

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

February 17, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

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

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Paul Inghram, Berryman & Henigar
Jessica Simulcik, Planning Commission Clerk

ABSENT

Commissioner MacCully
Commissioner Phisuthikul

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, Vice Chair Piro, Commissioners Kuboi, Sands, Hall, McClelland and Broili. Commissioners Phisuthikul and MacCully were excused.

3. APPROVAL OF AGENDA

The agenda was approved as submitted.

4. APPROVAL OF MINUTES

The minutes of February 3, 2005 were approved as written.

5. GENERAL PUBLIC COMMENT

Janet Way, 940 Northeast 147th Street, reminded the Commission that the intent of the State law is to protect the critical areas. Any measures that are taken to parse the words in order to undermine the protections would be inappropriate. It should be the City's objective to support the protection of critical areas and improve them. According to her understanding of the State law and the Endangered Species Act, if a stream has potential habitat, it must be restored. She referred to the center column of the matrix on Page 55 of the Staff Report, which identifies the Planning Commission comments related to the classification of a stream (Section 20.80.470). She said she finds the last Planning Commission comment to be very perceptive, and she agreed that the objective of this proposed amendment appears to have been added to address the issue of the one fish that was sited in Thornton Creek.

Ms. Way emphasized that the goal of the Thornton Creek Legal Defense Fund is to avoid undermining and degrading Thornton Creek specifically, but also the other streams, as well. She urged the Commission to find ways to regenerate the streams rather than creating an ordinance that protects the City from having to do so.

Virginia Paulsen, 16238 – 12th Northeast, said her vision for Shoreline is embedded on what Shoreline was 150 years ago and includes reforesting the area and protecting the environment. She said she would even like to have the native plants reintroduced at Ronald Bog Park. While recently visiting the Lake Forest Park Mall, she stopped in at Wild Birds Unlimited because they had native trees and plants in front of their establishment. She learned that Lake Forest Park has a Community Wildlife Habitat Project to protect their wildlife and waterways one yard at a time. The goal of the plan is to make sure entire projects are developed so that Lake Forest Park can become closer to its original habitat. She suggested that as the City considers future plans and developments, they should also consider an alternative vision for Shoreline that goes beyond just protecting the critical areas or creating buffers. She submitted a copy of the Lake Forest Park Community Wildlife Habitat Project document, which was identified as Exhibit 1.

Tim Crawford, 2326 North 155th Street, directed the Commission to the third paragraph on Page 23 of the Staff Report. He reported that he observed the Casper Remand Hearing a few weeks ago. He understands that there has been a lot of talk amongst the staff about conflicting and battling biologists. He clarified that the science that was produced by Adolphson and Associates is in continual direct conflict with best available science produced by the Washington State Fish and Wildlife. They have prevailed on this issue in court previously, and they will continue to prevail. Next, Mr. Crawford referred the Commission to Page 43 of the Staff Report (Section 20.80.270). He questioned why the City's best available science is in conflict with that of the Washington State Department of Fish and Wildlife, when they should be one and the same. He recalled that past problems with the City were created because staff did not follow the recommendations from the State and National Agencies. The City can continue to do this, but it will result in many situations before Superior Court. He said it is not going unnoticed that when Planning Commissioners leave their positions, they often end up taking advantage of the injustice they are doing to the environment.

Patty Crawford, 2326 North 155th Street, provided six handouts that were identified as Exhibits 2 through 7. She said she is concerned about the general direction of the proposed changes to the Critical Area Ordinance, which has a real wetland priority. She noted that with the new City Hall Project, the

City has identified Echo Lake as a wetland. She referred to a court order related to the designation of Peeverly Pond as a wetland, which indicates that the consultant's science and the Determination of Non-Significance were not upheld at the Superior Court Level. She referred to a list of materials which indicate that the proposed changes are heading in this same direction because they do not include a lot of stream information. At Mr. Stewart's request, she provided information outlining the difference between the flowing water of a stream and the still water of a pond, which she obtained from a 3rd grade biology book. If it is open water, it should be considered an open water pond of the United States. If it has vegetation in it, it should be considered a wetland. She concluded by stating that the staff is trying to twist around the definition for surface water. She explained that surface water should be defined by where it originated. If it comes from the sky, it should be considered surface water.

Jeralyn Hambly, 5721 – 181st Street Southwest, Lynnwood, said she is acting as the guardian for her brother who is living at the Fircrest School. She said she is interested in protecting creeks and lands in the City from a tribal aspect. She encouraged the Commissioners to carefully consider this issue before there is any Native American involvement.

6. STAFF REPORTS

Workshop Discussion on Critical area Ordinance Update

Mr. Torpey explained that this discussion is a continuation of the workshop of January 20th, when staff introduced the draft changes to the Critical Area Ordinance. Since that time, the staff has received a large number of comments from the Planning Commissioners, which were grouped into 69 different categories. He referred to the comment matrix that was included as part of the Staff Report, which identifies the draft code sections, the Planning Commission comments and the staff's response to each.

Mr. Stewart advised that there were a couple of additional comments that were not included as part of the matrix. He recalled that through discussions with Commissioner Hall and members of the Thornton Creek Alliance, it was suggested that the ordinance designate all wetlands, streams and their buffers as fish and wildlife habitat conservation areas. The functions and values of these resources and their buffers would not only include protection of the water or the wetland, but would also provide the critical habitat for fish and wildlife. This proposed change would address the concern raised by a number of people about how these conservation areas would be designated. He explained that if there are other areas in the City where there is documented presence of fish and wildlife, the City could further delineate those areas based on best available science after diligent review.

Mr. Stewart said a number of people indicated that they would like to see the maps that are referenced in the ordinance. He explained that the King County folio of critical areas, which the City is currently using, is a document that provides very generalized maps. But this has been augmented by the Stream and Wetland Inventory that was recently approved by the City Council in 2004. In addition, a Lidar image of the City identifies the topographic relief of the various areas of the City. There is a large canyon running west to east from the water, which is identified as the Boeing Creek Basin. Various other features are also identified on the map, including the individual grading of the lots throughout the City. These maps point out how highly disturbed the City's landscape is. Mr. Torpey briefly explained

the process that was used to collect the Lidar images, and Mr. Stewart pointed out that the Lidar images are very accurate when compared to other types of data that was previously available.

Mr. Stewart explained that using the Lidar images, staff classified the slopes into three different data sets. The green areas indicate properties that have less than 15 percent slope, the yellow areas identify properties that have between 15 and 40 percent slope, and the red areas identify properties with a slope of 40 percent or greater. The current Critical Area Ordinance regulates the red and yellow areas, and this would continue with the proposed language, as well. Mr. Stewart further explained that in addition to the Lidar images, staff has another set of data to identify the liquefaction characteristics of the soil. But this data set comes from the University of Washington and is considered to be imperfect at this time. Lastly, Mr. Stewart referred to the map that was prepared by using the Stream and Wetlands Inventory that was recently completed by the City. This map shows all of the open watercourses in green, as well as all of the wetlands. It also shows a buffer distance of 35 feet on each side of the watercourses and wetlands. He explained that 35 feet is the minimum buffer that is proposed under the revised Critical Area Ordinance. He noted that a future task is to classify all of the reaches by type of critical area.

Vice Chair Piro referred to the map that was prepared to identify the various watercourses in the City and questioned how this new map compares to the previous King County Map. Mr. Stewart answered that the new map provides much more detailed wetland data. It identifies not only where the watercourses are located, but also a great level of detail about the intrinsic invertebrate index, the surrounding land uses, the quality of the watercourses, how much they have been denigrated, etc. All of this additional information will aid the City in reaching conclusions about how each critical area should be classified. He emphasized his view that all data is imperfect, and it is important to recognize that each data set contains imperfections. The City's responsibility is to assess and identify the level of imperfection. He suggested that the stream data is probably 95 percent accurate or better, but some of the other data will have to be verified in the field. The City is currently reviewing permits in which wetland scientists hired by both the applicant and the City are debating and disputing wetland delineation.

Commissioner Hall expressed his belief that the map appears to represent the scope of the field study the City contracted, and does not include all streams that have been identified on the King County Inventory. Mr. Stewart concluded that it is important for the map to be as complete as possible. He stated that the maps should be considered a work in progress, and the public and the Commissioners should feel free to provide their comments and suggestions for change.

Commissioner Broili questioned if the streams identified on the new map include all stream types. Mr. Stewart answered that the stream and wetland inventory did not include the classification or typing of any of the watercourses, and it included only open watercourses. He recalled the previous debate about whether the City should distinguish between open watercourses and artificial watercourses. The Commission directed the staff to remove the word "artificial." The map includes all open watercourses without distinguish as to whether they run in a concrete drainage swale or in natural historic beds.

Mr. Stewart advised that staff would likely suggest an amendment that would remove the words "government dam." He recalled that a comment was made about discussions to remove the Boeing Creek Dam. Because these discussions are underway and there is a reasonable expectation that the

removal could occur, staff presumes that the barrier to fish would be removed within six years. Therefore, the upstream classification of the watercourse would be changed.

Commissioner Hall applauded the staff's recommendation to designate streams and wetlands as fish and wildlife habitat conservation areas. However, he said he is still concerned that the proposed Critical Area Ordinance does nothing to deal with the shoreline of Puget Sound. He said he understands the legal distinction that shorelines of the State are protected through the Shoreline Master Program that was adopted under the Shoreline Management Act. But he referred to the recent house bill, which states that protection for critical areas that fall within the jurisdiction of shorelines in the State must be as least as strong of protection as that provided in the critical area ordinance. Since the City's ordinance does not protect Puget Sound at all, the field is left open. He said he would like the ordinance to include standards for protection of the Puget Sound shoreline as though there was no Shoreline Master Program. This would allow the Commission to consider environmental protection for all surface waters, while recognizing that the ultimate regulations applied would be the Shoreline Master Plan requirements.

Commissioner Sands suggested that the proposed Critical Area Ordinance simply reference the State Shoreline Master Plan regulations that apply to Puget Sound. Commissioner Hall pointed out that the Shoreline Management Act works similar to the Growth Management Act. The State does not actually adopt standards, but requires the individual jurisdictions to do so. The City must either address Puget Sound in the Critical Area Ordinance or in the Shoreline Master Plan. He concluded that it appears odd that the proposed Critical Area Ordinance does not even identify the Puget Sound shoreline as a fish and wildlife habitat conservation area.

Commissioner McClelland asked if the cities of Edmonds and Seattle include regulations related to Puget Sound in their critical area ordinance. She pointed out that there are currently residential properties and parks located along the Sound and questioned what type of protection Commissioner Hall would propose for these properties. Commissioner Hall suggested that, as a starting point, Puget Sound should be provided the same protection as those identified for streams. Commissioner McClelland pointed out that if Puget Sound were given a buffer, the public would not be able to access the water's edge. Commissioner Hall said he does not propose that the City deny public access to the shoreline, since the Shoreline Management Act identifies public access as one of its goals. Neither does the proposed Critical Area Ordinance propose that public access to the streams be denied. But where future development is proposed along the shoreline, conditions should be imposed for protection.

Commissioner McClelland said she recently listened to a speech provided by a wetland biologist, and he suggested that there are three issues that should be considered when reviewing a critical area ordinance: the protection of critical areas, the protection of private properties and the protection of government-owned properties. It is important that a critical area ordinance protect and balance all of these areas. She emphasized that the Commission should remember that the issue is far more complex than just protecting the environment.

Commissioner Broili indicated his support for Commissioner Hall's suggestion that the Puget Sound shoreline be addressed as part of the Critical Area Ordinance. He said he would like to consider the whole issue from a systemic watershed perspective, and he does now see how the City can separate the

shoreline from the creeks, streams, wetlands, etc. A single stream should not be reviewed in isolation from the surrounding landscape and the connections that are inherent within a watershed perspective.

Commissioner Hall said the City of Edmonds' Critical Area Ordinance does recognize the shoreline of Puget Sound. He recalled that there are specific marine issues called out in State Law related to the protection of forage fish spawning, eelgrass, kelp, shellfish, etc. In addition, the Growth Management Act requires jurisdictions to give special consideration to anadromous fisheries. He questioned how the City could justify the protection of salmon in Thornton Creek but not along the Puget Sound shoreline.

Mr. Stewart agreed that Commissioner Hall's issue should be addressed further, and he asked Mr. Inghram to clarify how the shoreline issue could be integrated into the Critical Area Ordinance. He pointed out that most of the shoreline is already heavily armored by the railroad tracks or by residential uses. During times of very low tide, it is evident that the condition of the residential properties is widely varied, and there will be continuing maintenance issues in the future. He also noted that Salt Water Park is the best piece of shoreline the City owns. He referred to the areas where the streams discharge into the Sound, and noted that Boeing Creek has a great opportunity for future improvements. In addition, he noted that a series of critical areas are located on the east side of the railroad tracks, and issues and debates have taken place about the streams and wetlands that have formed to capture the water as it comes down the hill. The City's Critical Area Ordinance does regulate the critical areas on the east side of the tracks, but he agreed that the City should further contemplate ways to integrate protection for the west side, as well.

Commissioner Kuboi asked how the proposed ordinance would establish the buffers for the conservation areas and how this would be reconciled with the buffer table for streams. As an example, Mr. Stewart explained that staff is now suggesting that the fish and wildlife habitat conservation area definition be broadened to include all areas that are streams, wetlands and their buffers. This would not add a further buffer requirement on top of the existing buffer, but the edge of the buffer would delineate the conservation area. There would be two ways for properties to become a fish and wildlife habitat conservation area under the proposed amendment. One would be if the property were within a buffer area now. The other would be through best available science and additional formal delineation. Commissioner Kuboi pointed out that the buffer for the conservation area might end up being greater than what the stream table calls for. Mr. Stewart agreed, depending on the species, the uniqueness and other best available science. Commissioner Kuboi said the staff's proposed broader categorization of habitat conservation areas makes sense to him. Commissioner Hall concurred but said he would also like the Puget Sound shoreline to be included.

Commissioner Hall referred to Section 20.80.260 (Page 42 of the Staff Report), which states that the City would give special consideration to anadromous fish. In addition, Section 20.80.270.A (Page 43 of the Staff Report) states that one of the criteria for a fish and wildlife habitat conservation area is the "presence of species proposed or listed by the federal government or State of Washington as endangered, threatened, critical or priority." He said he couldn't imagine the City adopting an ordinance that says they do not have documented evidence of listed salmonids on the Puget Sound shoreline that must be protected. Vice Chair Piro agreed and suggested that staff contact other surrounding jurisdictions such as Edmonds, Seattle, King County, etc. to find out how they regulate their Puget Sound shorelines.

Commissioner Kuboi restated a previous Commission request that staff somehow delineate the buffer areas on the maps. As if it is not already hard enough to delineate these buffer areas using stream tables that are relatively simple, the staff is proposing the infusion of the science driven process for determining the appropriate buffers for habitat conservation areas. He expressed his belief that the maps identifying the buffer areas will probably never be completely accurate. Therefore, the Commission will never have a clear understanding of what impacts the proposed changes would have on the community.

Mr. Stewart explained that best available science would be used to designate the habitat and the appropriate buffer, but then the City must balance the best available science with the other competing goals of the Growth Management Act. Commissioner Kuboi said it appears that the analysis of what an appropriate buffer would be for a particular habitat conservation area would be determined through a study conducted by the applicant of a proposed development. Mr. Stewart agreed. Commissioner Kuboi pointed out that an applicant could hire the services of a consultant to justify a smaller buffer than what the stream table calls for. Mr. Stewart reminded the Commission that best available science continue to evolve. He explained that the word “best” represents a value judgment that is debated depending on one’s personal values, and “available” represents a resource question of how much money the City is willing to spend to complete studies, etc.

Mr. Stewart pointed out that the structure of the ordinance is such that the map represents only the approximate location of critical areas. Additional critical areas and their buffers may occur within the City even though they have not been previously mapped. When an application is submitted, the staff would use the map to help an applicant understand that there could be an issue with critical areas. But the specific location of a stream or wetland is often identified by the applicant during the permitting process. Surrounding property owners, who also hire scientists to study the issue, can challenge the location, as well.

Commissioner Kuboi noted that a table is provided in the ordinance to describe the mechanism for identifying stream and wetland buffers. Now they are introducing a process whereby a property owner or developer can purchase the credentials of a consultant to put together a report in support of having a habitat conservation buffer area that is less than what is called for in the stream table. This could result in a loophole for future developers to circumvent the buffer requirements. Commissioner Hall pointed out that the code provides explicit criteria that must be met in order for additional fish and wildlife habitat conservation areas to be designated. He recalled that in terms of buffer widths, City Attorney Sievers previously advised that science takes the City partway towards the appropriate decision, but not all the way. The City Attorney further advised that the City must also balance science with the protection of people, development, etc. Commissioner Hall said he does not believe a scientist would be able to turn the City’s buffer requirements upside down. The City gets to decide the buffer requirements, and habitat conservation areas that are located within a stream or stream buffer would not require additional buffer area.

Mr. Stewart referred to Section 20.80.270 (Page 43 of the Staff Report) which states that certain criteria would have to be met in order to designate areas within the stream and wetland buffer areas as habitat conservation areas. Section 20.80.260 (Page 42 of the Staff Report) outlines how habitat conservation areas should be established, and Section 20.80.310 (Page 44 of the Staff Report) discusses the required

buffers and how they should be established. He agreed with Commissioner Hall's suggestion that, in addition to this mechanism, all of the buffers for streams and wetlands should also be designated as fish and wildlife habitat conservation areas, but no additional buffer would be required around the conservation area.

Commissioner Hall noted that streams, by definition, are not a critical area under the Growth Management Act. Therefore, the only State statutory authority the City has to protect streams is to designate them as fish and wildlife habitat conservation areas. Mr. Stewart pointed out that the City has a long-standing policy in their Comprehensive Plan which states that streams shall be designated as critical areas to acknowledge that they provide habitat for certain fish species.

Commissioner Sands said he is still unclear about why staff is proposing the deletion of certain items in the original definition for critical areas. He specifically referred to terms such as "soils having high water tables" and "highly acidic soil." Mr. Inghram reminded the Commission that the goal of the proposed amendments is to make the critical area ordinance more consistent with the Growth Management Act and the structure of the City's Development Code. For example, he pointed out that neither the Growth Management Act nor the Development Code provides language related to the protection of "highly acidic soils."

Vice Chair Piro suggested that any editing of the critical areas ordinance should be supplemented by a description of why the changes are being proposed and what the practical implications would be. It is important to communicate this information to the public. Commissioner Sands agreed that if staff is proposing the elimination of certain elements of the existing ordinance, they should provide documentation about why the changes are being proposed. If the record is not clear, the intent of the changes could be challenged later in court.

Commissioner McClelland requested that staff provide a few examples of where the code has been effective in its implementation. She asked if there are examples of where the City's mandated critical area protections have actually made a difference to the environment. Mr. Stewart explained that most development projects are constrained by and typically removed from the critical areas and their buffers. The City has adopted buffer enhancement and wildlife habitat mitigation plans as part of permit approval, and staff could provide copies of some of these plans to the Commissioners for their review.

Commissioner McClelland recalled a previous Commission discussion about the need for a focused and well-intended public education program where the City would document some of the projects that have been completed to protect the environment and how these protections are connected to the entire ecological system of the City. She would like the City to use signs to plant thoughts into people's minds about environmental issues and concerns. Mr. Stewart advised that the City employs a full-time environmental educator, Rica Cecil. Her job is to provide environmental education, and the Shoreline Master Plan that is currently before the City Council for approval includes \$4.2 million for habitat restoration.

Vice Chair Piro suggested that examples of comprehensive critical area stewardship plans would be of value to the Commission, as well. Mr. Stewart said the City has not completed any critical area stewardship plans to date. This concept is new and intended to be done in conjunction with view

preservation and restoration. It is modeled after some of the plan exclusions in the King County ordinance for agriculture, etc. where they allow exceptions for certain activities. Vice Chair Piro again requested examples of these model provisions.

Commissioner Broili expressed his belief that the City should try to do more than just match what the Growth Management Act requires. They should strive, at every opportunity, to enhance and strengthen the City's environmental ethic with regard to critical areas, land development, and other issues the Planning Commission must address. Deleting items from the ordinance could negate the issue from being addressed in the future. Terms such as "acidic soils" and "high water tables" were included in the ordinance for a reason. Just because the City hasn't addressed these issues in their code up to this point, does not mean they should be taken out of the ordinance.

Commissioner Broili referred to Section 20.20.22.F (Page 26 of the Staff Report), which indicates that the term "flood plain" would be changed to "flood hazard areas." He argued that a flood plain is a systemic ecosystem, while a flood hazard area is people oriented. He would like the Commission to discuss this proposed change further. Finally, Commissioner Broili recalled a point he made previously that best available science depends on the questions being asked. He pointed out that the term "no net loss" is used frequently throughout the proposed ordinance, and to him, this means the City would be just treading water. The system is already badly degraded, development continues to happen and population continues to grow. The City's goal should be restorative rather than "no net loss." He encouraged the Commissioners to think in terms of strengthening and restoring the environment. He referred to the Lidar map which shows where the watersheds were originally located. He pointed out that the watersheds on the Lidar map are much more extensive than what is identified on the stream inventory map. Parts of the watershed system have been lost. While he is not suggesting that people be moved off their lands, the City has the design tools and technology to do a far better job of protecting the natural critical areas and the uplands that support and sustain them.

Commissioner Sands asked staff to review the regulations associated with tree removal and trimming in critical areas versus non-critical areas. He would like to have this tied in with the concept of stewardship plans, as briefly discussed earlier. He questioned if the stewardship program that has been identified for views and trees would also allow someone to thin a forested area for fire prevention. Mr. Stewart explained that the Comprehensive Plan that was adopted in 1998 included a policy that the City should adopt tree protection regulations. The 2000 Development Code adopted a section regarding development standards for clearing activities, which regulated the removal of trees and ground cover. These standards established two types of rules for removal of significant trees. One set of rules applies to those parcels that were not located in critical areas, and the second set applies to parcels that are located in critical areas or their buffers. Generally, an owner of property outside a critical area can remove up to six significant trees per parcel during any three-year period, and there is no limit on the number of non-significant trees that can be removed.

Mr. Stewart further explained that when a site that is located outside of a critical area is developed, the applicant is required to retain at least 20 percent of the significant trees on a site if a clearing and grading permit is obtained from the City. An applicant of a site that includes some critical areas and/or critical area buffers must retain a minimum of 30 percent of the significant trees on the site. The City

requires an inventory of significant trees as part of a development permit application. The City uses this inventory to calculate the number of trees that must be retained.

Mr. Stewart said it is important to also understand that there are six exceptions associated with the tree removal regulations. The one that has been utilized by a number of citizens is the exemption for emergency situations. Any tree or vegetation that is an immediate threat to health, safety, welfare or property may be removed without first requiring a permit regardless of any other provisions contained in the code. If possible, the code requires that trees be evaluated prior to removal using the most recently adopted method identified by the International Society of Arboriculture. He noted that the Innis Arden Reserve Group has utilized this provision to remove a large number of trees. He briefly reviewed the other exemptions that are listed in the code.

Commissioner Sands asked when tree trimming would be considered tree removal. Mr. Torpey referred to the Planning Director's interpretation that was issued in 2001 (Attachment 2 of the Staff Report). He explained that the International Society of Arbiculture defines trimming and topping. Topping is considered the same as removal of a tree, and trimming is limited to up to 30 percent of a tree's biomass. Anything more than that would be considered detrimental to the long-term health of the tree.

Mr. Stewart explained that the proposed language would add a provision to allow for the removal of up to six significant trees within a three-year period on properties that are located within a critical area if all of the functions and values of those trees can be preserved and enhanced.

Commissioner Sands summarized that there are no provisions for tree removal in non-critical areas to accommodate view preservation. Mr. Stewart stated that there are no exclusions that would distinguish between tree removal for view preservation and tree removal for any other purpose.

Mr. Torpey referred to the areas identified on the map as having a slope of 15 to 40 percent. He explained that, as per the draft ordinance, a property owner could apply for a clearing and grading permit (Type B) for these properties, but the City would require the applicant to provide professional reports from an arborists and a geotechnical engineer as to the stability of the soil during the tree removal and the replanting necessary to replace the function of the trees. These reports would be reviewed and either approved or denied by staff, and the staff's decision would be appealable by either the applicant or another person who may be affected. Mr. Torpey further explained that the current and draft ordinance would require a critical area reasonable use permit for tree removal in areas that have a slope of greater than 40 percent. If the property were owned by a utility or other public entity such as a water district, a critical areas special use permit would be required. In these situations, the staff would make a recommendation to the Hearing Examiner, who would make the final decision that is appealable to Superior Court.

Commissioner Sands clarified that all of the tree removal requirements would be triggered by the request for a permit. What if a property owner wants to remove a significant number of trees without submitting a permit application? Mr. Torpey said that a clearing and grading permit would be required for the removal of any tree from a critical area unless it was considered a hazardous tree. Commissioner Sands said this provision makes it important for a property owner to understand whether or not a property is located in a critical area.

Commissioner Sands requested further information about the proposed “stewardship plan” concept. Mr. Stewart referred to Section 20.80.030 on Page 33 of the Staff Report, which would add a new exception to the list of regulated activities. It states that view preservation and enhancement programs may be permitted in critical areas and their buffers if a critical area stewardship plan is approved as part of a clearing and grading permit and can meet specific criteria. First, the plan must result in no net loss of the functions and values of each critical area. Second, the plan must maintain or enhance the natural hydrologic systems on the site. Third, the plan must maintain, enhance or restore native vegetation on the site. And fourth, the plan must maintain habitat for fish and wildlife on the site and enhance the existing habitat.

Mr. Stewart said the intent of the proposed language in Section 20.80.030 is to allow a stewardship plan to be developed that would protect the functions and values of a critical area while also allowing for preservation and enhancement of views. It would require the same type of study and assurances that are currently provided under a clearing and grading permit. It would further broaden the City’s authority to move into areas that are not covered, including 40 percent slopes and the buffers of the streams and wetlands.

Vice Chair Piro clarified that the new language would allow six significant trees to be removed from a critical area without any rationale, but with an assessment that the removal would not result in any net loss in function and value. He requested feedback from staff about why they are recommending the new language. Mr. Stewart said there are situations in the City where uphill neighbors have won court cases against downhill neighbors, ordering the downhill neighbors to remove trees that are located in critical areas or critical area buffers. In these cases, even though the property owners do not want to remove the trees, the City is requiring them to apply for permits to do so. These property owners are also required to provide the City with scientific studies, etc. The proposed language is intended to address these situations. There are also situations where the City receives reports of trees being cut on private or common properties, and the staff investigates these situations and attempts to resolve the problems. In addition, the City has received 142 hazardous tree reports, and they have rejected about 40 of them. He concluded that the City has spent a lot of time and energy wrestling with this issue.

Mr. Stewart further clarified that the proposed language is intended to tighten the definition for a hazardous tree to focus in on the reasonableness of the hazard. Some would argue that any tree is hazardous because it could fall at any point. The proposed language further defines the definition to state that the hazard must have the potential to result in the loss of a major or minor structural component of the tree that would either damage personal or public property or prevent access in the case of medical hardship. This language was pulled directly out of the King County definition for a hazardous tree.

Commissioner McClelland asked if the City has designated any landmark trees. Mr. Stewart said the code includes a provision that allows the City to designate landmark tree, and a proposal was submitted to the City. In this situation, the uphill neighbor was seeking to enforce covenants on the downhill neighbor, and the downhill neighbor or a friend nominated the tree as a landmark tree. He read the definition for a landmark tree and pointed out that once designated as a landmark tree, it can’t be removed unless the applicant can meet the exception requirements of the section. He further said the

language states that the Planning Director shall establish criteria and procedures for the designation of landmark trees, which he has done via an administrative order. The standard and criteria include a provision that the owner and all parties with an interest in the property rights must sign off on the landmark tree application. If a tree can meet the criteria for designation, the application would be sent to the City Council for final approval.

Vice Chair Piro concluded that the way the language is proposed, the only reason a property owner would be allowed to cut down more than six trees is for view preservation or enhancement. He expressed his concern that the proposed language (Section 20.50.360) would not allow a property owner to thin out trees for purposes related to the health of the forested area. If a certified arborist report indicates that the tree removal would not have any impact on the slope and that the remaining trees would be healthier, the ordinance should allow this to occur. Mr. Stewart clarified that this section only applies for critical areas that have a slope of more than 40 percent. For properties with a slope of less than 40 percent, a clearing and grading permit could be obtained to allow the removal to occur.

Commissioner Kuboi asked who would determine if a property owner is entitled to the view preservation and enhancement provisions. Mr. Stewart said that any property owner or group of property owners could apply for a permit to remove trees for view preservation or enhancement. He said the intent of the view preservation and enhancement provision is to limit the scope and how it could be applied. Protection of views is a competing value with protection of the critical areas. The City does not want to allow the removal of trees in critical areas for any circumstance, but only for view enhancement or preservation. He emphasized that the view preservation program could be applied anywhere in the City. Commissioner Kuboi noted that since view is not defined, a person could create his or her own definition of what a view is. He felt the proposed language could result in potential abuse in the future.

Vice Chair Piro questioned who would decide whether or not a tree or group of trees would constitute a fire hazard. Mr. Stewart recalled that there was an urban wildfire along the Interurban Trail at about 160th Street. Some low growing vegetation caught on fire and got up into the conifers. It was a spectacular sight that occurred after a particularly dry spell. During the City's recent evaluation process, urban wildfires were identified as a potential hazard to the City, particularly in those areas that are heavily wooded. He suggested that adding an exemption or provision related to urban wildfire hazard mitigation would be appropriate.

Vice Chair Piro agrees that the Growth Management Act was a revolution for Washington State. He said he would like to see more information about some of the cases that speak about its potential conflicts with the standing covenants that predate the Growth Management Act. He said it would also be helpful to receive information from the Growth Hearings Board about cases that deal with situations where a provision in a covenant had been trumped by the Growth Management requirements.

Mr. Stewart explained that 1000 Friends of Washington has appealed the comprehensive plans of Normandy Park, Issaquah and Kent because they have zoning provisions of less than four dwelling units per acre. Mercer Island's plan will also be appealed once it is adopted. He said the issue for Shoreline is that there are restrictive covenants for Innis Arden and The Highlands that prohibit development in densities of four units per acre, even though the zoning code would allow for this density. He said it is his understanding that there is a case at the Shoreline appellant court level challenging the density

provisions on a particular piece of property. The case is claiming that these types of restrictions violate the Growth Management Act. There is also proposed legislation at both the house and the senate level clarifying the four dwelling units per acre requirement.

Commissioner Broili said that if the staff is going to create new language related to fire hazard issues, it is important to understand that a good fire management regime does not necessarily require the removal of trees. Instead, it should speak to removing fire ladders so that fires stay on the ground rather than crowning. At some point, they need to discuss the concept of having an urban forest management plan. This would allow the City to look at the issue holistically rather than lot-by-lot. He said there is a movement afoot in the broader regions of the area to think in these terms, and he encouraged the City to do the same.

Commissioner Hall asked if the public hearing in March would be based on the January 10th version of the Critical Area Ordinance or if adjustments would be made to the document first. Mr. Stewart suggested that no changes be made to the January 10th edition of the ordinance prior to the public hearing. However, it could be supplemented with the list of amendments that have been proposed. He noted that numerous copies of the ordinance have been sent out to citizens and groups, so it would be best to continue to use the original draft as the working copy for the public hearing.

Commissioner Broili voiced his concern that the Commission would not have an opportunity to completely review the draft ordinance prior to the public hearing, yet there are numerous issues the Commission still needs to discuss. Mr. Stewart said the document has been available to the public for review since January 10th, and the next step is to move into the public hearing process. Hopefully, they will receive numerous comments and suggested amendments from the public. The Commission will have an opportunity to deal with these comments as they move into their deliberations. Commissioner Broili pointed out that the ordinance is very intricate, and it was difficult for him to review it in just one week and come up with appropriate comments. The comments he provided were made after only a brief review, and were certainly not comprehensive. He sees the review process as going very slowly, but the timeline is actually quite constrained.

Mr. Torpey explained that the document the Commissioners received includes the complete version of Section 20.80, which is the critical areas section of the code. The document also included all other sections of the code that are being recommended for change. The definitions can be found in Section 20.20. The matrix that was provided identifies all of the sections of the code that were commented upon by Commissioners. Mr. Stewart suggested that if the Commissioners want to review the full context of the Critical Area Ordinance, they should have the entire Development Code available.

Commissioner Hall referred to the sections of the ordinance related to tree removal, and expressed his concern about the definition for a “hazardous tree.” The words “immediate threat” were removed from the definition, and this could end up creating a loophole. Secondly, Commissioner Hall felt the Commission should further consider the option of including regulations related to Puget Sound in the City’s Critical Area Ordinance. Lastly, Commissioner Hall referred to Section 20.80.330 (Page 48 of the Staff Report). He expressed his concern that the legal construction and interpretation of this section is too confusing. He noted that Item 1 uses the words “may,” which is not enforceable from a legal standpoint. Perhaps Item 1 should require an applicant to meet all of the conditions. Mr. Inghram said

that the listed conditions may or may not apply in all cases. He suggested that rather than trying to create criteria that would apply to every case, the section could reference guidelines such as those prepared by the Puget Sound Action Team for low impact development. Commissioner Hall felt this would be appropriate as long as it is worded in a restrictive rather than a permissive manner. The staff agreed to work more on Section 20.80.330.

Commissioner McClelland suggested that the entire ordinance should be edited for readability. The document should first make it clear what the standards and requirements are, and then identify the opportunities for deviation. The remainder of the Commission agreed, as did the staff.

Mr. Stewart said another issue the Commission might want to consider is the future of water-based recreational activities on ponds or lakes. If a pond or lake has historically been used as a water-based recreation area for fishing, swimming, boating, beaches, etc., the Commission must consider whether or not the uses should be allowed within the buffer area. Staff's interpretation of the current ordinance does not allow this type of use, but the Commission could add it as an exclusion. Commissioner Hall said his interpretation of the ordinance is that passive, low-impact recreation uses such as swimming or walking would fall into the category of "other activities not mentioned above, which have a minimum impact." Mr. Stewart said it could be argued that these uses should be allowed to continue as pre-existing non-conforming situations if no changes are being proposed. But if changes are proposed, the current ordinance would no longer allow the recreational uses. He asked that the Commission provide direction to staff about whether or not this type of activity should be exempt from the buffer requirements. Mr. Torpey reported that the City of Seattle exempts all of their waterfront parks and public spaces as public facilities.

Mr. Torpey reconfirmed that the public hearing for the Critical Area Ordinance is scheduled to begin on March 17th.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Vice Chair Piro reported that he and Commissioner Hall attended a special meeting on February 10th with members of the City Council, Planning Commission and some community groups. One of the key issues raised was related to amendments to the Comprehensive Plan. Concern was expressed about whether past amendments actually strengthen previous policies or weakened them. He asked that staff carefully identify and express the intent of future proposed changes so the public has a clear understanding. Mr. Stewart agreed that a number of issues were identified where a simple clarification from staff would have removed much of the anxiety and fear.

Commissioner McClelland thanked the staff for organizing the Cottage Housing Tour on February 12th. She said the tour was beneficial because they were able to go inside the houses and meet some of the residents. They received excellent exposure to the construction materials, site issues, neighborhood issues, etc. Commissioner Kuboi said he was puzzled at the amount of attention that was spent reviewing the interior of the properties when the bulk of the public's concern was related to exterior issues such as parking and traffic impacts. He recalled a recurring concern from the surrounding communities about neighborhood degradation yet he noticed that some of the properties are now being rented out. Chair Harris recalled that the major concern expressed by surrounding property owners was

that the properties would all be developed by an absentee landlord and rented out, and this has not occurred.

Commissioner Hall requested an update from Mr. Stewart regarding staffing vacancies and new hires. Mr. Stewart reported that the City Manager recently announced the hiring of an economic development manager, and the Planning Department has hired a new technical assistant who starts on March 3rd. In addition, Mr. MacCready has resigned to accept a new position as a planner for Snohomish County, and his position will be open for applications soon. The City's building official has also resigned, so they are recruiting applicants for this position, as well. They are also interviewing for an Aurora Corridor Planner project position.

Chair Harris announced that the Shoreline 10th Anniversary Committee is moving forward with plans for celebration. An impressive list of City accomplishments has been compiled, and they are in the process of creating a calendar that identifies community events that are scheduled throughout the year.

8. UNFINISHED BUSINESS

Planning Commission Retreat

Mr. Stewart recalled that staff recently distributed a document outlining options for the retreat. The Commission scheduled the retreat for March 10th starting at 6:00 p.m. Pizza would be served for dinner.

Commissioner Hall referred to the list of possible discussion topics and said he feels the most valuable topics would include the Planning Commission's role compared to the City Council's role, Planning Commission expectations, and how the Commissioners can work together more effectively as a group. The other items on the list could be discussed as workshop items at a normal Commission meeting. The remainder of the Commission concurred. Commissioner Kuboi suggested that Commissioners come to the retreat prepared to discuss their issues and concerns relate to each topic. The Commission continued to discuss ideas for how they could focus the retreat discussions on specific concerns and issues.

The Commissioners agreed to submit their written comments regarding each discussion topic to Commissioner Kuboi by February 24th. He agreed to compile the comments and forward them to each of the Commissioners prior to the retreat. The Commission felt this would enable them to narrow their discussions and resolve specific issues.

The Commission discussed whether or not it would be appropriate for the Commission to self-facilitate the retreat discussions. Mr. Stewart expressed his concern about a Commissioner acting as facilitator. Another option would be to find a City employee who has facilitation training to facilitate the actual retreat discussions as an independent and neutral party. He also suggested that perhaps three topics might be too many items to discuss in just one evening. He suggested that the topics be narrowed to just two. The Commission agreed to provide written comments on all three of the items previously identified, recognizing that they would discuss and resolve Item 4 (Planning Commission expectations) first. They also agreed that staff should find a City employee to facilitate the retreat discussions. Mr. Stewart said he would also invite all of the staff members who work on Planning Commission business to participate in the discussion.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. ANNOUNCEMENTS

Mr. Stewart reported that the City Council received over 600 individual comments related to the Comprehensive Plan amendments. They have reviewed 130 of them and identified 50 for further discussion. They still have to review the more than 450 remaining comments. A second public hearing was held by the City Council, where they heard many of the same comments that have been expressed previously. In addition, the Innis Arden Neighborhood Group came forward with their concern that they did not receive notice of the meeting the City Council held with the Sno-King Environmental Council. They requested a special meeting with the City Council, as well. He said he is not optimistic that the plan will be adopted by February 28th, as originally planned. The Commission briefly reviewed the Comprehensive Plan public hearings that have been conducted by the City Council to date.

Mr. Stewart reported that Commissioner McClelland provided information regarding CTED's interpretation of the 2004-2005 Comprehensive Plan update. Commissioner McClelland said she obtained the opinion from the City of Carnation because they are still working on their 2004 update, too. CTED has taken the position, which is not a legal position, that if cities adopt their 2004 amendments early enough in 2005 and their 2005 docket has been established, they can still make amendments in 2005. Phil Olbrechts, the City Attorney, agreed with this interpretation. Mr. Stewart said staff is seeking their own interpretation from CTED regarding this issue.

Commissioner Hall expressed his concern that the Planning Commission not take any action that would distract the City Council from consummating the significant Comprehensive Plan update that is currently on the table. Mr. Stewart said his interpretation is that the 2005 amendments would not be approved prior to the 2004 update being approved. However, it is possible that approval of the updates from both 2004 and 2005 could occur at the same time. Commissioner Hall expressed his concern about the Commission holding public hearings and deliberations on proposed 2005 Comprehensive Plan amendments prior to final adoption of the 2004 Comprehensive Plan update. He felt the Commission has an obligation to defend the public's trust, and he would not support a staff recommendation to roll the site-specific Comprehensive Plan amendment for the south side of Echo Lake into the major 2004 Comprehensive Plan update. Commissioner McClelland agreed that rolling a 2005 docket issue into the 2004 update could be dangerous, and she would not support a proposal of this type, either.

11. AGENDA FOR NEXT MEETING

The Commissioners had no additional comments to make regarding the agenda for the next meeting.

12. ADJOURNMENT

The meeting was adjourned at 10:40 p.m.

David Harris
Chair, Planning Commission

Jessica Simulcik
Clerk, Planning Commission