX. COMMISSIONER MCCLELLAND SECONDED THE MOTION. THE MOTION CARRIED 6-0.

Amendment 4 (Section 20.80.230 – Required Buffer Areas)

Commissioner Broili asked staff to explain why it is important to remove the word “conclusively” from this section. Mr. Torpey answered that this recommendation came from the City’s Critical Areas Ordinance Consultant. It was felt that the term was too subjective. He explained that geotechnical reports, in and of themselves, are professional documents that do not have a finish line.

THE COMMISSION ACCEPTED PROPOSED AMENDMENT 4 AS DRAFTED ON THE MATRIX.

Amendment 5 (Section 20.80.270 – Classification)

Commissioner Hall explained that in the original draft that went out for public comment, there was no explicit protection given to the Puget Sound Shoreline. To some extent, protection would be provided anyway because of fringing wetlands and other critical areas issues. But several citizens expressed their belief that additional protection of Puget Sound was important. He also reminded the Commission of the recent appellate court case involving Pierce County’s decision not to designate marine shorelines in their critical areas ordinance. He concluded that designating the City’s marine shorelines as critical areas, as per his proposed amendment, would be important not only on procedural grounds, but the community also wants to protect the salmon habitat. The Critical Areas Ordinance has placed substantial buffers on salmon bearing streams, but there is a gap as far as the Puget Sound Shoreline is concerned even though the record documents that there is salmon in the marine near-shore areas. He referred to Page 146 of the Commission’s packet, which describes the marine near-shore areas and talks about their functions for fish and wildlife habitat. It also points out on Page 147 in Paragraph 4.3.2 that “vegetated marine riparian zones are lacking within the marine near-shore area within the City limits.” He said this suggests that designating the shoreline and the water as a fish and wildlife habitat conservation area is critical to protect the salmon that are there. But he does not think it is necessary to require a 150-foot buffer along the shoreline. The proposed amendment would add to the fish and wildlife habitat areas.

Commissioner Hall emphasized that instead of just saying that the City would designate fish and wildlife habitat areas, the proposed amendment takes the next step by designating, as part of the ordinance, fish and wildlife habitat conservation areas that meet the listed criteria. In addition, it would not preclude the identification of other types of habitat they want to protect. It makes it explicit that all regulated streams and wetlands and their buffers are fish and wildlife habitat areas as determined by qualified specialists. The proposed amendment would improve the staff's recommendation by addressing the public comments they heard about protecting Puget Sound.

THE COMMISSION ACCEPTED PROPOSED AMENDMENT 5 AS DRAFTED ON THE RIGHT HAND COLUMN OF THE MATRIX.

Amendment 6 (Section 20.80.470 – Classification)

Commissioner Hall said this section is also connected to his proposed amendment regarding piped streams.

Commissioner Broili pointed out that in the staff's proposed amendment, Item B is related to Type II Streams, and in Commissioner Hall's proposed amendment, it is Type III. The Commission agreed that Commissioner Hall's proposed amendment should be renumbered.

COMMISSIONER HALL MOVED THAT THE COMMISSION ADOPT AMENDMENT 6 ON PAGES 178 THROUGH 180 OF THE STAFF REPORT AS AMENDED BY THE CHANGES IDENTIFIED ON HIS HANDOUT WITH CORRECTIONS TO THE LETTERING. VICE CHAIR PIRO SECONDED THE MOTION.

The Commission concurred that the opening paragraph and Items A and B of Section 20.80.470 are acceptable as proposed by the staff.

Commissioner Hall referred to the language he proposed for a Type III Stream, which was based on a letter the City received from the Washington Department of Fish and Wildlife. He summarized that his proposed language states that if a watercourse is smaller than two feet in width and does not have salmon, it would not be classified as a Type III Stream. The Commission concurred with Commissioner Hall's proposed amendment to the definition for a Type III Stream.

Commissioner Hall said his recommendation is also that the Commission not amend Section 20.80.470 to include a waiver of presumption of salmonids fish use based on water quality parameters. He said this recommendation is in response to public testimony. He recalled the example provided at a previous meeting by Commissioner Broili in which the only water quality problem is that the water is too warm. He said this type of problem should not prevent the stream from being treated as a salmon stream. **The remainder of the Commission concurred that the first paragraph on Page 180 of the matrix should be deleted from the proposed amendment.**

Commissioner Hall said that now that the City's definition identifies piped streams as streams, they should avoid inadvertently creating a 100-foot buffer on a culvert. He said he does not feel this would

provide an appropriate balance, and it would discourage people from opening the streams. **He recommended, and the remainder of the Commission agreed, that a new stream type be created in this section to read, “Piped stream segments are those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert.” He also recommended that table in Section 20.80.480.B be amended to add a new row for a piped stream segment. The piped stream segment would identify a standard 10-foot buffer and a minimum 10-foot buffer regardless of the stream type.**

Commissioner McClelland summarized that Commissioner Hall’s proposed amendment would result in a 10-foot maximum buffer requirement on both sides of a piped stream. Commissioner Hall clarified that, as per his proposed language, a 10-foot buffer would be required on each side of a piped stream, even if it were not daylighted. This would be consistent with the buffer that another part of the code would require if the stream were daylighted. The amendment would make this section consistent with the restoration section of the ordinance, and there would no longer be a disincentive for daylighting a stream.

Commissioner McClelland pointed that there are many places where piped streams go through residential properties. Commissioner Hall said the new provision would prohibit any future development that would have an adverse impact on a critical area based on the City’s overall Critical Areas Ordinance. He agreed that the proposed amendment would have some impact to property owners, but he felt it would create the appropriate balance. Mr. Stewart clarified that uses that were legally established would be allowed to continue unless they are abandoned for a period of two years or more. However, no expansion, intensification or new construction would be allowed in the buffer area.

Commissioner Kuboi asked if there is any way a stream could somehow be put into a culvert and then daylighted just so that a person could obtain the reduced buffer. Mr. Stewart said that placing a stream into a culvert would not be an easy or practical option. He further advised that in order to daylight a stream, you would have to go through a series of studies and analysis to make sure it would not change the flows, etc. The design would have to be approved through a City permit, as well as a permit from the Department of Fish and Wildlife.

Mr. Stewart pointed out that staff added a new item to Section E.3 of their proposed amendment to address streams that are planned for removal of private dams that will result in a fish passable connection to Lake Washington or Puget Sound. He explained that there is currently a case on Boeing Creek where there is a private dam that is likely to be removed within the six-year period, and it is important that this be captured as a stream to be used by salmonids. **Commissioner Hall noted that the word “for” should be added between the words “planned” and “removal.”**

THE MOTION WAS APPROVED 6-0.

Amendment 7 (Section 20.80.480 – Required Buffer Areas)

Mr. Stewart reminded the Commission that this section is a new provision having to do with the restoration of piped watercourses, and was used by Commissioner Hall to create the proposed

amendments that were previously discussed. The proposed amendment would change the wording from “the applicant shall seek written agreement” to “the applicant shall obtain written agreement.” He explained that this would require an applicant to obtain his/her neighbor’s approval.

Commissioner McClelland asked if the new definition the Commission just accepted for a piped stream segment in Section 20.80.470 would be consistent with Item 1 of Section 20.80.480 which states “the City encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams.” Mr. Stewart answered affirmatively, except when the pipe or culvert is opened it would be regulated under Section 20.80.480. Commissioner Hall clarified that channelizing means that rather than having a natural bed, a stream has been squeezed into an artificial channel. The proposed language states that even if it is not in a culvert, there should be incentive to restore channelized watercourses as well.

Mr. Stewart suggested that Item 1 could be changed by replacing “channelized/culverted” with “channelized, piped and culverted.” He pointed out that this language reiterates a policy and statement of intent. Commissioners Hall and McClelland suggested that the word “previously” be deleted. Commissioner Hall pointed out that the word “determine” in the last line of Item 2 on Page 181 of the matrix should be changed to “determined.”

Commissioner Kuboi noted that the ordinance includes the terms called “piped watercourses,” and “piped stream segments.” He said he would assume that a piped stream segment would be a subset of piped watercourses. Commissioner Hall suggested that the words “watercourse sections” could be changed to “stream segments.” Mr. Stewart noted that Item H should also be changed by replacing “watercourses” with “stream segments.”

Mr. Stewart requested that the word “channelized” in Section 1 be deleted, as well. Commissioner Kuboi agreed and pointed out that the word “channelized” introduces a whole different category that isn’t covered by the definition of a “piped stream segment.” The Commission agreed that Item 1 should read “The City encourages the opening of piped stream segments and the rehabilitation and restoration of streams.” They also agreed that in the last sentence of Item 2, the word “channel” should be changed to “stream segments.”

Commissioner McClelland pointed out that Item H already speaks to the restoration of piped stream segments, and the numbered items under Section H fall into the category of stream restoration. Commissioner Broili suggested that the term “rehabilitation” be deleted from Item 1. The Commission concurred that Item 1 should be changed to read, “The City encourages the opening and restoration of piped stream segments.”

Commissioner Hall summarized the Commission’s changes to Section 20.80.480 as follows:

- **Section H – Restoring piped stream segments.**
- **Section 1 – The City encourages the opening and restoration of piped stream segments.**

- **Section 2 – When piped stream segments are restored, a protective buffer shall be required Opened stream segments shall be used to support fish access unless determined to be unfeasible by the City.**

Commissioner McClelland suggested that Item 3 be changed by replacing “Removal of pipes conveying streams” with “Opening piped stream segments.” The remainder of the Commission supported this change.

THE COMMISSION ACCEPTED THE PROPOSED CHANGES TO SECTION 20.80.480 AS AMENDED BY THE COMMISSION

Commissioner Hall’s Proposed Amendments to Section 20.80.480 (not on the matrix)

Commissioner Hall pointed that as per this code language, trails could be constructed in a buffer areas if they are consistent with the listed criteria. He suggested that since the Commission has agreed to identify a piped stream segment as a stream, the criteria listed in this section should be softened to make it easier to construct a trail over a culvert.

COMMISSIONER HALL MOVED THAT SECTION 20.80.480.D BE AMENDED TO ADD A NEW PARAGRAPH BEFORE ITEM 3 THAT WOULD READ, “THE CONSTRUCTION OF TRAILS OVER AND IN THE BUFFER OF PIPED STREAM SEGMENTS; OR” VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall said this would create a new exception that would allow a trail to be constructed over and in the buffer of a piped stream segment without having to meet the low-impact development criteria because the stream is in a culvert anyway.

Commissioner Kuboi reminded the Commission that they created the concept of “piped stream segments” with an associated 10-foot buffer. He said that while this term is appropriate for portions of a stream that are piped, it appears the language still calls it a piped stream segment after it has been daylighted. He questioned if the Commission should identify a new term for a piped stream segment after it has been daylighted. Commissioner Hall explained that once a stream is taken out of a pipe, it no longer meets the definition for a piped stream.

Commissioner Kuboi inquired if the ordinance would provide a mechanism for someone to daylight a stream on either side of a trail crossing. Commissioner Hall said that if a stream were daylighted, the culvert could be removed and a bridge could be constructed over the open stream. He felt that a bridge over an open stream would be better than a culvert. Mr. Stewart pointed out that Items 4 and 5 of the same section would apply in these situations.

THE COMMISSION UNANIMOUSLY ACCEPTED THE MOTION.

Next, Commissioner Hall suggested that Section 20.80.480.D.6 be amended to allow stormwater facilities for piped stream segments. Mr. Stewart inquired if this amendment would be necessary given

the amendment the Commission previously accepted. He also pointed out that including language regarding piped stream segments in this section could further limit where stormwater management facilities could be located. Commissioner Hall agreed with Mr. Stewart and withdrew his recommendation to amend the section.

Commissioner Broili pointed out that in Section 20.80.480.D.6, the term “grass lined swales” should be changed to “bioswales.” The remainder of the Commission agreed. It was agreed that staff should conduct a word search to identify and change this term in other locations of the ordinance.

COMMISSIONER HALL MOVED THAT THE COMMISSION AMEND THE STAFF’S RECOMMENDATION FOR SECTION 20.80.480.G TO READ, “RELOCATION OF A TYPE I, II, OR III STREAM SHALL BE ALLOWED ONLY WHEN THE PROPOSED RELOCATION IS PART OF AN APPROVED MITIGATION OR REHABILITATION PLAN, WILL RESULT IN EQUAL OR BETTER HABITAT OR WATER QUALITY, AND WILL NOT DIMINISH THE FLOW CAPACITY OF THE STREAM. RELOCATION OF A TYPE IV STREAM SHALL BE ALLOWED ONLY WHEN THE PROPOSED RELOCATION WILL RESULT IN EQUAL OR BETTER HABITAT AND WATER QUALITY AND WILL NOT DIMINISH THE FLOW CAPACITY OF THE STREAM.

Commissioner Hall explained that since the City has provisions for allowing the relocation of Type I, II and III Streams, they should provide provisions for relocating a Type IV Stream. He noted that, as per his proposed amendment, an approved mitigation or rehabilitation plan would not be required for a Type IV Stream. He felt the proposed amendment would support the opportunity for development where there might be a small, intermittent stream, as long as there would be equal or better habitat and water quality without diminishing the flow capacity.

Mr. Stewart asked how Commissioner Hall’s proposed amendment would address a situation where an applicant requests to reopen a piped stream segment as part of a stream relocation project. Commissioner Hall said that if the piped stream segment were a Type I, II or III Stream, an approved mitigation or rehabilitation plan would still be required. If the segment were a Type IV Stream, the applicant would only have to ensure that the end result would be equal or better habitat and water quality.

Commissioner Broili expressed his concern about Commissioner Hall’s proposed amendment for Item G. He said all stream location proposals, regardless of the stream type, should be required to provide an approved mitigation or rehabilitation plan.

COMMISSIONER HALL WITHDREW HIS MOTION.

The Commission agreed to change Item G to read, “Relocation of a stream shall be allowed when . . .” They also agreed that staff should also conduct a word search to replace all “piped watercourse” terms with “piped stream segments.”

Vice Chair Piro suggested that the Commission consider their remaining meeting time and adjust their review of the proposed amendments on the matrix to allow time for them to consider Commissioner Hall's proposed amendments to the section related to tree protection in critical areas. He pointed out that there are members of the audience who are particularly interested in tree protection. The Commission agreed to work as quickly as possible through the remaining items on the matrix and then take up the issue of tree protection afterward.

Commissioner Hall's Proposed Amendments to Section 20.80.460.A (not on the matrix)

Because the Commission already addressed the definition for stream, Commissioner Hall suggested that the definition in Section 20.80.460.A be amended to match the definition in Section 20.20.046.S. Vice Chair Piro suggested that rather than including the entire definition for stream in this section, they could make reference to the definition that was provided in Section 20.20.046.S. Commissioner Hall said he originally made this suggestion to the staff, but staff felt that including the definition in this section, as well, would improve the readability and usability of the ordinance.

The Commission agreed to amend Section 20.80.460.A to be consistent with Section 20.20.046.S.

Amendment 8 (Section 20.80.320 – Classification)

Mr. Torpey explained that this proposed amendment was based upon a recommendation from the Department of Ecology. Commissioner Broili expressed his belief that the more closely the City's ordinance is aligned with the State's, the stronger it would be.

Mr. Torpey pointed out that the proposed amendment would not impact buffer widths. The Department of Ecology's Western Washington Manual does not provide any buffer information. It just provides a typing system.

Commissioner Hall clarified that, as per the proposed amendment, Chapter 20.80.320 would be replaced with a reference to the Department of Ecology's Manual, and Chapter 20.80.330 (Page 46 of the Staff Report) would establish the buffer widths. Commissioner Hall inquired if the Department of Ecology's classification scheme would be compatible with the City's typing system and buffer widths. He said he could not support the proposed amendment without further information from the staff. Mr. Torpey reported that he participated in a 3-day seminar with the Department of Ecology regarding their Western Washington Manual. It was identified that there were changes between the old method and new method. There are a number of differences, and he said he does not know if he can provide a definitive answer to show how the manual would impact the City's typing system. Vice Chair Piro asked that staff also consider how the Department of Ecology's classification scheme has impacted other jurisdictions.

Mr. Stewart said if the Department of Ecology's Wetland rating system is adopted into the City's ordinance, they must make sure that the definitions are integrated completely with the buffers in the City's ordinance. Commissioner Hall suggested that rather than accepting the proposed amendment to Section 20.80.320 now, he would rather place the issue on the Commission's agenda for future discussion. He emphasized that he would not be in favor of revisiting the entire Critical Areas

Ordinance at that time, but just this one item. He clarified that he supports the staff recommended draft language, which increases buffer widths in several cases as shown on Page 46 of the Staff Report, improves the definitions, and makes the ordinance more clear and protective. If, in the future, the City wants to completely change the way they regulate wetlands to match the Department of Ecology's manual, he would prefer to hold a separate public hearing and discuss the proposed change after adoption of the Critical Areas Ordinance Update. Commissioner Broili asked if the Commission would have the authority to tweak the Critical Areas Ordinance again after the update has been approved by the City Council. Mr. Stewart explained that as per the City's code, any person may request the City Council, the Planning Commission or the Planning Director to initiate amendments to the text of the Development Code, and amendments would not be constrained to annual review.

The Commission agreed to accept the language for Amendment 8 as proposed by staff in the left hand column of the matrix. They also agreed to conduct a more thorough review of Section 20.80.320 and its consistency with the Department of Ecology's wetland rating system at a future date.

Commissioner Kuboi asked if there would be any repercussions from the State if the City did not adopt their wetland rating system as part of the 2005 Critical Areas Ordinance Update. Mr. Torpey explained that the state's proposed amendment is a recommendation for change. Verbally, they have indicated that they do not have extremely strong feelings one way or the other, but they would prefer the adoption of their rating system as best available science.

Amendment 9 (Section 20.30.030.F – Exemptions)

Vice Chair Piro inquired if the word "isolated" was defined in the ordinance. Mr. Torpey answered that "isolated" is an industry term for wetland biologists meaning "not contiguous with a stream." One example would be a Type IV Wetland that has functions and values near a stream habitat. This type of stream would not be considered isolated and would be typed and buffered differently.

Commissioner Hall reported that in a recent Supreme Court case, it was determined that the Federal Government had the authority to regulate wetlands because they are waters of the United States, which could be used for interstate commerce. Thus, the Corps of Engineers was given the authority to regulate wetlands. He explained that, over time, the Corps authority has been tested in courts. One test that was used was called the "Migratory Bird Test." If a bird flies across state lines and lands in a wetland, the Corps would identify it as one used for interstate commerce. Many people felt that, in this case, the Federal Government was overstepping its bounds. If the wetland had no connection to a navigatable stream, the Federal Government should not be able to regulate it just because a bird flew there. The case went the United States Supreme Court and the Corps of Engineers lost their authority to regulate isolated wetlands. However, local governments can still do so. The term isolated, as interpreted by the courts, means that it has no hydrological continuity and does not exchange ground water with a stream or Puget Sound.

Vice Chair Piro suggested that the ordinance should provide some reference in the definition for the term "isolated" as per Commissioner Hall's explanation. Mr. Stewart referred to Page 45 of the Staff

Report, which references the typing of a Type IV Wetland (Section 20.80.320.B). He noted that this language does include the term “hydrologically isolated.” He clarified that the classification of a Type IV Wetland is defined as an isolated 2,500 square foot wetland, and an exemption would be allowed for an isolated wetland of less than 1,000 square feet that is within the Type IV Wetland. Vice Chair Piro suggested that the word “hydrologically” be added before the word “isolated.”

Commissioner Hall pointed out that as per the recommended code amendment, any isolated wetland of less than 1,000 square feet would be exempt, even if it were in a pristine natural condition. He said he prefers the staff’s original recommendation since it would provide for the protection of even small wetlands that are in their natural condition. Mr. Torpey advised that the proposed amendment to the staff’s language came from the City of Seattle’s ordinance. It was noted that as much as the City of Shoreline has in common with the City of Seattle, it is important to recognize that Shoreline has more natural areas to preserve.

Commissioner McClelland asked how the City would determine whether or not more than 80 percent of a wetland had been altered. She suggested that perhaps the consultant recommended the deletion of this language because it would be expensive to make a determination for a wetland that is small. Mr. Stewart pointed out that either proposal would require the services of a qualified expert.

With the exception of Chair Harris, all of the Commissioners agreed to maintain the staff’s original draft language for Section 20.80.030.F, with inclusion of the word “hydrologically” before “isolated.”

Amendment 10 (Section 20.80.080 – Alteration or Development of Critical Areas)

COMMISSIONER HALL MOVED THAT THE COMMISSION ADOPT THE PROPOSED AMENDMENT (RIGHT HAND COLUMN) TO SECTION 20.80.080 AS OUTLINED ON THE MATRIX.

Mr. Torpey said this proposed amendment was submitted by the Washington State Department of Fish and Wildlife. The City has five existing criteria, and they recommended the addition of a sixth.

VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall explained that when an action is taken that would have an adverse environmental impact, the City’s code already requires that the impact be mitigated. The process of determining how to mitigate goes through a sequence of steps. The ideal situation would be to avoid the impact. But if the impact cannot be avoided, it should be minimized using the sequence of steps. No matter what steps are taken, it is important that the situation is monitored and corrective measures are taken.

Vice Chair Piro said he supports the requirement of monitoring and taking appropriate corrective measures. This would allow the City an opportunity to make sure that what an applicant intends to accomplish by engaging in a mitigation program is actually being achieved.

Commissioner McClelland said she likes the term “applicant” better than the term “proponent” because “proponent” suggests there are “opponents.” She expressed her concern that the language in this section would place all the burden of proof on the applicant, including the monitoring. Once a project is constructed, she inquired if the developer would be responsible to monitor the situation. Mr. Stewart said the responsibility of monitoring would run with the land and would become a liability of the permit. He said the City has a number of permits that require monitoring. Mr. Torpey added that, typically, these projects are bonded for a certain dollar amount. Any future owner would also purchase the conditions that are attached to the property, which would include mitigation. Even if an applicant were no longer available to monitor the mitigation, the bond would insure that mitigation occurs.

Again, Commissioner McClelland expressed her belief that “proponent” is a very specific title. The responsible party would be whoever is obliged to complete the mitigation, and it may or may not be the proponent. The Commission discussed the appropriateness of changing the term “proponent.” Mr. Stewart explained that from a practical point of view, the applicant must either be the owner or an authorized agent of the owner, and that is how the City would define the project proponent. A permit would then be conditioned and issued to the applicant, who is the owner or the project proponent, and the conditions would run with the land. He summarized that the terms “owner,” “applicant” and “project proponent” are really synonymous.

The Commission accepted the proposed amendments to Section 20.80.080 as presented in the right hand column of the matrix.

Commissioner Hall reminded the Commission about the main motion still on the table. The Commission must make a decision about whether they want to conclude further deliberation and vote on the main motion now or if they want to continue deliberations to the next meeting. He said that if the Commission intends to take action now and close deliberations, he has a few more amendments he would like to put forward.

The Commission agreed to continue their deliberations to the next meeting, August 4, 2005.

9. UNFINISHED BUSINESS

Chair Harris said he believes that at least some of the Commissioners would be invited to attend the City Council’s meeting of August 22nd, at which the cottage housing issue would be discussed further. He said it is unclear what the outcome of the Council’s meeting would be. Mr. Stewart reminded the Commission that any change to the Cottage Housing Ordinance would require a public hearing by the Planning Commission and City Council approval. He reminded the Commission that anyone could submit a proposed amendment to the Development Code to the Planning Director, the Planning Commission, or the City Council. The Planning Commission would then conduct a public hearing and forward a recommendation to the City Council for a final decision on the matter. The City Council also has the option of setting up additional citizen advisory groups, etc.

Commissioner McClelland pointed out that even though the extended moratorium would last until February, it could be ended earlier if a decision were made. She emphasized that the Commission’s

request was not intended to be a delay tactic. She said that she spoke to several City Council Members who seemed to agree that extending the moratorium would be wise in order to allow sufficient time for the Commission to study the issue carefully.

Mr. Stewart said there has been a certain level of frustration with the cottage housing issue, first because the staff and the Planning Commission were busy with the Comprehensive Plan and the master plans. They also have to meet the deadline for the Critical Areas Ordinance. He said the Commission minutes are very clear that they chose to meet the State mandate by completing their work on the Critical Areas Ordinance Update first.

Commissioner Hall expressed his opinion that he does not think the Commission did the right thing by postponing a decision and asking the City Council to extend the moratorium on Cottage Housing. He said he views his appointment to the Planning Commission as being tasked with collecting and considering public input, reviewing staff recommendations and other information, and making a recommendation to the City Council on Development Code issues. In this one case, the Commission failed to take timely action, and he was disappointed, and he would have preferred the Commission to have made a clear recommendation.

Commissioner Broili said the Commission's process of conducting deliberations, which includes listening to public comments and making decisions on facts, takes time. To be pushed and pressured to make snap decisions without careful consideration would not do anyone any justice. He said that since he has been on the Commission, he has felt they have been asked to make snap decisions that were not fully thought through or articulated as well as they might have been. He said he disagrees with Commissioner Hall's position.

Vice Chair Piro agreed it is incumbent on the Commission to make decisions as quickly as possible. However, he felt the cottage housing issue reached a point of complexity where he was not comfortable making a final decision. He recalled that the Commission previously went through a very similar process on cottage housing and felt that they had worked through all of the issues to come up with a solution that would resolve the problems. But their recommendation was rejected by the City Council. In light of this, he said he wants to make sure that the Commission's next recommendation to the City Council deals with all of the outstanding issues.

Commissioner McClelland recalled that some of the Commissioners expressed their thought that design review might be an appropriate tool for addressing the cottage housing issue. But the staff did not have time to provide information to the Commission to address whether or not the proposed amendments would have satisfied the public or whether having design review would make the process better. She felt the Commission was ill prepared to move on with a recommendation to the City Council.

Chair Harris said the Commission must be able to articulate a reason why cottage housing is so important and why it cannot be eliminated—especially when the community does not appear to support it. Commissioner McClelland pointed out that the Commission does not have a measurement of how many people are opposed or in support of cottage housing. Secondly, she said she does not believe the

Commission is trying to push forward the concept of cottage housing. Rather, they are trying to analyze it.

Commissioner Kuboi asked if staff's progress on the Cottage Housing Ordinance would be placed on hold until after the City Council makes a decision regarding the process on August 22nd. Mr. Stewart answered that staff would continue to proceed with the schedule outlined by the Commission.

Commissioner Kuboi reported that he has sent a couple of email request to staff that the Commission have some input or say into what the review effort would encompass. He would like more information about what the review would entail before it starts so that he can feel comfortable they are heading in the right direction. Mr. Stewart reminded the Commission that they have completed the public hearing process and they are now in their deliberative stage. However, the Commission has the option of reopening the public hearing. Commissioner Kuboi recalled that the Commissioners were supposed to provide comments back to staff by a certain date, and this input was going to be used by staff to determine what the next effort would encompass. He said he was hoping to have some input on what staff plans to do. It is important that staff is moving in the right direction to provide the necessary information for the Commission to continue their deliberations.

Vice Chair Piro recalled that there still might be some differing opinions amongst the Commission about whether they should amend the Cottage Housing Ordinance or eliminate it altogether. He agreed that the Commission ended their last deliberation with the charge for staff to work through several of the Commission's issues that kept them from reaching closure. Mr. Stewart said he would work with staff to make sure they are heading in the right direction with their additional work on the Cottage Housing Ordinance.

10. NEW BUSINESS

Commissioner Hall asked that a discussion regarding the Department of Ecology's Wetlands Manual and wetland buffers be placed on the Commission's extended agenda for action at a future date.

11. REVIEW OF AGENDA FOR AUGUST 4, 2005

Vice Chair Piro asked that staff work with the appropriate City employees to make sure the air in the meeting room is comfortable. Mr. Stewart suggested that the Commission might want to consider seeking an alternative location.

Chair Harris reviewed that the Commission's deliberations on the Critical Areas Ordinance Update was continued to the August 4th meeting. It was noted that no new information was requested from the staff. Vice Chair Piro asked that Commissioners be provided with a copy of Commissioner Hall's recommended amendments regarding the protection of trees.

12.

ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

David Harris
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission