

4.6.2005 Tns

Sanders notes  
see highlights

hearings and joint meetings with the Bothell Shorelines Board. The Commission considered buffer widths observed by neighboring jurisdictions (King County (Exhibits 8 & 32), and Snohomish County, Woodinville, Kenmore & Bear Creek Basin (Exhibit 18 & 48). In arriving at recommended buffer widths below, the Commission attempted to balance BAS with concerns raised during public testimony, such as:

- consistency with neighboring jurisdictions;
- balancing pertinent GMA goals 1, 2, 4, 5, 6 and 10;
- achieving critical area protection with minimum widths necessary;
- respecting property rights and not asking individuals to bear an inordinate amount of responsibility for community environmental protection.

64. The Commission's proposed recommendations regarding stream buffers, as well as current buffer widths contained in Bothell Municipal Code (BMC), are shown in the table below.

Current BMC 14.04.260.D		Proposed PC Recommendation	
Category	Buffer Width	Category	Buffer Width
1	100 ft	S	100 ft
2 (salmonid-bearing)	100	F	100
2 (non-salmonid-bearing)	75	Np	75
3	50	Ns	50

65. The Commission finds that there are certain streams or segments of streams that warrant special consideration and protection, because they provide salmon spawning and rearing habitat or because they directly support that activity. The Commission finds that these segments should be designated as "Streams of Local Significance":

Per information in Finding 47, the Commission recommends that the three spawning reaches of North Creek:

- between 240<sup>th</sup> to 228<sup>th</sup> St SE,
- behind Salmon Run Apartments bordered by 19th Ave SE, 20th Ave SE and ultimately 228th SE, and
- the reach located within Thrasher's Corner Park receive this special designation.

In addition, the Commission recommends that the five tributaries listed in Finding 46:

- the entire reach of Palm Creek;
- the entire reach of Coal/Woods Creek;

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for  
 Deputy Mayor  
 Thrasher  
 Council person  
 Mayor  
 GAIN

- Royal Anne Creek from 9<sup>th</sup> Ave SE to its confluence with Filbert Creek;
- No Name Creek behind Fred Meyer; and
- Filbert Creek

should also receive this special designation. Additional protections provided by this special designation should be determined on a case-by-case basis to reflect specific functions provided at each location.

66. In recognition of the value of the entire North Creek system, the Commission also recommends updating the 1994 North Creek Watershed Management Plan to include best management practices.

## Additional Issues Raised

-  67. An overriding concern expressed by the Planning Commission was the possibility of increasing buffer widths without allowing for transfer of density from the buffers. The concern stemmed from a variety of issues, including providing for other GMA goals, meeting population targets mandated by state Office of Financial Management, respecting individuals' property rights, and not wishing to ask individual property owners to bear the cost of environmental protection that has cumulatively been impacted by historical development in Bothell. The Commission recommends comprehensive attention to strategies insuring economic recovery to property owners impacted by larger buffers.

68. The Commission sought legal direction regarding the legal doctrine commonly referred to as takings and substantive due process particularly as they relate to potential increases in buffer widths. In the absence of a specific recommendation from the City Attorney, the Commission reviewed a December 2003 Advisory Memorandum for the State Attorney General's office (Exhibit 49), an undated, unreferenced article by Alexander Mackie of Perkins Coie entitled "Critical Areas and Big Buffers" (part of Exhibit 36), and a letter from attorney Troy Fuhrman to City Attorney Michael Weight dated October 21, 2002 (Exhibit 41). The Commission finds that the City Council should receive a complete briefing from the City Attorney regarding these legal concepts at the beginning of its review of the Critical Area Regulations.

69. In addition to prescribed buffer widths, the Commission also considered whether there might be circumstances where buffer widths might be increased or decreased.

The Commission finds that the buffer should be increased when:

- The buffer has a steep slope, and its ability to protect water quality is compromised as determined in a critical area study;