

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

January 20, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro (arrived at 7:10 p.m.)
Commissioner Sands
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner MacCully
Commissioner Hall
Commissioner McClelland
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Ian Sievers, City Attorney
Jessica Simulcik, Planning Commission Clerk

Chair Harris welcomed Mike Broili as the new Planning Commissioner. He also welcomed the new Planning Commission Clerk, Jessica Simulcik.

1. CALL TO ORDER

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

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris and Commissioners Sands, Kuboi, Phisuthikul, Hall, McClelland, MacCully and Broili. Vice Chair Piro arrived at 7:10 p.m.

3. APPROVAL OF AGENDA

The Commission unanimously approved the agenda as written.

4. APPROVAL OF MINUTES

The Commissioner approved the November 4, 2004 minutes as drafted and the November 18, 2004 minutes as amended.

5. GENERAL PUBLIC COMMENT

Janet Way, 940 North 147th Street, Shoreline, indicated that she was present to represent the Sno-King Environmental Council, the Thornton Creek Legal Defense Fund and the Paramount Park Neighborhood Group. She referred to Page 4 of the Commission minutes of November 18th, in which Mr. Stewart pointed out that the Stormwater Management Plan and the Comprehensive Plan Update policies could have an influence on the Critical Areas Ordinance, which should be consistent with the policy direction provided by the Commission. Ms. Way said her hope is that the Commission provided clear policy direction to staff during their review of the Comprehensive Plan and Master Plans before they were forwarded to the City Council for review. She said she is not sure the policy direction has been made clear in the record.

Again, Ms. Way referred to Page 4 of the minutes of November 18th, in which the consultant advised that the Growth Management Act (GMA) states that counties and cities shall give special consideration to conservation and protection measures necessary to preserve and enhance anadromous fisheries. Then the consultant raised a question about the exact meaning of the word “shall.” However, she did not feel the question was resolved satisfactorily.

Next, Ms. Way referred to Page 10 of the November 18th minutes. The minutes show Chair Harris inquired how they could get more individuals to participate in the critical areas ordinance discussion. Ms. Way agreed that it would be good for the City to do more outreach to the community. Now that the actual draft Critical Areas Ordinance is available for public’s review, she assured the Commission that there would be more people coming to the hearings. She said she would appreciate City efforts to get the word out to the citizens.

Ms. Way referred to an article from *THE SEATTLE POST INTELLIGENCER*, dated January 19, 2005. The article was titled, “*The State of Puget Sound Troubling.*” The article stated that development throughout the region is booming, and this could have a negative impact on marine wildlife. The authors of the report, the Puget Sound Action Team, concluded that when it rains a record volume, unfiltered stormwater rushes down gutters, scouring streambeds and dumping dirt, oil, pesticides and animal waste into creeks and rivers and ultimately the Sound. The authors further stated that industrial chemicals, even those banned decades ago, are still hammering the ecosystem, and salmon runs are struggling to survive. The article concludes by stating that although there has been great progress in some areas in the Sound, the scale and pace of the improvements is not yet equal to the pace of the change and decline. She asked that this article be entered into the City’s Critical Area Ordinance Update record.

Ms. Way referred to a new study the City commissioned regarding Thornton Creek and the fish passage that flows under the freeway. She asked that the City spend as much time and money trying to back up fish and wildlife as they do trying to undermine the opinion of the Department of Fish and Wildlife. She asked that the Commission urge the City to do everything in its power to protect the ecosystem. She

noted that there was confirmed Chinook sightings in the south branch of Thornton Creek, about ten blocks from Northgate, as a result of the City of Seattle fixing the fish passage barrier on Lake City Way. The Department of Fish and Wildlife has reiterated that the passage under I-5 is adequate right now for the fish to get to Thornton Creek, and they have listed improvement to this fish passage as a high priority for the Department of Transportation.

6. STAFF REPORTS

Workshop to Discuss Critical Areas Ordinance Update

Mr. Stewart reminded the Commission that the State has mandated that cities update their Critical Areas Ordinance and incorporate or include best available science as they review their policies and regulations. He reported that the preliminary draft Critical Areas Ordinance Update has been released to the public and Commissioners. It was forwarded to the State in order to meet the 60-day comment period requirement. It can also be found on the City's website. Invitations have been sent to a number of groups, inviting them to meet with City staff to further discuss their issues of concerns. He said staff anticipates they will be working with various groups, including State resource agencies, over the next few weeks in preparation for the scheduled Planning Commission public hearing.

Matt Torpey asked that the Commissioners take notes during his presentation and ask their questions after he has completed the staff report. He reviewed each of the changes that are being proposed in the draft ordinance as follows:

- **Page 32 – Critical Areas Definition:** In order to mesh with the GMA, the proposed definition has been narrowed down to just five recognized categories (streams and wetlands, geologic hazard areas, fish and wildlife habitat conservation areas, frequently flooded areas, and areas of aquifer recharge). Staff believes that the three deleted categories could be wrapped into the other five listed categories.
- **Page 33 – Hazardous Trees Definition:** A definition of hazardous trees was added to the ordinance. The proposed definition was borrowed from King County's Critical Areas Ordinance and identifies a hazardous tree as a tree that would cause harm or damage to a structure, road or access. As per the proposed language, removal of hazardous trees must be consistent with tree conservation, permitting and site restoration requirements, and it must be replaced with another healthy tree.
- **Page 34 – Reasonable Use Definition:** Staff is recommending that the last sentence of the current reasonable use definition be eliminated, which is consistent with a request from a number of citizens.
- **Page 34 – Stream Definition:** The proposed change would add the word "open" to describe a watercourse. He explained that in the current definition, pipes and closed systems are not considered streams. The change would clarify this issue. In addition, the definition further clarifies that channels or beds do not necessarily need to have water in them year round in order to qualify as a Type IV Stream.

- **Page 39 – Section 20.80.025.D:** This is a duplicate section, staff is proposing that it be deleted from this section of the code.
- **Page 41 – Section 20.80.030.E:** The language in this section is also stated in the wetland definition. To avoid redundancy, staff is recommending that it be deleted.
- **Page 42 – Section 20.80.030.F:** This section exempts critical area requirements for Type IV Wetlands (the lowest class of wetlands in the City) that can meet the 1,000 square foot requirement or are smaller than 2,500 square feet. The proposed change would make the exemption much stricter than many jurisdictions, where the average number is 3,000 square feet for a standard exemption.
- **Page 42 – Section 20.80.030.H:** Staff is proposing this change to include an exemption that would allow native planting to occur in a wetland or stream buffer without a critical areas alteration permit.
- **Page 42 – Sections 20.80.030.I and 20.80.030.J:** This section allows an exemption for people who wish to top, trim, or thin trees on properties in order to preserve or enhance views. He noted, however, the requirement that no net loss of the function and values of the critical areas could take place. He advised that the current code allows absolutely no action on trees in critical areas, which looks good on the surface. But in some situations it might be good to clear out the non-native species and plant native species as per a qualified professional's recommendation.

Mr. Stewart advised that, along with the hazardous tree amendment, there have been code enforcement actions in Innis Arden as a result of about 100 trees being removed from the critical areas of the reserve under the hazardous tree provision. Staff has attempted to formulate a package that would allow for view preservation and enhancement if a critical area stewardship plan were developed. This language was built on a model from King County's agriculture and forest preservation plans. He further advised that staff believes the proposed change would tighten the hazardous tree exemption and make it more difficult to use. It would also require replacement of any hazardous trees that are removed.

Page 44 – Section 20.80.030.P – Mr. Stewart advised that this change would allow for the removal of up to six significant trees on a parcel in a critical area if all of its functions and values could be preserved.

- **Page 46 – Section 20.80.050:** Notice to title is required for any permit that involves a critical area on the property. However, most of these projects would not have an impact to the critical area. The proposed language would eliminate the ambiguity between a required tract and a simple notice to title for Type A Actions.
- **Page 47 – Section 20.80.050:** These changes are related to "notice to title" for larger applications such as plats, short plats, commercial, etc. If a critical area is located on the site, an applicant would be required to place the critical area in a separate tract.

- **Page 48 – Section 20.80.080:** The purpose of this proposed change is to clear up the sequence of requirements for mitigation of impacts to a critical area. The order of preference for the requirements is listed on Page 49 (Items A – E). In addition, the enforcee would be required to consider these actions when going through mitigation.
- **Page 50 – Section 20.80.210.A:** The proposed change would break out the three types of geological hazards that are identified in the Critical Areas Ordinance. These items are listed as Items 1 – 3 (erosion hazard, landslide hazard, seismic hazard).
- **Page 51 – Section 20.80.220.A:** This proposed change is a housekeeping measure that would eliminate the “class” structure. Instead, titles have been assigned to the types of geologic hazard. A moderate hazard would have a 15 to 40 percent slope, a high hazard would have a 15 to 40 percent slope with underlying soils consisting largely of silt and clay, and a very high hazard would have a slope of greater than 40 percent.
- **Page 52 – Section 20.80.220.D:** Staff is proposing that this section be eliminated since the ordinance already states that areas of greater than 40 percent slope are considered steep slopes.
- **Page 53 – Sections 20.80.230.C and 20.80.230.D:** This proposed change establishes a standard buffer of 50 feet for geologically critical areas, which is an industry standard and backed by best available science. The 50-foot buffer could be reduced at the recommendation of a geotechnical engineer. He explained that in almost any case where an applicant would propose a reduction in buffer, the City would do its own independent review of the buffer reduction.

Mr. Stewart noted that language in **Section 20.80.230.C** was also added to indicate that larger buffers may be imposed as required by a geotechnical report to eliminate or minimize the risk of people and property.

Commissioner Phisuthikul inquired if staff would provide a critical areas map of the City. Mr. Stewart said that, right now, the staff has been using the King County overlay maps that were published a long time ago. Work is in progress to create new maps based upon the stream and wetland inventory, updating the landslide areas, and other hazard areas. This effort would follow on the tail of the Critical Areas Ordinance. Right now, staff has map information to use, but the formal adoption of a critical areas map is an important step.

Commissioner Phisuthikul said it is important for the staff and Commission to know where the critical areas are located. Commissioner Sands suggested that it would be important for the Commission to have these maps available before they make a recommendation to the City Council on the Critical Areas Ordinance update. He explained that when the provisions of the ordinance are applied to the community at large, it could include the entire City. Or they could find that application of the ordinance does not include enough of the critical areas. The Commission must have maps to identify the critical areas before making a determination as to whether the ordinance is too restrictive or not restrictive enough. Mr. Stewart said staff would prepare a response regarding the mapping of critical areas.

Commissioner McClelland said all municipalities in the State have been given a mandate to apply best available science guidelines and adopt ordinances. The presumption is that the data and maps would come by way of development applications whereby the applicants would pay for the studies to be done. Over a period of time, a jurisdiction would accumulate a body of information. It would be extremely expensive for a jurisdiction to do their own mapping of critical areas, and she doubts staff would be able to provide accurate maps prior to the adoption of the Critical Areas Ordinance.

- **Pages 57 and 58 – Section 20.80.040.F:** Staff is proposing that this section be split up and placed in different sections of the Code. Item 1 was moved to Page 54. Item 2 could be eliminated since it relates to the “notice to title” requirement,” which was addressed earlier in the ordinance. Item 3 requires posting of bond and could be deleted since it is listed in the mitigation standards.
- **Page 60 – Section 20.80.260.A:** Staff is proposing to add the word “critical” as a type of species to the Federal threatened, endangered and priority species. Instead of using the words “identified by the Department of Fish and Wildlife,” staff is proposing to use the term “listed by the Department of Fish and Wildlife.”
- **Page 60 – Section 20.80.270:** The proposed change would add the Washington Department of Fish and Wildlife and the Washington Department of Ecology for assistance in helping the City establish the fish and wildlife habitat conservation areas.
- **Page 61 – Section 20.80.270.A:** This proposed change would eliminate the word “documented” since the presence of the species listed by the Federal or State Government is sufficient enough for the City to establish a fish and wildlife habitat area.
- **Page 64 – Section 20.80.310.A:** Previously, there was no definition for the term “wetlands.” The proposed definition would make it clear about what areas would be regulated. The second paragraph defines exactly what an artificially created wetland is. He recalled that, previously, the City had an exemption for alteration of artificially created wetlands, so it is important that a definition be provided in the ordinance.
- **Page 67 – Section 20.80.330.B:** Staff has proposed increases to both the standard and the minimum buffer area requirements. The proposed numbers were obtained from the WRIA 8 recommendations and are based on best available science. Mr. Stewart noted that the proposed buffers would be consistent with King County’s standards.
- **Page 67 – Section 20.80.330.C:** This language was changed to clarify that wetland buffers must be protected in one of two ways. He noted that in Items 1.b and 1.c, the word “or” was eliminated so there would no longer be options for mitigation. An applicant would be required to do all of the items. In Item 2, the words, “that will result in equal or greater wetland functions” were added, and this is consistently done throughout the draft ordinance. Any action must provide at least maintain the existing function or enhance the function before any proposed alteration would be allowed.

- **Page 68 – Section 20.80.330.D:** Mr. Stewart explained that the Aegis lawsuit was partly based upon a dispute of classification for Peverly Pond. One view was that Peverly Pond was a wetland and should be regulated as such. Another view was that it was a stream and should be regulated as such. Under the current ordinance, streams have larger buffer requirements, so there is an incentive for environmental advocates to argue for classification as a stream, and there is incentive for the property owner to argue as a wetland. Staff considered the difference in function and value between a stream and a wetland, and they couldn't come up with any quantifiable difference. The way staff is proposing to bridge the gap between streams and wetlands is to add language stating that where a wetland has salmonid fish use, a corresponding wetland or stream buffer, whichever is greater, shall be established. He noted that the buffers for streams correspond in type, generally, to the buffers for wetlands.
- **Page 69 – Section 20.80.330.F:** The change made to Item 1 includes the statement that the structure and function must be equivalent to or greater than the structure and function before averaging. Item 3 sets the minimum and maximum requirements for buffer averaging. The reference to ten feet was eliminated because the smallest buffer requirement would be 25 feet.
- **Page 74 – Section 20.80.350.D.3:** This section identifies the wetland replacement ratio requirements. He noted that the numbers were dramatically increased consistent with the Department of Ecology's recommendations.

Commissioner Sands referred to the wetland creation replacement ratio for a Type IV Wetland, which he assumes would apply if a wetland would be destroyed somewhere else. He said his interpretation is that the newly created replacement wetland would have to be 25 times the size of the one that was destroyed. However, enhancing an existing Type IV wetland would require a 6:1 ratio. Mr. Stewart explained that if an applicant were seeking to disturb 10 square feet of a wetland, he/she would be required to enhance 60 square feet of the existing wetland. Commissioner Sands asked how an applicant could be required to enhance a wetland that does not need to be enhanced. Mr. Torpey answered that this concern does not exist in urban wetlands. Mr. Stewart advised that staff could provide some illustrations to further explain how this concept would be applied. The Commission agreed that illustrations would be helpful.

Commissioner McClelland suggested that many people interpret the ratios to mean the area of the entire parcel, not the percent of the parcel that is disturbed, and this misconception has been a significant concern. She concluded that it is important for staff to provide clear information to illustrate the intent of this section.

- **Page 80 – Section 20.80.360.C:** This section was added to indicate that Tsunami hazard areas might be designated as flood hazard areas by the Federal or State Government. He noted that there is some Tsunami risk from Puget Sound. The section related to frequently hazardous areas was not changed because the City only has one area of town classified as a FEMA flood hazard area, along Boeing Creek by Hidden Lake. There are four or five privately-owned parcels in Innis Arden that would qualify for flood insurance. Mr. Stewart clarified that every property in the City is eligible for flood insurance, but the FEMA maps are rating maps.

- **Page 92 – Section 20.80.460.A:** A definition of “stream” was added to this section. The proposed definition would read, “Streams are those areas where open surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids and are used to convey streams naturally occurring prior to construction. A channel or bed need not contain water year-round, provided that there is evidence of at least intermittent flow during years of normal rain flow.” He noted that the last sentence refers to a Type IV Stream, which does not require water all the time. Mr. Stewart noted that this definition is identical to the definition on Page 34. While, typically, staff tried to avoid redundancy, they felt the definition should be located in both places to eliminate concern and confusion.
- **Page 93 – Section 20.80.470.A:** In the classification for a Type II Stream, the term “have salmonid fish use” was added, and Items 1, 2 and 3 were eliminated because of the ambiguities they presented. The potential for salmonid fish use could be argued indefinitely, and significant recreational value could be defined in different ways, depending on the area. Mr. Stewart explained that staff has identified what they believe to be a reasonable definition for salmonid fish use, but they expect the environmental proponents to look carefully at this section.
- **Page 94 – Section 20.80.470.E:** The long definition for temporarily created streams was removed because it was already stated in the definition of streams.
- **Page 95 – Section 20.80.480.B:** This section identifies the established buffers for streams. Again, staff attempted to match these buffers to those required for wetlands. The numbers are based on WRIA 8 recommendations.
- **Page 95 – Section 20.80.480.C:** This section was amended to match the language in the wetlands section for buffer averaging. It provides the maximum protection for critical areas.
- **Page 98 – Section 20.80.480.F:** These amendments are intended to make the buffer averaging section for streams match up to the buffer averaging section for wetlands. Nothing new was added to this section.
- **Page 99 – Section 20.80.480.H:** Previously, the City did not have any method for people to restore underground or piped streams on private property. Item H encourages watercourse restoration and establishes a ten-foot minimum buffer for the new proposed streams. Mr. Stewart explained that under the current regulations, daylighting a piped watercourse would make it a Type III Watercourse, and the standard buffer width of 65 feet on each side would be required. The proposed language would provide a method whereby a property owner would be required to provide a minimum 10-foot buffer on each side for maintenance and restoration. Staff believes the proposed language would provide an incentive for the restoration of piped watercourses.
- **Page 109 – Section 20.50.310.A.1:** The current code does not require a person to notify the City before a hazardous trees is removed. This amendment would require a person to notify the City

within one working day, and if possible, before they take the hazardous tree out. It would also require tree restoration for hazardous trees that are removed.

- **Page 110 – Section 20.50.310.A.5 and A.6:** This item provides an exemption from needing another permit if an applicant is already working with the City to have a critical areas stewardship plan. Item 6 exempts commercial properties from being required to obtain a clearing and grading permit to remove trees unless there is a critical area involved.
- **Page 127 – Section 20.50.360.C:** This amendment eliminates the exemption for hazardous trees from the planting requirements. Arborists would have to recommend the number of plantings, the type of plantings, and the method of planting that would take place to replace the hazardous tree that was removed.

Vice Chair Piro suggested that in order to keep the Commission's discussion at a manageable level, perhaps they should work through the document sequentially, section by section. Commissioner Sands said he spent a lot of time reviewing the draft ordinance, and he has questions on just about every page. He suggested that it might be more productive for him to submit his questions to the staff after the meeting. Copies of his questions and the staff's response could be forwarded to each of the Commissioners. He said he feels the entire document was drafted poorly, and useful definitions were taken out.

Vice Chair Piro agreed with Commissioner Sands that it would be helpful for the Commissioners to forward their written questions to the staff. Staff could respond to these questions at a subsequent meeting. However, he suggested that perhaps they could begin reviewing the first sections of the document now.

Commissioner MacCully concurred that there are advantages to the Commissioners directing written questions to the staff. He suggested that the Commission continue their group discussion on issues such as mapping, the overall impact of the proposed changes, etc. Commissioner Kuboi agreed that the Commission should spend more time discussing the intent of the proposed ordinance.

Chair Harris said that if the Commissioners agree to forward their comments to the staff, he would like to see a collective summary of all of the questions. The Commission agreed that rather than debate issues now, the Commissioners should forward their written questions and concerns and allow staff to prepare a response for presentation and discussion at a future meeting.

Vice Chair Piro inquired regarding the schedule for the Commission's review of the proposed Critical Areas Ordinance. Mr. Stewart reminded the Commission that the State mandate required the City to complete their review of the critical areas ordinance by the end of 2004. However, very few cities have actually met this deadline. More important than getting the document done on time is getting it right. If the Commission needs more time to work on their review, they should do so. He recalled that the original ordinance was adopted in 2000 using best available science. While some could argue that this meets the State's mandate, staff believes changes are necessary, and the Commission should move forward with discussion and debate of the proposed ordinance. He recommended that the Commission

take as much time as they need to review the Critical Areas Ordinance, even if they have to postpone the public hearing beyond February.

Commissioner Phisuthikul requested that staff provide each Commissioner with a copy of the existing critical areas map. Mr. Stewart explained that Section 20.80.020 in the current ordinance (Page 38 of the staff report) states that the approximate location and extent of identified critical areas within the City's planning area are shown on the critical areas maps adopted as part of this chapter. However, no maps were ever adopted. He pointed out that the language indicates that the maps were to be used for informational purposes only to assist property owners and other interested parties. It further states that the boundaries and locations indicated on the maps are generalized, and that critical areas that have not been previously mapped may occur within the City. This section goes on to talk about how the actual classifications are made as part of project applications.

Mr. Stewart reported that Mr. Torpey has made great progress on the mapping folio, and a draft set of maps should be available soon. He advised that the stream and wetland inventory required a huge amount of work, but the project has been completed.

Commissioner MacCully said it is important that the Commission not require the staff to hurry the maps, thus ending up with non-professional documents. While the maps would likely generate more public response, it is important that they be accurate. He said he would be interested in learning how the impacts of the proposed changes would differ from the current requirements. The proposed changes could increase the amount of non-developable land, which is not necessarily bad. But there would also be more instances where the development of a property would require a reasonable use permit.

Mr. Stewart asked that staff be allowed an opportunity to consider the mapping issue further. He said he is optimistic that they would be able to provide maps to identify the generalized location of the critical areas. Mr. Torpey said the City already has information showing where the wetlands and streams are located, but they don't have each one of them classified yet. Therefore, they would be unable to map the buffer zones. Mr. Stewart summarized that he understands the Commissioner's concerns about mapping and would prepare a response at the next meeting.

Commissioner Hall inquired if the maps would distinguish between the fish and wildlife habitat conservation areas and other types of critical areas. Mr. Stewart answered that the City has never designated a fish and wildlife habitat conservation area. However, the City does have information from the Department of Fish and Wildlife identifying areas they have designated. He noted that there is language in the proposed ordinance whereby areas that are not mapped could be designated through another mechanism. He said he received questions regarding this same issue from the Thornton Creek Alliance, and he responded with an email that is now part of the record. He said he would provide a copy of the email to each of the Commissioners.

Commissioner McClelland said the first paragraph in **Section 20.80.270** of the ordinance should be changed to make it clear that the City has not designated any fish and wildlife habitat areas. Perhaps the words "designated by the City" should be deleted. Mr. Stewart agreed that staff should clarify the intent of this section.

Commissioner Hall said he finds it difficult to understand, from reading the ordinance, what protections apply and when. He specifically referred to Puget Sound shorelines. Mr. Stewart answered that Puget Sound is the only Category I Watercourse in the State, and it is protected under the Shoreline Management Act. His understanding of the current law is that the Shoreline Management Act dominates as long as the protections are no less than those provided for in the Critical Areas Ordinance. This requires that any development within 200 feet of the high water mark must meet the provisions of the Shoreline Master Program. Mr. Stewart suggested that the staff and Commission discuss the relationship between Shoreline's Critical Areas Ordinance and the Shoreline Master Program at a future meeting.

Vice Chair Piro recalled that the GMA included provisions for looking at hazard areas that were created by human actions, such as mines, etc. Mr. Stewart advised that Type D Soils have recently been mapped by the University of Washington. These soils are susceptible to high degrees of liquefaction during a seismic event, particularly for brick or masonry structures. In the future, the City must map and designate the Type D Soils as seismic hazard areas.

Commissioner McClelland asked why there were no aquifer recharge areas identified in Shoreline. Mr. Stewart explained that the City is located on a mound of earth between Puget Sound and Lake Washington, and it is likely that the water probably flows into the surface waters. Aquifers can be thought of as below ground lakes that are recharged by surface water percolating down. He suspects the water tables in Shoreline are more closely related to the hydrology of Lake Washington. He advised that the primary reason for protecting aquifer recharge areas is when they are used as a source of drinking water, and there are no wells in the City of Shoreline that use them. However, the hydrology of the surface water is a whole different matter and is very important when it comes to recharging streams and wetlands.

Commissioner MacCully pointed out that best available science appears to be a developing and changing environment with something new coming up regularly. He asked how often the City should review newest best available science practices and update their ordinance. Mr. Stewart referred to RCW 36.70A.172(1), which states that "when designating and protecting areas, cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries."

Commissioner Sands said his interpretation of this RCW is that the City must review and use best available science when developing their statutes. While it does not require a City to follow the best available science if it is not meaningful to them, they must take it into consideration.

City Attorney, Ian Sievers, referred to the court case known as the "Action Network Case." This case dealt with the questions of how to use best available science and how cities could simultaneously balance the GMA goals with their obligation to protect the environment. He quoted a few paragraphs from this court case as follows:

“The County is correct when it asserts that under GMA it is required to balance the various goals set forth in RCW 36.78.020. It is also true that when balancing the goals in a process of adopting a plan or development regulation under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency’s ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if the local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA, which it is implementing by making such a choice.”

Mr. Sievers explained that the County lost their case because they could have balanced, but simply didn’t. The County didn’t create a record pointing to the other goals, nor did they develop facts to support why they didn’t select something within the range of best available science. While they thought they had picked something within the range of best available science, the court could not find supporting evidence in the record.

Mr. Sievers said the county won on one issue because they adopted something within a range of best available science for a Type I Stream buffer. He read the following from the court case:

“We conclude that substantial evidence exists to support the court’s concluding that a Type IV Stream is a stream that is two feet or wider, not used by a significant number of fish, its primary importance is predicting water quality down the stream.”

Mr. Sievers pointed out that the County recommended 50-foot buffers for Type IV Streams and the Washington Department of Fish and Wildlife recommends buffers of 150 feet for Type III and 150 to 225 for these Type IV Streams. The environmental group that appealed the County’s ordinance alleged that best available science requires a 100-foot minimum for all streams. The courts found that the County produced a number of scientific studies showing that their selected buffer for the streams did meet most functions for Type IV Streams, and in this case, the record supported their buffer requirements. He concluded by stating that when a city adopts something that is outside the range of best available science, they must also adopt their own findings showing why and how they are balancing best available science with GMA goals.

Commissioner Broili said he worked in Skagit County several years ago when they were trying to apply buffers. Dr. Albertson, a Fisheries specialist who has done a lot of work with best available science, provided testimony at the Growth Management Board that best available science depends on the question you are asking. As an example, Skagit County was trying to apply buffer averaging and buffers that were based on Department of Fish and Wildlife data on what is best available science for upland streams. But when considering lowlands, flood plains and developed lands, it is important to ask if the best available science is still appropriate science. Mr. Sievers recalled the description of best available science that was provided to the Commission at a previous meeting by the consultant, Paul Inghram. He advised that the City must consider the key variables associated with the area being considered.

Commissioner Hall commended the staff for carefully reviewing the work that was done for the WRIA 8 Plan. In terms of creating a defensible ordinance, he felt the staff did a great job. Relying on the work that has already been done is a great place to start. If the City chooses to depart from best available science, they know they must provide evidence in the record to support this diversion.

Commissioner Kuboi inquired to what extent the current draft ordinance balances the GMA goals. If it does not, he asked staff to describe the proposed process for the Commission to balance the proposed draft with the GMA goals at some point in the future. Mr. Stewart answered that staff often hears numbers of 300 feet for buffer areas, but these are more applicable to rural areas. Shoreline is highly urbanized, and he is comfortable that the recommended buffers are appropriately balanced with the other goals of the GMA. Staff has not completed the specific analysis of how much buildable land they would lose by increasing the buffers, but this information could easily be produced. He noted that King County has developed two standards, one for the rural areas and one for the urban areas. The standards that is being recommended in the draft ordinance are consistent with those identified by King County for their urban areas.

Commissioner McClelland recalled an APA Conference session a few years ago when best available science was being discussed at length. She reminded the Commission that the Department of Community, Trade and Economic Development (CTED) is trying to accomplish some standards for science that make the ordinances amongst the participating municipalities a little more consistent. This would enable the State to build a body of knowledge and test the requirements. One of the deficiencies in the requirement for best available science is that the regulations have not been in effect long enough for scientists to have a clear idea of what the results will be. The goal is to build a track record based on the length of time the requirements have been in effect. Best available science is a new concept, and Washington is one of the few states that require statewide compliance.

Commissioner Broili said one of the things he learned from the Skagit case was that the width of the buffer is dramatically impacted by what the upland use is, especially in urban areas. He suggested that in an urban area it could be argued that the 120 to 150-foot buffer would not be adequate in almost any case. Mr. Stewart agreed. He said it is important to focus on the function the buffer is performing. If the function of the buffer were to enhance water quality and 80 percent of a watershed comes directly off a street without any cleansing, the function of the buffer would not be met. The City must then determine if they could provide that function some other way, and these other options might pay the biggest dividends in urban areas.

Commissioner Kuboi inquired if staff would obtain input from other City Departments, who might be proponents for other aspects of the GMA goals (i.e. economic development, affordable housing, etc.). Mr. Stewart advised that the City has a leadership team, where all of the departments meet to discuss the various strategies involved in balancing requirements. Commissioner Kuboi asked that staff provide a synopsis of the input that was provided at the leadership team meetings. This would enable him to better represent the overall community interests. He advised that staff would prepare to address the GMA goals in more detail at a future Commission Meeting.

Mr. Sievers suggested that it is important for the Commission to go back to the original question of what is being proposed in the draft ordinance. Is it a straightforward best available science plan, or are they proposing something that does not quite fit within the range of best available science thus requiring the City to balance the ordinance with other values? He suggested that since the ordinance falls within the range of best available science, there would be no need for the City to balance it with the other GMA goals. However, there has been some inference by the Commission that they would like to complete this balancing exercise anyway. However, unless the ordinance is applied to a City map to determine how uses and land would be impacted by the critical areas and buffers, it would be difficult for the Commission and staff to consider the appropriate balance.

Mr. Sievers further suggested that rather than being scientific standards, the terms, “urban” and “rural” are more political balancing standards. The City is faced with making a political decision. While there are definite benefits to protecting the critical areas in rural areas to a greater degree, urban areas such as the City of Shoreline must consider other factors, as well.

Commissioner MacCully noted that most of the Commission’s discussion about maps has been related to the critical areas associated with water. However, they must also consider the other types of critical areas, which might be easier to define, such as erosion hazard areas, landslide hazard areas, seismic hazard areas, fish and wildlife habitat areas. Mr. Stewart pointed out that geologically hazardous areas were defined by King County years ago, and they have not changed very much over the years. The most significant issue is related to Type D Soils as discussed earlier, and staff plans to provide more information regarding these soils at a future meeting. Commissioner MacCully emphasized that if someone were to build a home on unstable soil and a problem occurs, the entire community would have to pay a price to address the problem. The Commission should consider opportunities to avoid these situations.

Commissioner Hall pointed out that the buffer widths that are proposed in the draft ordinance are not those that were identified by the pure scientific exercise. He further pointed that science would say that fish do not care whether a stream is located in a rural or urban area, and the rationale behind King County and WRIA 8’s decision to reduce the risk was based on other factors, including the desire to allow development to occur in patterns that are comparable to what has occurred to date. He suggested that it would be wrong for the Commission to believe that the buffer widths proposed in the draft ordinance were based purely on science. Elected officials have worked very hard in the WRIA 8 process, and their discussions have gone far beyond science in trying to balance environmental needs with future growth. The City Council must determine whether or not the proposed ordinance constitutes best available science, based on the Commission’s recommendation. The Commission’s recommendation as to whether the ordinance represents the right balance would be crucial to the City Council’s ultimate decision.

Mr. Stewart inquired if the Commission would like staff to generate a map that illustrate the impacts of a strict application of a 300-foot buffer requirement for all critical areas. The Commission agreed that would not be appropriate. However, Commissioner Sands indicated that he would like the staff to generate a map to illustrate the application of the buffers proposed in the draft ordinance.

Commissioner Sands said it is important for the Commission to keep in mind the impacts the proposed ordinance would have on individual property owners. He suggested that the proposed ordinance is incredibly confusing, and in all likelihood it is unworkable. He said the ordinance is not clear about how a private property owner is supposed to comply with the requirements. Would an owner of property that has a slope be required to obtain a geotechnical review to determine if a critical area exists before the property could be sold to a third party? Mr. Sievers answered that a property sale is not one of the identifiable land use approvals that would require notification on property records. Only permit actions would trigger this requirement. Commissioner Sands said that as he considered the buffer requirements for Type IV Wetlands, he found them to be ridiculous. The 35-foot buffer requirement around a 2,500 square foot Type IV Wetland would equate to 10,000 square feet of buffer area to protect just 2,500 square feet of wetland. This would require 1/3 acre of land to protect a small wetland space. If the wetland is smaller in size, the situation could get even more ridiculous. He expressed his concern that it would be difficult to make an ordinance that fits every situation.

Commissioner McClelland said that when reviewing the draft ordinance, she had to take the point of view that the Commission cannot consider every conceivable application and outcome. She suggested that perhaps it would be helpful if staff were to provide a vacant lands map to illustrate the number of vacant properties in the City that might be impacted by the ordinance. The Commission should not presume that every property in the City would be redeveloped or that every development application would trigger the ordinance. Mr. Stewart advised that the City recently completed a buildable lands inventory as per a State requirement. This process indicated that 98 percent of the City's projected growth would be redevelopment. There are very few vacant properties in the City, with the exception of some under-utilized parcels.

Vice Chair Piro referred the Commission to the sections of the proposed ordinance related to hazardous trees. He inquired if an "approved utility facility" is defined in any of the City's code documents. Mr. Stewart answered that there is a definition for this term on Page 34 of the ordinance. He explained that the current "hazardous tree" definition does not carefully qualify what target the tree would receive, and some have made the argument that a target any place on the ground would qualify as a hazardous tree. Others have said that as long as the tree is not located in an area where humans spend a lot, it should not be considered a hazard.

Commissioner Phisuthikul suggested that rather than creating a map that defines all of the proposed setback areas at this time, it would be helpful for staff to at least identify the various types of critical areas. Mr. Stewart noted that the stream inventory listed all of the watercourses, and the criteria in the ordinance was applied to the stream reaches or segments to make a classification. The same process could be used to create maps for wetlands, slopes, etc. Again, he said staff would spend some time researching mapping possibilities that could aid the Commission in their review.

Commissioner MacCully inquired if the City has a provision to fine people who illegally cut down trees. Mr. Sievers said the ordinance has criteria for various kinds of fines for intentional acts. There is also a whole other level of fines to capture any economic profit from violating critical areas laws. The intent is to prevent a situation where a property owner is willing to pay a fine because the benefit (i.e. a view, etc.) to him/her would be greater. An individual would be required to pay a fine that is equal to the

increase in the market value that is obtained. Mr. Stewart advised that **Section 20.30.780** is the penalty portion of the ordinance. He briefly reviewed the proposed language. He said that in one recent case, the City imposed a fine of \$1,000 per tree. In another case, a significant fine was imposed but was abated by the Hearing Examiner provided that restoration was done in accordance with the restoration program.

Vice Chair Piro said he would like the staff to provide some reassurance that the City would not end up with a situation where a lovely, healthy tree is removed because a branch hangs over a utility line. Mr. Stewart said language is included in the ordinance related to removing only that portion of the tree that is hazardous. Vice Chair Piro said he would like the language in the ordinance to make it clear that removal should only be allowed if it is the only recourse.

Commissioner Hall said that as he read through the tree removal section of the ordinance, he found that perhaps the amendments go too far the other way and create an inadvertent possible loophole. He specifically referred to **Section 20.50.310.A.1** on Page 109 of the Staff Report. He noted that the language “an immediate threat to the public health, safety or welfare” was not repeated in the definition of a hazardous tree. Therefore, as proposed in the draft ordinance, if a tree falls under the range of environmental conditions of the site, the entire tree could immediately be removed because it is hazardous without any advance notice to the City. He felt this exemption goes too far and does not do enough to protect trees. He encouraged the Commission to consider a requirement of advance notice unless there is an imminent threat to life or property. Mr. Stewart said this issue would likely receive significantly more discussion at future meetings. He said he understands Commissioner Hall’s concerns since staff has discussed the issue of imminent threat at length while engaged in enforcement actions.

Commissioner Sands inquired if the proposed ordinance includes a definition for the term “significant tree.” Mr. Stewart answered affirmatively. Commissioner McClelland said it would be helpful to have a copy of all of the definitions rather than just those for which amendments are being proposed. Mr. Stewart advised that the definitions are all located in the Development Code. Vice Chair Piro suggested that the Critical Areas Ordinance cross-reference the applicable definitions from the Development Code.

Commissioner Sands clarified that the proposed ordinance would not limit the number of non-significant trees a property owner could remove. However, only six significant trees could be removed from a property during a three-year period. Mr. Stewart concurred but noted that, under the current code, a property owner would not be allowed to remove any significant tree from a critical area. In addition, the Planning Director would have the discretion to determine what constitutes the removal of a significant tree, and an interpretation is on record to aid in this determination.

Commissioner Sands inquired if arborists who work in the community have a clear understanding of the City’s rules and requirements. Mr. Torpey said that an arborist must be licensed by the State of Washington, and it would be considered a breach of professional ethics if he/she were to remove a significant tree without following the City’s rules and requirements. Commissioner Sands inquired how the City tracks these situations to make sure the tree removal regulations are met. Mr. Stewart explained the current process for tracking and enforcing code violations, including those related to the tree ordinance.

Commissioner McClelland inquired if the 10-foot buffer guideline for a piped-watercourse would apply if the City or another public agency were the applicant. Mr. Stewart answered that the buffer requirements would not vary by applicant.

The Commission discussed the schedule for proceeding with their review of the draft ordinance. Mr. Stewart summarized that it does not appear the Commission would be ready to hold a public hearing on February 17th. He suggested that the schedule be adjusted to allow at least two more work sessions for the Commission to review the additional information that has been requested. The Commission agreed that the February 17th meeting should be tentatively scheduled as a Planning Commission workshop to review the draft Critical Areas Ordinance, with the anticipation of a public hearing on March 17th.

Commissioner Broili reminded the Commission that questions have been raised regarding the overall philosophy of the proposed Critical Areas Ordinance. In addition, the Commission has just begun to voice their numerous questions regarding various aspects of the ordinance. He suggested that the Commission first identify a strategy for reviewing the ordinance in a progressive way that would allow them to be effective with their time. Commissioner Hall agreed with Commissioner Broili. He recalled his previous suggestion that the Commission's next workshop discussion should be limited to specific issues that are raised by the Commission via written comments to staff. The staff could compile these issues and provide a response to each. He suggested that each Commissioner be responsible for submitting their list of items they would like to discuss at the next workshop. If any Commissioner feels strongly that something in the proposed ordinance should be changed, they should put forward their ideas for a proposed amendment to address their concerns.

Vice Chair Piro agreed with the process recommended by Commissioner Hall and felt it would enable the Commission to get through their initial review of the proposed ordinance with only one additional workshop. However, he suggested that staff notify the Commission as soon as possible if they feel they have received an overwhelming amount of material. This would enable the Commission and staff to modify the schedule and notify the public. The Commission agreed that their comments should be forwarded to the staff no later than January 28th. The staff could then provide their written response to the Commission on February 3rd. Mr. Stewart pointed out that there are other significant items scheduled for discussion at the February 3rd meeting, so the Commission would not have an opportunity to discuss the new information in detail. The Commission could review the responses and be prepared to discuss their concerns and questions at the February 17th workshop meeting. He added that a compilation of the Commissioners' questions would be forwarded to each of the Commissioners as soon as possible after January 28th. In addition, Mr. Stewart suggested that individual Commissioners could schedule an opportunity to meet with the staff to discuss issues related to the proposed ordinance prior to the February 17th workshop discussion.

Commissioner Broili said he is still unclear about how the Commission plans to resolve their concerns related to the basic philosophy of the Critical Areas Ordinance. The proposed process of submitting questions to staff would probably not be the appropriate method for dealing with this issue. He suggested that this issue could be best addressed through a Commission discussion process. Mr. Stewart explained that as the Commission reviews the ordinance, part of their basis would depend upon the

goals and policies that are now being considered by the City Council. These policies will set the framework for the Critical Areas Ordinance update, within the confines of the law. As the Commission gets further into their review, the values will come forward in terms of what the actual rules should be and how they should be applied.

Commissioner MacCully emphasized his belief that while the review process would not be as clean and orderly as some of the Commissioners may desire, one of the advantages of a group discussion is the opportunity to consider the philosophical underpinnings. The more the Commission learns about the proposed ordinance, the more intense their discussions would likely become.

Commissioner McClelland suggested that staff provide a one-page summary of the GMA Goals for the Commission to reference during their future review and discussions. Mr. Stewart advised that staff could provide this information. Mr. Torpey asked that the Commissioners submit their questions to him electronically, if possible.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports from Commissioners.

8. UNFINISHED BUSINESS

Mr. Stewart reported that proposed a process for the City Council to follow for the review of the Cottage Housing Ordinance, and they provided a number of comments and suggestions. Council Member Fimia developed an alternative process, which has been reviewed by the staff. The staff will present an alternative process for the City Council's consideration on January 24th. He further reported that at the January 24th City Council Meeting, staff would also request a six-month extension to the cottage housing moratorium to allow sufficient time to review the ordinance. He advised that the City Council expressed a desire to tour cottage housing projects with the Planning Commission, and staff is in the process of scheduling this event. He noted that the original application that was submitted for the Cottage Housing Project on Northwest 8th Street has been re-submitted as an 8-unit single-family development, instead.

Mr. Stewart reported that the City Council opened the public hearing for the Comprehensive Plan amendments in December, and it was continued to January 10th. The record has been kept open for written comments until January 21st. There have been 55 people comment thus far, and about 150 to 200 individual comments. Staff would put together responses for all the comments, and the City Council is expected to move into deliberations soon.

Commissioner Hall suggested that perhaps a joint City Council/Planning Commission retreat could be scheduled on the same evening as the cottage housing tour. Mr. Stewart said a retreat is on the staff's list of item to complete, but the Comprehensive Plan and Critical Areas Ordinance amendments are their top priority right now. Commissioner Piro reminded the Commission that they also suggested holding the retreat in another community where they could look at some features of development that are happening elsewhere. One suggestion was the Mill Creek Town Center Development.

Commissioner Kuboi requested an update of the Gateway Shopping Center Project. Mr. Stewart reported that the street was vacated, and the site development permit was approved. The building permit for the Bartell's project was approved and issued, and the building permit for the L-shaped building is very close to being approved. He reminded the Commission that there are a number of conditions associated with the vacation and permit that still must be met.

Chair Harris inquired regarding the timeline for the demolition of the businesses along Aurora Avenue North. Mr. Sievers said the time period is supposed to expire in February or March, and it appears that one business will request an additional month or two. Mr. Stewart advised that the City has hired a consultant to finalize the design of the trail from North 175th Street up to North 192nd Street. A short briefing on the proposed design could be scheduled on a future Commission agenda. There may also be some public open houses scheduled regarding this issue.

Chair Harris inquired if Sky Nursery has received a building permit for a new building. Mr. Stewart said discussions are taking place between the City and the owners of Sky Nursery regarding their future development plans. They are moving forward with a long-range development plan for their property, and part of that plan includes where the trail is going to be located and where the pedestrian connections are going to be made.

Vice Chair Piro referred to the memorandum the Commissioners received from Davida Finger who is doing some legal counsel for some Shoreline citizens. He said he welcomes opportunities to talk with citizens and neighbors about issues. However, he requested that staff provide the Commission with advice in terms of the nature of these communications and discussions when legal actions are involved. Mr. Stewart indicated that staff would review Vice Chair Piro's concern and provide a response.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. ANNOUNCEMENTS

Chair Harris announced that the City of Shoreline is planning a 10-year birthday celebration. Committees have been formed to plan and coordinate the event. He has been invited to participate on two of these committees. The event will be held in late summer in conjunction with the annual "Celebrate Shoreline" event.

11. AGENDA FOR NEXT MEETING

Ms. Spencer reminded the Commission of their previous recommendation to the City Council that a condition be placed on Drift On Inn's special-use permit requiring that it be revisited after the racing season. Mr. Stewart recalled that the Commission had raised the question about whether additional traffic mitigation should be required.

Mr. Stewart said the Commission would also review the site-specific Comprehensive Plan changes at the February 3rd meeting. He reminded the Commission that this would be a quasi-judicial action. Ms. Spencer added that summary details of each of the proposed changes were provided in the Commission folders.

12. ADJOURNMENT

The meeting was adjourned at 9:50 p.m.

David Harris
Chair, Planning Commission

Jessica Simulcik
Clerk, Planning Commission