CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

May 19, 2005 Shoreline Conference Center
7:00 P.M. Board Room

PRESENT
Chair Harris
Commissioner Sands
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili
Commissioner MacCully

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Kim Lehmberg, Planner II, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT
Vice Chair Piro

1. CALL TO ORDER

The regular meeting was called to order at 7:03 p.m. by Chair Harris, who presided.

2. ROLL CALL

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

3. APPROVAL OF AGENDA

Commissioner Hall suggested that if the Commission does not feel they would have time on their agenda to consider the Critical Areas Ordinance, they could send Mr. Torpey home rather than requiring him to wait throughout the entire meeting. The Commission agreed that no changes should be made to the proposed agenda, and Mr. Torpey should remain at the meeting.

COMMISSIONER BROILI MOVED THAT THE AGENDA BE APPROVED AS PRESENTED. COMMISSIONER HALL SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. DIRECTOR'S REPORT

Mr. Stewart advised that each of the Commissioners received a copy of the Shoreline Hearing Examiner's decision confirming the Mitigated Determination of Non-significance, and announced that the appeal that was filed on the Echo Lake SEPA Determination has been denied.

Mr. Stewart advised that Steve Burkett, the City Manager; Tom Boydell, the new Economic Development Manager; and Alicia Sherman, the Aurora Corridor Project Planner would be in attendance at the June 2nd meeting to introduce themselves to the Commission and have an informal chat.

5. APPROVAL OF MINUTES

The minutes of April 14, 2005 were approved as submitted. The minutes of April 21, 2005 were approved as amended.

6. GENERAL PUBLIC COMMENT

Barbara Lacy, 19275 Stone Avenue North, said she is a resident of the Echo Lake neighborhood and a Board Member for the Echo Lake Neighborhood Association. She recalled that at the April 14th meeting Commissioner McClelland asked if Echo Lake was safe for swimming. She shared data from a 2004 Swimming Beach Bacteria Levels Report that is published weekly on King County's website. She explained that Shoreline's water specialist, Andy Lock, sampled Echo Lake Water two to three feet from the sandy beach at the north end of the public park. She said the numbers in the report indicated that the water quality in Echo Lake was good. However, whether or not it is safe to swim in Echo Lake would depend upon the behavior of the public in the park and parental supervision. Signs in Echo Lake Park note that there is no lifeguard on duty. They also caution swimming, not feeding the geese or ducks, keeping pets on leash, bagging pet waste, bagging picnic garbage, etc. All of these are valid concerns for potentially harmful bacteria in the lake. She concluded that the decision to swim still rests with individual parents, but the neighborhood is extremely grateful that the City provided data to help them make individual choices about the risk of swimming. Ms. Lacy said the very first water sample for the 2005 weekly monitoring of Echo Lake was taken by Mr. Lock on Tuesday and would be posted on the website soon. Commissioner MacCully asked if Ms. Lacy or any of her family swims in Echo Lake. Ms. Lacy answered affirmatively.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports from Commissioners during this portion of the meeting.

8.

STAFF REPORTS

There were no staff reports scheduled on the agenda.

9. PUBLIC COMMENT

No additional comments were provided during this portion of the meeting.

10. UNFINISHED BUSINESS

a. Deliberations/Recommendation for Rezones Related to Comprehensive Plan Amendments

Ms. Spencer advised that the public hearing for Items a.1 and a.2 was held on March 3rd, and all of the Commissioners were present, and could therefore participate in the deliberations and recommendations.

a.1 Crosby Rezone for Property Located at North 160th and Fremont (File Number 201371)

Ms. Spencer recalled that the Planning Commission recommended that the City Council deny the land use change request for this parcel. Therefore, the land use designation would remain as low-density residential. She noted that concurrent with the Comprehensive Plan amendment request, a rezone application was submitted to change the zoning from R-6 to R-24. The staff recommends that the Commission make a finding for denial of the rezone request since it would not be consistent with the Comprehensive Plan. She pointed out that the findings for this particular application could be found starting on Page 43 of the Staff Report.

COMMISSIONER BROILI MOVED TO RECOMMEND DENIAL OF REZONE APPLICATION 201371 FROM R-6 TO R-24 UNITS PER ACRE BASED ON THE COMMISSION'S PREVIOUS DENIAL TO CHANGE THE COMPREHENSIVE PLAN LAND USE DESIGNATION FROM LOW-DENSITY RESIDENTIAL TO HIGH-DENSITY RESIDENTIAL BASED ON THE FINDINGS PRESENTED ON PAGE 43 OF THE STAFF REPORT. COMMISSIONER PHISUTHIKUL SECONDED THE MOTION.

Commissioner Hall noted that the findings, as presented in the Staff Report, reflect the procedural history quite accurately. And the conclusions summarize some of the decisions the Commission made. However, during their deliberations, the Commission also specifically talked about the adjacent green space, the trees and their drip lines and how impractical it would be to save the trees if the proposed dense development were allowed to occur. They also discussed that the adjacent residential density, even across the street, is only R-18 instead of R-24. In addition, they discussed a possible section of Boeing Creek that flows through a pipe in the adjacent right-of-way. All of these issues could be sited as Findings of Fact instead of Conclusions.

Commissioner Broili added that the Commission also discussed that the there is a natural division between the low and high-density residential areas. Everything west of Fremont Avenue is low-density

residential. He said he previously expressed that he is opposed to the expansion of high-density residential zoning into the low-density area.

Commissioner Kuboi referred to Conclusion 4 on Page 46 of the draft findings in the Staff Report, which states, "Due to the site's proximity to a low-density zone to the west, the impact of allowing for placement of up to 4 units would adversely affect the adjacent low-density neighborhood." Commissioner Kuboi expressed his belief that this statement is too strong. He expressed concern about what it could mean to future instances where something with a higher density is proposed next to a lower density. He said that even though the proposed R-24 density sounds high, it would only result in four more units. He suggested that someone in the future could twist this conclusion in ways that might not have been intended by the Commission.

Commissioner Hall agreed and suggested that the wording of Conclusion 4 be changed to read, "The placement of four units would be inconsistent with the character of the R-6 zoning to the west." Commissioner McClelland recalled that when the Commission considered the Comprehensive Plan Amendment for this property, they agreed that an R-24 density was too high for a property that was adjacent to an R-6 neighborhood. She suggested that a better approach would be for Conclusion 4 to reference zoning designations rather than the number of units.

Commissioner Kuboi asked for clarification regarding the term "adversely affect." Mr. Stewart said the real criterion is "materially detrimental" and that is the standard the Commission should judge an application against. Commissioner Kuboi inquired if case law or staff experience has yielded a more concrete definition for "materially detrimental." Mr. Stewart said this term certainly offers staff some leeway, but the Commission clearly stated their reasons for recommending denial of the proposed Comprehensive Plan Amendment.

COMMISSIONER HALL MOVED TO AMEND THE MAIN MOTION BY CHANGING SECTION II PART 4 ON PAGE 46 OF THE STAFF REPORT TO READ, "R-24 ZONING WOULD BE INCONSISTENT WITH THE R-6 ZONING TO THE WEST." COMMISSIONER KUBOI SECONDED THE MOTION TO AMEND THE MAIN MOTION.

THE AMENDED MOTION WAS APPROVED 7-0, WITH CHAIR HARRIS ABSTAINING.

Chair Harris noted that he was not present when the Commission considered the Comprehensive Plan Amendment for the subject property and that is why he did not vote on the motion. Commissioner MacCully pointed out that he was present at the March 3rd public hearing, but he was not present when the Commission deliberated the proposed Comprehensive Plan Amendment. He questioned if he should have abstain from voting on the motion, also. Chair Harris advised that he was eligible to vote on the matter since he also attended the public hearing, but he chose not to.

a.2 Harper Rezone for Property Located on Northeast 15th (File Number 201277)

Ms. Spencer reminded the Commission of their recommendation to change the Comprehensive Plan Land Use Designation from Ballinger Special Study Area to High-Density Residential. She noted that

the Comprehensive Plan amendment proposal was accompanied by a rezone application to change the zoning on the property from R-6 to R-24. She advised that staff recommends the Commission approve the rezone application. She pointed out that the findings for this application start on Page 57 of the Staff Report.

COMMISSIONER HALL MOVED TO APPROVE REZONE APPLICATION 201277 FROM R-6 TO R-24 UNITS PER ACRE BASED ON PREVIOUS FINDINGS OF APPROVAL MADE BY THE PLANNING COMMISSION REGARDING A REQUEST TO CHANGE THE COMPREHENSIVE PLAN LAND USE DESIGNATION OF THIS PARCEL FROM BALLINGER SPECIAL STUDY AREA TO HIGH-DENSITY RESIDENTIAL BASED ON THE FINDINGS PRESENTED IN THE STAFF REPORT. COMMISSIONER KUBOI SECONDED THE MOTION.

Commissioner Hall recalled the statement he previously made when the Planning Commission deliberated the Comprehensive Plan Amendment proposal. The subject parcel is completely surrounded by high-density residential, and the aerial photographs seemed compelling. There was no neighborhood opposition. Only one person testified at the hearing, and they seemed to advocate a complete no growth approach. The Planning Commission has been challenged by the Comprehensive Plan goals, which call for growth and an increase in density. It is the Commission's task to try and site the growth in appropriate places. Allowing a higher density for property that is surrounded by a higher density provides an opportunity for the City to achieve their growth targets. He said he strongly supports the proposed rezone request.

THE MOTION CARRIED 7-0, WITH CHAIR HARRIS ABSTAINING.

a.3 Echo Lake Rezone (File Number 201372)

Mr. Stewart advised that, as requested by the Commission, staff attempted to create an amended set of conditions (Pages 63 through 66 of the Staff Report) for the Commission's consideration. He noted that in Condition 7 on Page 64, the reference to "3-I" should be changed to "4-H." Mr. Stewart noted that the genesis of where the condition came from is identified in parentheses at the end of each item. The conditions were published a week ago, and staff received three comment letters that were included in the Commission's packet. Mr. Stewart said that in the conditions, staff attempted to find middle ground and acceptable language based on the comments and testimony that were received at the public hearing. He referred the Commission to the yellow "Meeting Action Summary," which offers three options for the Commission to proceed.

Mr. Stewart pointed out that Commissioners Sands and MacCully did not attend the public hearing on the application. Unless they listened carefully to the tapes, they probably would be best advised not to participate in the development of the recommendation for Council. Commissioner Broili pointed out that he missed the first hour of the May 4th public hearing, but he did listen to the tapes from the meeting.

Commissioner Hall suggested that the Commission place a motion of approval on the floor and then work to amend the conditions as appropriate.

COMMISSIONER HALL MOVED TO RECOMMEND APPROVAL OF THE REZONE APPLICATION FOR FILE NUMBER 201372 FROM R-48 AND REGIONAL BUSINESS TO REGIONAL BUSINESS WITH CONTRACT ZONE BASED ON THE FINDINGS IN ATTACHMENT E OF THE STAFF REPORT WITH THE PROPOSED CONDITIONS OF REZONE PRESENTED IN ATTACHMENT A ON PAGE 63 OF THE STAFF REPORT. COMMISSIONER BROILI SECONDED THE MOTION.

Chair Harris suggested that the Commission review the conditions one-by-one. The remainder of the Commission agreed. Commissioner Kuboi pointed out that anything that is not included in the conditions would not be enforceable. Therefore, it is important for the Commissioners to state their preferences so they can be included in the contract conditions. Mr. Stewart clarified that the contract rezone would be integrated with the Regional Business zone, and this has been clearly articulated in the first part of Condition 4. Therefore, the contract is not the entire body of regulations that would apply to the subject property, that if the contract does not specify a regulation the Development Code Standards for the Regional Business zoning district would apply. The contract conditions would identify deviations from the normal requirements of the Regional Business zone.

The Commission reviewed each of the proposed conditions and made the following comments:

- **Condition 1:** Mr. Stewart said it is important to recognize that the applicant must agree with the final set of conditions. If the applicant does not agree to one or more of the conditions, he/she does not have to sign the contract and the contract rezone would not be valid.

  Commissioner Phisuthikul suggested that language be added that the agreement would run with the land. Mr. Stewart said there would not be any need to add this to the condition because it is a fact that the contract would run with the land. However, it would not be appropriate for the City to limit ownership through the contract conditions. The applicant would be free to exchange, trade, barter or sell the property in the future with the associated conditions.

  Commissioner Kuboi asked if the term "all parties" refers to the applicant and the City, only. If so, perhaps they could just say "applicant and the City." This would make it clear that Echo Par is not a party. Mr. Stewart explained that the parties and ownership might be different than the applicant who signs the application. Therefore, he would prefer to use the term "all parties."

- **Condition 2:** Commissioner McClelland inquired if the 100 units that are proposed to be set aside are consistent with the issued SEPA MDNS decision. Mr. Stewart said the only MDNS requirement that would apply to Condition 2 is related to screening. The checklist provides some information about the number of units that would be allowed on the subject property, and extensive comments were previously provided by the applicant suggesting that perhaps the language should be modified. He referred to Condition 4b, which represents staff's attempt to craft language regarding affordable

- **Condition 3:** Commissioner McClelland said she understands that the City's technical definition of Echo Lake is "Wetland" because they don't have a definition for a lake. But throughout the document, they call it both a wetland and a lake. Even though it has a classification as a wetland, she suggested that it should be called "the lake." Mr. Stewart said that would not be possible in Condition 3 since they want the buffer to run along the wetland, which is the edge of the lake. He said the City staff has consistently interpreted the Critical Areas Ordinance for a lake or water body to be a wetland, except where the court overruled them by determining that Peverly Pond was a stream. He emphasized that there is not a similar fact pattern in this case.

  Commissioner McClelland inquired if the reference to "wetland" in Condition 3 would only apply to the water's edge and not the whole lake. Mr. Stewart said they are referring to the edge of the water that meets the standards and criteria for a wetland. This might also impose further onto the land than what normally would be considered the edge of the water. Commissioner McClelland suggested that Condition 3 be changed to "the wetland portion of Echo Lake." Mr. Stewart explained that the wetland line would be delineated and then a 115-foot line would be drawn to establish the buffer limit where no development would be allowed.

  Commissioner Hall agreed that there could be a gap in the code that is confusing to some, but the code has been consistently applied. He explained that classifying it as a wetland is the only regulatory tool the City can use to protect Echo Lake. Without designating the lake as a wetland, the gap in the regulations could be interpreted to mean that no regulatory protection would be required at all. In his opinion, he said it is to the advantage of everyone who has testified about the importance of protecting the lake to continue to refer to it as a wetland.

  Mr. Stewart pointed out that this condition merely establishes the buffer for building. It does not require restoration, nor does it prohibit certain uses from occurring within the buffer. He said this fact would be important when the Commission reviews some of the other conditions.

- **Condition 4:** Commissioner Kuboi questioned why traffic was not included in the list of provisions. Mr. Stewart answered that the SEPA Checklist and the limitations on use (182,000 square feet of commercial and 350 residential units) are below the impacts that would have otherwise been generated by the current zoning. Limiting the intensity of development keeps the impacts below what would have otherwise been permitted under the current zoning. He noted that the current zoning had been studied during the adoption of the original Comprehensive Plan and Zoning Ordinance. There was no finding under SEPA that traffic mitigation should be required, and this determination has been upheld.

- **Condition 4.a:** Commissioner Kuboi requested clarification about how staff would interpret the phrase "generally comply with the site plan submitted with the application." Mr. Stewart said there is a gray area as to what level of specificity would be required for the development. The condition would require the development to comply with the general layout of the site, with the units and

configuration as shown on the site plan. If the property owner decides to build one large structure on the west side as opposed two or three, Commissioner Kuboi asked if a developer would be allowed to build one large structure on the west side as opposed to two ore three as indicated on the site plan. Mr. Stewart said this determination would have to be made when a formal proposal is submitted; but generally, this condition would provide some level of flexibility.

Commissioner Kuboi pointed out that the proposed site plan might not be anything close to what is actually built other than 350 housing units and up to 182,000 square feet of commercial space. Mr. Stewart said the site plan would be part of the record and incorporated into the ordinance, and the staff would have some discretion in deciding whether or not a development proposal generally complies with the site plan. He clarified that the site plan has always designated space for a City Hall/Office structure.

Mr. Stewart advised that the applicant has stressed the importance of allowing flexibility in order for them to accommodate the market. The staff believes that some flexibility would be reasonable, with all of the other conditions added to address future development. Commissioner McClelland pointed out that this condition would allow up to 10,000 square feet of retail space on the east side of the property. Does this mean a developer could construct up to 10,000 square feet of retail space in place of some of the housing units. Mr. Stewart said the overall development limitation is 182,000 square feet of commercial space, and up to 10,000 of this could be developed on the east side. This would leave 172,000 square feet on the west side. Also, up to 350 residential units would be allowed on the east side. Condition 4.c would also allow for the replacement of commercial space with residential uses on a square-foot-by-square-foot basis. Commissioner McClelland suggested that perhaps they should make it clear that the 10,000 square feet of commercial space allowed on the east side of the property would be calculated as part of the 182,000 square feet of commercial space allowed for the entire site. Mr. Stewart said he believes the conditions, as proposed, would limit the maximum amount of commercial space to 182,000 square feet total. However, the Commission could further clarify this constraint.

Commissioner Phisuthikul suggested that the key element of the proposed development is that it would be a true mixture of commercial and residential development. He asked if the Commission could impose a condition that any development proposal must include both commercial and residential development. This would prohibit totally commercial or totally residential developments. Mr. Stewart answered that this could be possible. However, he anticipates that the site would be developed in phases. Some of the phases might be heavily residential and others might be heavily commercial. By requiring a mixture of uses, they might further constrain the developer's ability to build something that is feasible. Commissioner Phisuthikul agreed that some phases might be more commercial and others more residential, but at least the master plan should clearly identify a mix of commercial and residential development for the site. Commissioner Hall suggested that there are ways to create a condition that might be acceptable to staff once they start deliberating on alternatives.

Commissioner Kuboi asked if the conditions, as proposed, would limit a developer's ability to construct a single "big box" commercial building that provides 182,000 square feet of space. Mr.

Stewart said some of the other conditions that have been proposed would prohibit this type of development.

- **Condition 4.b:** Commissioner Hall asked if the City could impose an additional condition aimed at achieving a minimum housing density. For example, he suggested that an additional condition could be added that would say, "No development shall occur on the site that would preclude a yield of a minimum of 250 housing units on the site in the general configuration of the site plan." Mr. Stewart said this type of condition would be acceptable to the staff. Commissioner Hall said it would be consistent with the developer's testimony, but it would offer some assurance that the development would not be all commercial or all residential.

  Commissioner Kuboi asked if the last words of this condition would place a burden on the project proponent to seek out and apply for subsidies, or would this be the City's responsibility. Mr. Stewart explained that the new language in this condition represents a compromise based on the comments from the public hearing. The intent of this condition is to require the developer to assert effort to find subsidies. He explained that when a specific development proposal is submitted, staff would ask what attempts the developer made to find subsidies. The staff would expect the developer to provide a rational and factual based answer. He concluded that if the developer makes a substantial effort to comply, this effort would satisfy Condition 4.b. They would not deny the development permit unless there was no evidence in the record to show that effort had been made.

- **Condition 4.c:** Mr. Stewart pointed out that the second sentence in this condition represents compromise language that is intended to provide for flexibility in design. The staff agreed with the applicant that this would be on a square-foot-per-square-foot basis and would actually reduce the traffic impact associated with the development because trading commercial square footage for residential square footage would generate fewer trips. This condition would also help promote the City's housing goals. He emphasized that the condition would not allow a developer to trade residential units for more commercial space.

- **Condition 4.d:** Commissioner Hall asked if this condition would permit 563 surface parking spaces on the site. Mr. Stewart said it would allow for 500 spaces to be open to the sky, but this might be proportionately on the surface and on the top floor of a garage that is not covered.

- **Condition 4.e:** The Commission did not have any comments to make regarding this proposed condition.

- **Condition 4.f:** Mr. Stewart explained that Commissioner Phisuthikul proposed the language in this condition. When the developer did the actual calculations, it was very onerous. The condition has been modified to protect the first 50 feet of the wetland buffer as opposed to the entire 115 feet. Ms. Lehmberg said that in order to meet the condition to allow solar access for the entire buffer, the applicant indicated that they would have to set the building back an additional 65 feet, which did not seem reasonable. Mr. Stewart expressed his belief that the proposed modification to this condition represents a technically objective standard for design, and it would allow the architect opportunities to be flexible.

Commissioner Phisuthikul explained that it would not make sense to draw a hard line for where the developer should protect the solar access for the buffer area. Only a portion of the building might cast a shadow within the 50 feet, and the rest could be open for the sunshine. He suggested that drawing a hard line would be too limiting. As proposed, this condition would only apply to about half of the setback area, and the applicant would be required to make their best effort to protect the solar access. It is intended to be a design guideline.

Commissioner McClelland inquired if a building could be built right up to the edge of the 115-foot buffer line. Mr. Stewart answered affirmatively. Commissioner Phisuthikul added, however, the developer must demonstrate that he has done the best he can to comply with Condition 4.f. If part of the building is right next to the buffer but the rest is set back and does not cast a shadow into the buffer, the development would be in compliance with the condition.

- **Condition 4.g:** Commissioner McClelland asked if the 90 percent identified in this condition would be variable, depending on how many units they end up with. Mr. Stewart said these standards are part of the current development code for maximum impervious surface. Commissioner McClelland pointed out that 15 feet of the buffer area would be treated as a setback. Mr. Stewart clarified that all 115-feet would be the buffer, but 15 feet of it could be used when calculating the amount of impervious surface allowed.

- **Condition 4.h:** Mr. Stewart explained that when the staff reviewed the original site plan and tree inventory, it appeared that they would be incompatible with the preservation of trees outside of the wetland buffer. There was significant staff debate, and not all staff members support this condition. He noted that the relief proposed in the condition would not apply to either the wetland or the buffer area. Trees on site would be exchanged for the development of an approved habitat restoration plan in the wetland buffer.

  Commissioner Kuboi asked why staff did not recommend tree replacement as a condition instead of requiring a habitat restoration plan for the buffer. Mr. Stewart said the City's landscape standards require tree replacement, but the tree ordinance requires it at a higher standard. The Commission could require tree replacement in accordance with the tree ordinance standard, but staff felt that the landscape tree replacement standard would be adequate and that a habitat restoration plan would be an adequate trade-off. Commissioner Kuboi recalled that this issue was raised during the applicant's negotiations with the Echo Par Group. Mr. Stewart said this was originally a staff recommendation that the developer concurred with in his March 28th comment letter. It was also a subject of the agreement with members of the Echo Par Group. The original agreement was that the "owner shall identify significant trees and preserve as many as can be preserved consistent with their design parameters." He felt the original condition was quite ambiguous.

- **Condition 5:** The Commission did not provide any specific comments regarding this condition.

- **Condition 6:** Commissioner Broili referred to Line 4 of this condition, which would require the developer to work with the City. He asked what this phrase would imply. Mr. Stewart said the site and Echo Lake is the collection point of a fairly large drainage basin that runs all the way up through Sky Nursery and the Gateway site. He said one of the benefits that was discussed early on was the opportunity for the City to work with the developer to build an oversized water treatment and collection facility to handle some of the runoff from roads in the larger basin. This would have to be a voluntary agreement by both the City and the applicant, but they wanted to include it as a condition so that people would know that the opportunity exists. If the site required a treatment facility of a certain size and the City wanted to make this larger, they would have to subsidize construction of the oversized facility.

  In the event of a conflict between the Department of Ecology Manual and the City's adopted Stormwater Manual, Commissioner Broili asked if it is standard procedure for the City's manual to prevail. Could this condition state that whichever provides the highest standard should prevail? Mr. Stewart said the agreement between the applicant and some of the citizens who participated in the SEPA appeal would require the developer to comply with the Department of Ecology Manual and City requirements. The City requires the use of the King County manual, and parts of the two manuals are inconsistent with each other. In these situations, this condition would require that the City's manual be implemented. The proposed condition is an attempt to accommodate the private agreement but still be consistent with the City's regulations.

  Commissioner Broili suggested that there might be occasions where the Department of Ecology Manual would be more stringent in its requirements, and he would prefer to err on the more stringent side. Mr. Stewart said that a higher standard might result on the site because of the private agreement provision, but it would be a private matter. The City would enforce its own regulations. He emphasized that the City was not part of the private agreement.

  Commissioner Broili asked if Condition 6 could be reworded so that they end up with the most stringent stormwater approach possible. Mr. Stewart answered that when he discussed this condition with the Public Works staff, they were very concerned about trying to merge the two manuals and about the lack of knowledge the City's technical staff has about the Department of Ecology Manual.

  Commissioner Sands said his interpretation of Condition 6 is that there is a separate private agreement that would require the applicant to comply with the Department of Ecology Manual. If the requirements in the Department of Ecology Manual were more stringent than the City's, the City would not be opposed to the applicant meeting the more stringent requirement. However, if the Department of Ecology Manual were less stringent, Condition 6 would require the developer to meet the requirements in the City's Stormwater Manual. He said it appears that, either way, the most stringent standard would be applied. Mr. Stewart agreed.

  Commissioner McClelland asked if this condition would require the applicant to consider working with the City. Mr. Stewart said the two parties would enter into a discussion that would probably

involve at least the City's willingness to contribute or propose an oversized system. If the City were willing to propose this, the developer would be obligated to consider whether or not they want to work with the City. Because the facility would be much greater than the applicant would be required to do on his/her own, it would require some form of contribution of public funds for the benefit of collecting and treating stormwater from the larger drainage basin.

Commissioner Hall recommended that the Commission spend the remainder of their time considering the changes they want to make to the conditions. Additional clarification could be requested along the way. He expressed his concern that the applicant has worked hard to go through a difficult process, and he would like the Commission to reach resolution of the matter by 10:00 p.m. so they could adjourn the meeting. If they continue in their current format, they will not likely be able to do this.

Commissioner Broili said he still has a few questions of clarification before he is ready to consider possible changes to the conditions. The Commission agreed to spend another ten or fifteen minutes to focus on the highest priority questions that each Commissioner has, but they should not belabor their discussions right now. They should start talking about changes to the conditions by 9:00 p.m. Commissioner McClelland questioned the need to rush a decision on one of the largest developments that will occur in the City over the next several years. Commissioner Phisuthikul suggested that many of the questions that have been raised are related to semantics. Chair Harris urged the Commission to ask straight questions for fact finding instead of deliberations. Commissioner Broili pointed out that this is a time-sensitive application, and the YMCA has a deadline of June 1 for a decision to be made. Commissioner McClelland cautioned that it is the Commission's responsibility to make sure there is not a single opportunity to misinterpret the intentions of the conditions.

- **Condition 7:** Commissioner Broili commented that he does not believe "BuiltGreen" certificates would be appropriate since they relate to single-family residential development only. However, the developers should consider pursuing LEED for buildings in the project.

- **Condition 8:** Commissioner McClelland asked if the term, "enhancement and restoration plan for the shoreline of Echo Lake" references the wetland. If so, shouldn't they just call it the wetland? Mr. Stewart explained that Conditions 8, 11.a, 11.b, 11.c, 12, 13 and perhaps others are really just refinements of Condition 4.h, which has to do with the creation of a habitat restoration plan. These other conditions refer to fine details that have been negotiated between the private parties and will be incorporated into the habitat restoration permit. He explained that the term referenced by Commissioner McClelland is broader than a wetland in that a wetland is regulated as the area of land at the edge of the water. The restoration plan goes beyond this area and talks about restoration within the lake, itself. Commissioner Phisuthikul suggested that the Commission move on since they have already determined that the Echo Lake is referred to as a wetland.

- **Condition 9:** Commissioner Phisuthikul asked what the term "existing higher quality shoreline areas" refers to. Mr. Stewart said this area would be identified by a biologist who would looking at classifications of higher and lower quality functions.

- **Condition 10:** Commissioner Broili said he is unclear about the meaning of the term "contiguous 70 feet of lake shoreline." He asked if this is related to the 75 feet that is referenced in Condition 11. Chair Harris asked how the staff came up with the 70 feet that is recommended in this condition. Mr. Stewart said this condition is the beach and dock provision that was part of the negotiated private agreement between Echo Par and the property owner. It would provide for a beach and a boardwalk within the 70 feet. The notion is that the remaining area would be fully restored into habitat, as would the area behind the beach with the dimensions described in the condition. He summarized that the 70-foot width would be measured along the shoreline.

  Chair Harris asked if the staff agrees with the 70 feet that is identified in this condition. Mr. Stewart said the staff does not object to Condition 10, but the property is currently privately owned. There are some benefits identified in further conditions that would allow public access to the area. He concluded this condition is a value statement of how much of a beach and dock the applicant is willing to grant.

- **Condition 11:** The Commission did not provide any specific comments about this condition.

- **Condition 12:** Commissioner Kuboi said it is important to remember that the conditions would run with the land. He asked if the term "public access" would be something a future owner would not be able to take away. Mr. Stewart answered the condition would require a dedication of public access easement, and the public would have a right to use the easement in perpetuity.

- **Condition 13:** The Commission did not provide any specific comments about this condition.

- **Condition 14:** Commissioner Broili said he has been concerned all along that there should be a link between Aurora Avenue and the Interurban Trail. He said he does not see anything in the proposed conditions to address this connection. Mr. Stewart said there is a guarantee of public access from the trail, and there would also be an access point at 192nd.

- **Condition 15:** The Commission did not provide any specific comments about this condition.

- **Condition 16:** The Commission did not provide any specific comments about this condition.

- **Condition 17:** The Commission did not provide any specific comments about this condition.

- **Condition 18:** Commissioner McClelland noted that the house on the site would be moved. She asked if the City would help find a new location for this structure. Mr. Stewart answered negatively. He said the Condition would encourage the developer to work with historic preservation organizations to seek to preserve the Weiman house either on or off site. The condition also includes a provision that the applicant at least offer the house at no cost for removal. He emphasized that the City would have no obligation to participate in this effort.

- **Condition 19.a:** The Commission did not provide any specific comments about this condition.

- **Condition 19.b:** Chair Harris inquired if this condition would require more than the current code. Mr. Stewart answered that this is consistent with the current code, so the condition would be ambiguous. However, he said staff does not have a problem including it as part of the conditions of approval.

- **Condition 19.c:** The Commission did not provide any specific comments about this condition.

- **Condition 19.d:** The Commission did not provide any specific comments about this condition.

Commissioner Hall said that in all of the testimony received at the public hearing, there was only one person who supported the adoption of the proposal as currently conditioned. Even the applicant, when questioned, said that he would not support approval of the rezone with the conditions that were in place at the time. Of those who expressed concern about the rezone, the primary theme was regarding the protection of Echo Lake. He said that, in his opinion, the staff proposed conditions that were introduced at the beginning of the public hearing process addressed the protection of Echo Lake in a very admirable way. The Commission also received substantial oral and written testimony encouraging the redevelopment of the site. He said he believes most of the ideas put forward in the agreement between the applicant and some of the individuals who filed the SEPA appeal are redundant with the conditions originally proposed by the staff and the applicant. In some cases, they contain language that is more ambiguous and inconsistent with the City's Development Code regulations. He particularly referred to **Conditions 8, 9 and 10**, and said he believes they are largely redundant with **Condition 4**. He noted that the statement in **Condition 10,** which requires 70-feet of lake shoreline to be used for the boardwalk to the beach and dock, is currently in conflict with the City's Critical Areas Ordinance.

In addition, Commissioner Hall suggested that **Conditions 16 and 17** be withdrawn since they are duplicative of **Conditions 6 and 7**. He said he believes that **Condition 17** is less helpful than **Condition 7**. Next, Commissioner Hall said he finds **Condition 11** to be overly restrictive and gets into a level of detail that is unnecessary. If the City already requires them to have a wetland biologist develop a habitat restoration plan, then that should be the end of it. It should be left up to the professional and the staff to determine the plan's adequacy. He said he believes that **Condition 19** contains a set of requirements that is far more appropriate at the building permit stage and should be introduced there, instead. He also suggested that since **Condition 15** would not be legally enforceable, it should be deleted, as well. He noted that all of the conditions he mentioned were added at a later date, and were not initially negotiated between the staff and the applicant.

Commissioner Hall also recommended that a new condition be added to require a public access easement from Aurora Avenue on the northern half of the frontage to the site of the proposed boardwalk.

Commissioner Kuboi said he would support the removal of conditions that actually present a conflict. However, he pointed out that the other conditions represent an agreement between the applicant and some of the members of the Echo Par Group, and it appears that staff does not have a problem including them as conditions. He suggested that they run the risk of making the parties of the private agreement feel as though they were undermined by the Commission's process. This could result in a backlash that

would make it more difficult for the City Council to approve the proposal. Unless there is a conflict or flaw in the proposed conditions, he would be in favor of leaving all of them in.

Chair Harris pointed out that the City does not necessarily have to take a stance on the points that are contained in the private agreement. The private parties could still be in agreement, as long as their views do not conflict with those of the City.

Commissioner Hall said he is sensitive to Commissioner Kuboi's concerns. However, there is testimony on the record from several people who are also members of the Echo Par Group who did not support the negotiated agreement between some members of the group and the private property owner. He noted that Dr. Paulsen, Tim Crawford and Pat Crawford are all on record as being opposed to the private agreement.

Commissioner Broili noted that **Condition 4.g** states that "the maximum impervious surface allowed on the site shall not exceed 90%" and this applies to both the commercial and residential portions. He said it is his belief, and scientific evidence and professionals would agree, that they can do far better than this by using low-impact design approaches such as vegetative roofs, water catchment systems, permeable hard surfaces, geotechnical solution such as bioswales, best soil management practices as stated in the State Stormwater Manual (Section DMPT.6.13), etc. All of these low-impact design approaches would help them get to far better than 90 percent impervious area.

Secondly, Commissioner Broili referred to **Condition 6**, which states that the City shall work with the developer to install on oversized stormwater system. He suggested that the City could reach an agreement with the developers to help them apply low-impact development approaches that would reduce impervious surface dramatically, and this would reduce stormwater run off.

Commissioner McClelland asked who would enforce the conditions in the private agreement. Mr. Stewart said that if the conditions were included in the contract rezone, the City would be required to enforce them. He noted that many of the conditions are not mandatory, but are effort-based. Commissioner McClelland asked if it would be possible to separate the conditions into those that are private and those that the City could and should enforce.

Commissioner Broili suggested that he would be in favor of eliminating some of the conditions, but only if they could achieve the other two goals he identified.

COMMISSIONER HALL MOVED THAT CONDITION 17 BE DELETED SINCE IT IS REDUNDANT WITH CONDITION 7. COMMISSIONER PHISUTHIKUL SECONDED THE MOTION.

Commissioner Hall suggested that if the motion is approved, **Condition 7** could be amended to add the term "low-impact development." Commissioner Broili agreed, but said he would rather remove the words "shall consider" from **Condition 7** and make it more mandatory.

THE MOTION CARRIED 4-2, WITH CHAIR HARRIS AND COMMISSIONER KUBOI VOTING IN OPPOSITION AND COMMISSIONERS MACCULLY AND SANDS ABSTAINING.

COMMISSION HALL MOVED TO AMEND CONDITION 7 TO READ, "GREEN BUILDINGS. THE DEVELOPERS SHALL CONSIDER PURSUING A LEED OR BUILTGREEN CERTIFICATE FOR THE BUILDINGS IN THIS PROJECT AND SHALL CONSIDER LOW-IMPACT DEVELOPMENT TECHNIQUES SUCH AS IMPERVIOUS CONCRETE, ETC. THE MOTION DIED FOR LACK OF A SECOND.

Commissioner Broili suggested that perhaps the reference to low-impact development should be placed in **Condition 4.g.**

COMMISSIONER BROILI MOVED TO AMEND CONDITION 7 TO READ, "THE DEVELOPERS SHALL CONSIDER PERSUING A LEED CERTIFICATE FOR BUILDINGS IN THIS PROJECT." COMMISSIONER PHISUTHIKUL SECONDED THE MOTION. THE MOTION CARRIED, 6-0, WITH COMMISSIONER SANDS AND MACCULLY ABSTAINING.

COMMISSIONER KUBOI MOVED TO AMEND CONDITIONS 12 AND 14 TO ADD THE WORD "EASEMENT" AFTER "PUBLIC ACCESS." COMMISSIONER PHISUTHIKUL SECONDED THE MOTION.

Mr. Stewart noted that the access required in **Conditions 12 and 14** could be perfected through either an easement or a dedication of an actual right-of-way. Commissioner Kuboi said he wants to make sure that these conditions assure that the public access requirement would run with the property. Mr. Stewart said "public access" is a commonly accepted condition or requirement. But how it is done, through either an easement or dedication, is an option for the developer to consider. Commissioner Kuboi recalled that at the public hearing, the applicant indicated that he did not plan to offer a dedication of sorts. Based on the applicant's comments to the Commission, it is not clear he agrees that public access means something in the form of a legal right. Mr. Stewart said staff would interpret **Conditions 12 and 14** as requiring public access from the Interurban Trail, through the buffer area and to the lake. They would not require access to Aurora Avenue or to other places.

Commissioner Kuboi said that none of the conditions speak to any sort of access right to the public access area. The applicant could build structures that facilitate people physically accessing the property, but that does not mean they would have the legal right to be there. He said he would like some assurance that the public would have a legal right to be in the area.

Commissioner Broili suggested that **Conditions 12 and 14** be combined into one succinct statement that connects Aurora Avenue and the Interurban Trail via a boardwalk. Commissioner Hall agreed with the intent of Commissioner Broili's suggestion. However, he proposed that rather than combining them they should keep the two conditions separate. To address Commissioner Kuboi's concerns he proposed an amendment to the motion that would add a sentence to **Conditions 12 and 14** and a new **Condition 20.**

COMMISSIONER HALL MOVED THAT THE MOTION BE AMENDED TO CHANGE CONDITIONS 12 AND 14 BY ADDING A SENTENCE TO EACH THAT READS, "THE PUBLIC ACCESS SHALL BE ENSURED THROUGH PERPETUITY THROUGH THE APPROPRIATE LEGAL DOCUMENT." COMMISSIONER KUBOI SECONDED THE AMENDMENT. THE AMENDED MOTION CARRIED 6-0, WITH COMMISSIONERS MACCULLY AND SANDS ABSTAINING.

COMMISSIONER HALL MOVED TO ADD A NEW CONDITION 20 THAT SAYS "THE DEVELOPERS WILL PROVIDE PUBLIC ACCESS FROM AURORA AVENUE ON THE NORTHERN HALF OF THE SITE TO THE BOARDWALK ALONG THE LAKE. THIS PUBLIC ACCESS SHALL BE ENSURED THROUGH PERPETUITY THROUGH THE APPROPRIATE LEGAL DOCUMENT." COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall pointed out that the proposed new **Condition 20** would provide a public access easement from Aurora Avenue to Echo Lake and would be separate from the one that would connect to the Interurban Trail. Commissioner Phisuthikul asked that the access described in **Condition 20** be required to continue to the Interurban Trail. Commissioner Hall suggested that would not be necessary. He used a drawing to illustrate that **Condition 12** would require a public access from the boardwalk to the lake, **Condition 14** would require a public access from the Interurban Trail to the boardwalk, and **Condition 20** would require an access from Aurora Avenue to the Interurban Trail. This would result in three separate access conditions.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER HALL MOVED THAT CONDITION 10 BE DELETED FROM THE CONTRACT. COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall said he does not dispute the value of **Condition 10.** However, the restoration and enhancement of the buffer area is dealt with in **Condition 4.h.** He acknowledged the he would rather have a wetland expert define the restoration plan. He said the public access has been provided for in **Condition 12**, and the statement relating to the beach and dock presumes something that is not in evidence as a condition. In addition, he questioned whether this would even be consistent with the City's Critical Areas Ordinance.

Commissioner Broili asked if **Condition 10** is the only place that the dock and beach are mentioned. Mr. Stewart answered affirmatively. Commissioner Broili noted that this is urban property, and a dock would be appropriate. However, he would be opposed to a beach because there is already a beach on the north end of the lake, and an additional beach could create unnecessary habitat disturbance. A dock, if done properly, could be a very nice addition to the opportunities that are present. He said he would vote against the motion as proposed.

Chair Harris agreed that the Critical Areas Ordinance does not have provisions for active recreation in buffer areas at this time. But an amendment has been proposed that the Commission could consider at a later date. He reminded the Commission that the applicant's goal is to allow a YMCA to locate on the subject property, and he believes the community would be incredibly disappointed in the Commission if they end up with a beautiful wetland with a hands-off approach. They have an opportunity to provide for active recreation, life saving classes for the YMCA children, canoeing, sail boating, etc. He pointed out that Green Lake is the most used park in the State. While the habitat is being impacted, they must balance the public's needs versus habitat needs. He said he would support more beach area if possible

THE MOTION WAS WITHDRAWN.

COMMISSIONER HALL MOVED THAT CONDITION 10 BE AMENDED BY REPLACING THE WORDS "BEACH AND DOCK" WITH THE WORD "LAKE."

Commissioner Hall suggested that the last sentence in **Condition 10** is simply a statement of intent. **Condition 10** speaks to a boardwalk without dictating at this time whether there will be a dock or not. Chair Harris noted that some of the City's strongest environmental advocates came up with the proposal.

Commissioner Hall drew an illustration to show that the reference to "70 feet of the lake shoreline" would be interpreted as a linear distance along the shoreline of the lake. The intent of his motion would not require that this be a sandy beach, but it does say that the developer would not have to restore it to its natural wetland conditions. He pointed out that 10 of the 70 feet would be intended for use as a boardwalk. Some form of public access would connect the boardwalk to the Interurban Trail and to Aurora Avenue.

Commissioner McClelland agreed with Chair Harris that there are excellent opportunities to provide for public access and use of the waterfront for recreational purposes. Commissioner Hall pointed out that the conditions, as proposed, would not require public access throughout the entire 70-foot area. According to **Condition 12,** the public access would be on the 10-foot strip that would be used for a boardwalk and not the entire 70 feet. Commissioner McClelland suggested that the residents of the 350 residential units would have expectations for amenities associated with the lake. Would people be able to run down the boardwalk and dive into the lake? Commissioner Hall said he is reasonably confident that the public could swim in any water in the state. But they cannot necessarily walk along any shoreline.

Commissioner Broili suggested that the motion be amended so that **Condition 10** would read as follows: **"**The developers will restore and enhance 70 feet of the lake shoreline, 10 feet of which will be used for a boardwalk and dock." He said he wants the end result to be a dock, with no beach. Commissioner Hall said he would not support Commissioner Broili's recommendation as a friendly amendment. He said he does not think they can require a dock as a permit condition when it is currently against the law in the City of Shoreline. Mr. Stewart said there might be some ability under the current regulations to construct a dock, but clearly a beach would not be allowed. Mr. Torpey said that residential property owners have been allowed to have docks under Section 20.80.030.K, which is an exemption to the

Critical Areas Ordinance that allows uses in buffers or their critical areas that are determined by the City to be minor.

Commissioner Broili said the intent of his amendment was to provide a boardwalk and dock, but no beach area. Chair Harris said he would like to make provisions for both a dock and a beach area, even though the current Critical Areas Ordinance would not allow it. Mr. Stewart said that if **Condition 10** were changed as proposed, the first sentence that requires the developer to restore and enhance all but a contiguous 70 feet of the lake shoreline would be mandatory. The second sentence is the intent to apply, and it would only be allowed or fulfilled if the Critical Areas Ordinance were amended.

THE MOTION CARRIED 4-2, WITH COMMISSIONERS BROILI AND MCCLELLAND VOTING IN OPPOSITION AND COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

Commissioner Kuboi referred to **Condition 4.a** and asked if the Commissioners are comfortable that there are enough protective measures to prevent a "big box" store (like the Target at Northgate) from being built on the subject property. Mr. Stewart reminded the Commission that the 182,000 square foot limit for commercial development would include both the north and south sites that are shown on the site plan. Commissioner Kuboi pointed out that if the YMCA is not located on the site, something akin to a low-impact "big box" store like Target could be built on the site without violating the conditions of the contract rezone. Mr. Stewart said this would depend upon the form of building that is proposed. Commissioner Kuboi expressed his concern that there could be significant deviation from the site plan, and the applicant would still remain within the terms of the contract rezone.

Commissioner Phisuthikul asked if it would be possible for the Commission to impose a condition that any proposal should include both commercial and residential development. Commissioner Kuboi said this would still not address his concern that they could end up with a large, massive structure along Aurora Avenue, which would be significantly different from the site plan the public used as a basis for picturing what would take place on the site. Commissioner McClelland agreed with Commissioner Kuboi that the site plan drawing is meaningless. If the only limitation is 182,000 square feet of commercial space and 350 housing units, the actual development could be quite different than what is identified on the site plan. She said the Commission must consider the significant impact development of this site could have on the people who live on the east side of the lake and look down on the subject property.

Commissioner Hall said he understands all of the various Commission concerns. He said he recognizes that the proposed contract conditions are not perfect, and he is not convinced they could be made perfect, either. The staff has a role in the discretionary process as part of their building permit review at a later date. He reminded the Commission that the applicant turned in his application in December of 2004, and he has been strung along by a lot of issues. The Commission has improved the conditions, and he is prepared to vote affirmative on the main motion to approve the contract rezone.

Commissioner Kuboi asked if it was discussed with the applicant whether or not the site plan would still be a workable setup for the commercial part of the development. Mr. Stewart said that in his letter of

March 28, 2005, the applicant indicated that he is okay with the way staff crafted the words in **Condition 4.a,** and staff believes that the language provides flexibility for some measure of change. They currently have a visual image of the massing and scale of the project, but they feel the developer should be allowed some flexibility to work with the market. The Commission's goal should be to ensure a high-quality development, and constraining the site too much could be detrimental to the end project.

COMMISSIONER BROILI MOVED TO AMEND CONDITION 4.g TO READ, "USING LOW IMPACT DESIGN PRACTICES SUCH AS VEGETATIVE ROOFS, A WATER CATCHMENT SYSTEM, PERMEABLE SURFACES, ETC., THE DEVELOPER SHALL CONSIDER WORKING WITH THE CITY TO NOT EXCEED 20% IMPERVIOUS SURFACE WITHIN THE COMMERCIAL PORTIONS OF THE SITE AND SHALL NOT EXCEED 20% OF THE RESIDENTIAL PORTION OF THE SITE. COMMISSIONER MCCLELLAND SECONDED THE MOTION FOR DISCUSSION PURPOSES.

Commissioner Broili said he believes this condition would be very achievable using all of the various techniques available. He said it is to the City's best interest to reduce runoff, and by working with the developer, they could achieve this goal. The end result would be a better building, less runoff, and a better project overall. He noted that these techniques have been demonstrated locally on many sites in Seattle. In some cases, it is actually less expensive to develop in this manner.

Commissioner McClelland pointed out that Commissioner Broili's recommendation would reduce the amount of impervious surface allowed on the site from 90 percent to 20 percent. She suggested that this would require the structures to be higher in order get the allowed 182,000 square feet of commercial space. Commissioner Broili disagreed. He said there are some who would say that it is possible to achieve zero percent impervious surface.

Commissioner Hall said he does not believe it is possible to achieve less than 20 percent total impervious surface. He said he would also be very hesitant, at this late date, to introduce a condition that is so different from what has been discussed over the past six months. He strongly agreed that it would be a great benefit to the City of Shoreline to have a significant low-impact development demonstration project, and many jurisdictions have created ordinances that provide incentives in order to achieve these objectives.

Chair Harris said he has a great deal of respect and confidence in Janet Way and her people, and he trusts her on environmental issues and their group did not propose a reduction in the impervious surface requirements. He said he would not support the proposed motion.

Commissioner McClelland asked if the 90 percent identified in **Condition 4.g** is an environmental consideration or a code consideration. Mr. Stewart answered that the current code allows for up to 90 percent impervious surface in both the regional business and the high-density residential areas. However, there are additional conditions that have to do with the cleaning and discharge of water and how it is treated when it comes off the impervious surfaces. He said the City's current Stormwater

Manual regulates how the City manages the stormwater for both quantity and quality. It also regulates where the water is discharged.

Commissioner Broili said he chose a number that he is confident could be achieved, but he is also flexible. He said he would like to work for a better percentage than the 90 percent that is currently proposed, since this would be the maximum allowed. He suggested that if the City were to work with the developer, they could lower the amount of impervious surface dramatically. Chair Harris agreed with Commissioner Broili's point that the developer would have to mitigate the surface runoff, and there would be a real cost value to this effort. He suggested that the developer would explore the least costly options for accomplishing this requirement. If the lower impervious surface options were less costly, the developer would likely go that route as a cost saving measure. But he said he does not believe they need to make this a condition of the rezone.

Commissioner Phisuthikul said the low-impact techniques that Commissioner Broili referenced are included in the LEED Program Certification. These are options and avenues the design architects could use. He expressed his concern about reducing the amount of impervious surface allowed for this one specific project only.

Commissioner McClelland suggested that a better approach would be to offer incentives to developers who design projects with less than 90 percent impervious surface. Mr. Stewart pointed out that the City's definition of impervious surface in the development code is "any material that prevents absorption of stormwater into the ground." Under that definition, some of the green techniques that have been discussed would not qualify. Secondly, he pointed out that normally in a traditional development proposal, all of the buffer area would be counted as pervious surface. Under the current proposal, only the 15 feet would be counted. The gross amount of impervious surface would actually be less than 90 percent.

THE MOTION FAILED 1-5, WITH COMMISSIONER BROILI VOTING IN FAVOR, COMMISSIONERS PHISUTHIKUL, KUBOI, HALL, MCCLELLAND AND CHAIR HARRIS VOTING IN OPPOSITION, AND COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER KUBOI MOVED TO AMEND CONDITION 4.d BY REMOVING THE WORD "SURFACE." COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Kuboi pointed out that surface parking and parking open to the sky is not necessarily the same thing. Parking on the surface of the ground could be the first floor of a structured parking lot, and parking open to the sky could be the top floor. He does not see that the surface aspect is relevant.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

COMMISSIONER MCCLELLAND MOVED TO AMEND CONDITION 4.H TO CHANGE "AN APPROVED HABITAT RESTORATION PLAN" TO "FISH AND WILDLIFE HABITATION RESTORATION PLAN."

Commissioner McClelland said that when the Critical Areas Ordinance has been updated, it will refer to a Fish and Wildlife Habitat Restoration Plan, and this will become a term of art in the ordinance. Mr. Stewart said the Fish and Wildlife Habitat Conservation Area is a designated critical area that has regulations attached. The intent of **Condition 4.h** is to provide for a habitat restoration plan for fish and wildlife, but the Commission cannot speculate about what may or may not be approved in the Critical Areas Ordinance amendments. He said it would help if he could understand why the current language is not sufficient.

THE MOTION DIED FOR LACK OF A SECOND.

Commissioner Hall offered the following comments and requested that they be listed as part of the findings that are forwarded to the City Council:

- Many supporters of the proposal, including neighbors, community groups, environmental groups, and Forward Shoreline based their support, in part, on public access.
- The Comprehensive Plan policies identified in deliberations on the recommended land use designation change call for public access in this location, and these policies were already in place when the current owners purchased the property. That includes the Comprehensive Plan land use designation of the 50-foot strip of Public Open Space.
- The proposed site plan shows that there is room outside the building footprints to accommodate public access improvements that could be developed as discussed from the Interurban Trail and from Aurora Avenue. The public access conditions do not impose any additional burden on the developer.
- Public comments and letters, such as the very recent one from Pearl Noreen dated May 11th, suggest that the City Planners or the Planning Commission is somehow holding up the possible development of a YMCA. He referenced the Planning Director's statement reflected in the minutes of the April 14th meeting, "The YMCA would be permitted under current zoning. It is not dependent upon either a Comprehensive Plan change or a rezone."
- Some from the public indicated that it is difficult to do business in Shoreline. Rezones require public hearings, and it the duty of the City and the Planning Commission to conduct these public hearings. He was pleased at the number of people who participated. All of his comments and amendments are based on testimony he heard and letters he received that are on the public record.
- The State law allows for appeals, and in this case, the SEPA determination was appealed. This caused a delay in the process through no fault of the City or the Planning Commission. The City worked with the Hearing Examiner and all parties to agree to a process and schedule for the joint hearing of the Planning Commission and Hearing Examiner. The withdrawal of the SEPA appeal by some of the appellants and the attempt not to withdraw by others brought into question whether the SEPA appellants had a uniform, legitimate interest in environmental issues or if some of them were actually seeking to strike out against the City's contemplation of a City Hall, etc.

- He agrees with Dr. Paulsen's recent concern in her letter about the last minute changes to the conditions. This did a disservice to the community, the Planning Commission and the City.
- There were members of the public, including some of the SEPA appellants, who made remarks about it being inappropriate for the Commissioners to talk to City staff. Remarks were also made about the Commission's decision to impose time limits during the hearing. They received clarification on these issues from the City Attorney. Time limits are a well-established and completely legal way of insuring that everyone in the community has an equal opportunity to participate in local land use decision-making processes rather than allowing outside interests to dominate the discussion and have undue effect on local land use decisions.

Mr. Stewart reread the main motion as follows:

COMMISSIONER HALL MOVED TO RECOMMEND APPROVAL OF THE REZONE APPLICATION FOR 201372 FROM R-48 AND REGIONAL BUSINESS TO REGIONAL BUSINESS WITH CONTRACT ZONE BASED ON THE FINDINGS PRESENTED IN ATTACHMENT E OF THE STAFF REPORT AND WITH THE PROPOSED CONDITIONS OF THE REZONE PRESENTED IN ATTACHMENT A AS AMENDED. COMMISSIONER BROILI SECONDED THE MOTION.

THE MOTION CARRIED 6-0, WITH COMMISSIONERS SANDS AND MACCULLY ABSTAINING.

b. Critical Areas Ordinance Deliberations

There was not sufficient time for the Commission to deliberate on the Critical Areas Ordinance.

11. NEW BUSINESS

There was no new business scheduled on the agenda.

12. AGENDA FOR NEXT MEETING

Mr. Stewart noted that there have been some requests to schedule a discussion on the "sidewalk in lieu of program" on an agenda in the near future. While staff is prepared to discuss this issue with the Commission, they feel the code enforcement update and the Critical Areas Ordinance review should be completed first.

Chair Harris noted that Cottage Housing and the Critical Areas Ordinance are scheduled on the June 2nd meeting agenda.

13.

ADJOURNMENT

The meeting was adjourned at 10:25 p.m.

_____	_____
David Harris	Jessica Simulcik
Chair, Planning Commission	Clerk, Planning Commission