



CITY COUNCIL MEETING AGENDA

August 16, 2010

SPECIAL MEETING, Council Chambers, 1st Floor

For the purpose of holding a discussion on the draft Shoreline Master Program

6:00 p.m.

and

COUNCIL MEETING, Council Chambers, 1st Floor

7:00 p.m.

400 SW 152nd Street, 1st Floor

Burien, Washington 98166

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1. CALL TO ORDER	2. PLEDGE OF ALLEGIANCE	3. ROLL CALL	
4. AGENDA CONFIRMATION			
5. CORRESPONDENCE FOR THE RECORD	<ul style="list-style-type: none"> a. Letter Dated July 21, 2010, from Paula J. Hammond, State Transportation Secretary, Regarding City’s Request that WSDOT Scope a Proposed Project at SR 518/Des Moines Memorial Drive. b. Letter Dated July 23, 2010, from Sam Pace, Seattle King County Realtors®, Regarding Shoreline Master Program. c. Letter Dated July 28, 2010, from Carol Jacobson Regarding Burien’s Six Year Transportation Improvement Project (TIP). d. Response from Lisa Clausen, City Manager’s Office, to Email Dated July 28, 2010, from Loren and Lola Kennel Regarding Clean Up City and Generate Revenue. e. Letter Received July 29, 2010, from Greg R. Scism Regarding the Burien Shoreline Master Plan. f. Letter Received July 29, 2010 Regarding the Burien Shoreline Master Plan. g. Response from Richard F. Loman, Economic Development Manager, to Letter Dated July 31, 2010, from Ken Klettke Regarding Parking Fine. h. Email Dated August 1, 2010, from John Upthegrove Regarding Why the Weir? 		<ul style="list-style-type: none"> 3. 5. 39. 41. 43. 45. 47. 49.

COUNCILMEMBERS

Joan McGilton, Mayor
Jack Block, Jr. Kathy Keene

Rose Clark, Deputy Mayor
Lucy Krakowiak

Brian Bennett
Gordon Shaw

CITY COUNCIL MEETING AGENDA

August 16, 2010

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Washington State
 Department of Transportation
 Paula J. Hammond, P.E.
 Secretary of Transportation

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AUG 02 2010

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 P.O. Box 47300
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CITY OF BURIEN

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July 21, 2010

The Honorable Joan McGilton
 Mayor, City of Burien
 400 SW 152nd Street
 Suite 300
 Burien, WA 98166

Dear Mayor McGilton:

Thank you for your letter of July 1, 2010 requesting that the Washington State Department of Transportation (WSDOT) scope a proposed project at the above referenced location. Our Urban Planning Office has enjoyed partnering with you in analyzing potential improvements at SR 518/Des Moines Memorial Drive and I certainly understand your interest in moving this project forward.

This year's budget did provide WSDOT with \$2,000,000 to be used statewide for "scoping unfunded state highway projects to ensure that a well-vetted project list is available for future program funding discussions." As you can imagine, there are a number of high priority projects throughout the state that would benefit from further analysis and we are working on a plan to ensure that those with the greatest need and benefit receive funding.

We will consider inclusion of the SR 518 Des Moines Memorial Drive Interchange Project as we develop our scoping plan.

Should you have any further questions, please contact our Northwest Region Administrator, Lorena Eng at 206.440.4706 or EngL@wsdot.wa.gov.

Sincerely,

Paula J. Hammond, P.E.
 Secretary of Transportation

PJH:jaa

cc: Burien City Council
 Burien Legislative Delegation (Districts 11, 33, and 34)
 The Honorable Mary Margaret Haugen, Senate Transportation Committee Chair
 The Honorable Judy Clibborn, House Transportation Committee Chair
 Dillon Auyoung, WSDOT
 Lorena Eng, WSDOT

CFTR: 08/16/10



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JUL 29 2010

CITY OF BURIEN

July 23, 2010

Burien City Council
City of Burien
400 SW 152nd St., Suite 300
Burien, WA 98166

RE: Shorelines Master Program

Dear Mayor Mc Gilton and Members of the City Council,

I'm writing to you on behalf of the Association of REALTORS®¹ to offer written comments of record to supplement our prior verbal comments of record in connection with the Council's update of the City's Shoreline Master Program.

As you know, we participated in the June 14th, June 21st and July 19th Council meetings regarding the update of the City's Shorelines Program.

When I testified most recently on July 19th I indicated I would be:

- Providing the Council with a REALTOR® *White Paper* on the Shorelines issues (prepared by Attorney Charles A. Klinge of the Groen, Stephens and Klinge law firm); and
- Providing an indication of items that caught our attention in the Planning Commission Draft.
- Additionally, I indicated that although we had not yet had the opportunity to analyze the newly released staff proposal that recommends revisions to the Planning Commission draft, once we have completed our review of the proposed revisions we will share our observations about those with the Council.

As promised, I have attached the *White Paper* I referenced on July 19th and request that it be included in the record - along with these written comments - because it outlines what we believe are appropriate considerations for achieving the kind of balanced shorelines program required by state law.

¹ Our 6,000⁺ REALTORS® on whose behalf these comments are submitted are members of the SEATTLE KingCounty REALTORS®, Washington REALTORS®, and the National Association of REALTORS®.

In addition, it also discusses in some detail the appropriate standards by which the City's plan must be evaluated. We trust you will find it helpful.

There were several items that caught our attention as we considered the Planning Commission's draft (together with the information provided by presenters, the public and city staff at the June 14th and June 21st meetings) based on the analysis and references in the attached *White Paper*.

1. Importance of Augmenting the City's Inadequate Shorelines Inventory

As noted by several speakers, the inventory prepared by the City's consultant (apparently based on the standards which existed prior to the changes in the state law) appears to fall short of satisfying the applicable requirements.

How should the City attempt to respond to this deficiency? As we understand the law, the City is expressly permitted to augment its existing inventory with:

- The additional environmental inventory and analysis submitted by the marine homeowners
- The additional anecdotal evidence provided by individuals who have spoken before – or written to – the Council (such as, but certainly not limited to - those who provided firsthand reports of underwater shoreline conditions based on their personal observations made while scuba diving Burien's marine shorelines), and
- An accounting of the City's investments and successes on shoreline-related improvements (as suggested by Deputy Mayor Clark).

In the absence of sufficient time and funding to re-do the inventory, the City should augment its inventory. We believe augmenting the inventory, and then having the Council fully consider the augmented information as required by the statute, are especially important for the following reasons:

A. Even though the state's Shorelines Act is a *top down* statute (as distinguished from GMA, which is *bottom up*), it does not support wholesale application or adoption of generic inventory or shoreline-condition information in-lieu of the kind of city-specific analysis required by the statute. Were that not the case, there would be no need for individual cities to do an individualized inventory of the extent and condition of their own shorelines, and they could instead simply adopt generic regional "science" proffered by the Department of Ecology or some other entity. But that is not what the law allows. And it does not satisfy what the law requires.

B. Unlike regulation of GMA critical areas, the state Shorelines Act explicitly requires a more balanced approach², and anticipates such an approach will be best-facilitated by a current city-specific shorelines inventory that accurately analyzes the extent and current

² Importantly, while there is some flexibility regarding what kinds of goals and values local governments may choose to balance under GMA, under the Shorelines Act the legislature has identified a minimum list of specific items the City is *required* to balance, and to protect, because those matters are deemed by state law to be *preferred* shoreline uses. One such use is single family homes.

conditions of shorelines in the City in order to facilitate doing no harm (as well as protecting the other preferred shoreline uses explicitly referenced in the state statute).

C. In the absence of an inventory that meets the applicable standards, the potential for the City's SMP to fail to satisfy the statute's mandate for a balanced approach becomes extremely problematic.

Why? Because (without legally sufficient, city-specific, inventory and shoreline condition information) the local government essentially defaults to a legally insufficient data vacuum that amounts to a "crap shoot" wrought with potential for a city to miss the mark, and likely to result in a city:

- Wrongly assuming that shoreline functions are degrading when they are not, and then proceeding to unduly over-regulate statutorily preferred shoreline uses (such as single family homes, which are expressly recognized in the State's Shorelines Act as a *preferred* use of shorelines) in a way that fails constitutional muster; or
- Wrongly assuming that shoreline functions are stable or improving when they are not, and then failing to ensure that the City's own investments, policies and regulations are sufficient to do no additional harm to shoreline functions as required by the statute.

2. Lack of Burien data in the City's Shorelines Inventory demonstrating continuing degradation to shoreline functions in Burien below current conditions means new prophylactic regulations on existing statutorily preferred shoreline uses (such as existing single family homes) would likely violate state law.

We are a bit puzzled by an aspect of the Update discussions that appears to be related to, but is separate from, the above-referenced concerns about the adequacy of the City's inventory of Burien's shorelines.

It involves proposals that would add new restrictions and regulations to existing statutorily preferred shoreline uses (such as existing single family homes) without a legally sufficient basis for doing so.

The City is required to ensure *No Net Loss* of shoreline functions from existing uses, including preferred shoreline uses such as single family homes. **But in the absence of Burien data in the City's inventory demonstrating that existing Burien shoreline uses are continuing to degrade Burien shoreline functions below current conditions**, adding new prophylactic regulations on existing statutorily preferred shoreline uses (such as existing single family homes) is simply untenable, especially given:

- The testimony of numerous speakers about the remarkable good health of Burien’s shorelines, both along the marine shore, and at the lake. (The act expressly acknowledges the City’s authority to rely upon such testimony.)
- The fact that neither the City’s consultant, the Department of Ecology, nor anyone else, has provided any city-specific data demonstrating that Burien’s existing shoreline uses – some of which have been in place for nearly 100 years - continue to produce additional widespread or significant degradation of shoreline functions below current conditions.
- The establishment of an initial baseline of data (in a City shorelines inventory) is just that: A Baseline. By definition, baseline data does not reflect *changes* to current conditions. At best, baseline data only identifies *current conditions*. As a result, relying upon such baseline data to justify the imposition of new regulations on existing shoreline uses does not pass muster. Baseline data simply does not provide a metric of changing conditions.
- The City is not permitted to merely assume continued degradation of shoreline functions below current conditions in the absence of Burien data in the City’s inventory indicating such additional degradation is occurring from existing shoreline uses.
- Importantly, it appears (but so far as we are aware has not been formally acknowledged by the City) that advocates for additional regulations on existing shoreline uses *assume* – but have not demonstrated – that existing shoreline uses continue to result in additional degradation of the functions of Burien’s shorelines below current conditions.
- Even in those situations where new regulations would be supported by an adequate record – and here they are not – the City must still meet constitutional *nexus* and *proportionality* standards in a way that would not be accomplished by the proposed new regulations which are generic and widely-applicable.
- The City is not permitted to impose an enhancement requirement on existing statutorily preferred shoreline uses.

We believe the key for understanding this aspect of the deficiency in the approach recommended by the Planning Commission requires coming to grips with the change in state law that clearly differentiates *Shoreline Regulations* under the Shorelines Act from *Critical Areas Regulations* under the Growth Management Act.

Stated simply, it’s the difference between *No Net Loss* (do no *additional* harm) in the case of existing shoreline uses, and incorporating *Best Available Science* (which has the potential to result in remediation, mitigation and/or enhancements) under GMA.

The distinction is not only discussed in the *White Paper* we have provided, it has been noted as well in written comments the City has received from others.

Our puzzlement refers to statements made during the City's shorelines update process attempting to suggest there is some vagueness, or lack of clarity, about what *No Net Loss* means.³ Those references to vagueness appear to be a bit of a "dust cloud" that has the effect of avoiding coming to grips with the following:

In the absence of Burien-specific data in the City's shoreline inventory which demonstrates that existing statutorily preferred shoreline uses (such as single family homes) are continuing to degrade Burien shoreline functions *below existing conditions* in specifically discernable and quantitatively measurable ways, generic new regulations on existing shoreline uses are inappropriate.

3. Appurtenances & Bulkheads

We are concerned that the Planning Commission draft inappropriately distinguishes between single family homes on the one hand, and bulkheads or other appurtenances serving the single family home on the other hand, in a way that may not be permitted under the statute.

One of the issues that will be a focal point of our review of the modifications the staff has proposed involves the potential for disparate treatment of bulkheads and appurtenances as compared to single family homes, particularly with regard to:

- Acknowledging the important role of existing appurtenances for the function and utility of single family homes
- New regulations regarding maintenance of bulkheads absent some extreme emergency, together with regulatory impediments to protective repairs even in the event of an emergency and
- Disparate treatment between single family homes and appurtenances with regard to non-conforming use issues.

It is important that the City not impose any new requirements on existing appurtenance in a way that directly, or indirectly, minimizes the existing function and utility of appurtenances serving the home. Doing otherwise may have the effect of reducing the value of the home.

Why? Because the appurtenance is an asset that comprises part of the value of the home.

Typically, such appurtenances are designed and constructed with the intent that they be used by the homeowner. The value of the asset that is the appurtenance is included in the price of the home.

³ Our White Paper discusses some of the alternatives for applying *No Net Loss* with regard to new construction. But that issue is not the threshold question framed here that the Council needs to address. Granted, there are some nuances in the statute about how *No Net Loss* can be applied to allow additional development on the shoreline and in the upland shorelands. But the focus on those nuances appears to conveniently overstep coming to grips with the threshold question: **Does the City's shorelines inventory demonstrate continuing degradation from existing uses?**

But with new regulations on existing appurtenances, homes may be perceived in the marketplace as less valuable due to:

- Inability to use the existing asset (appurtenance) as fully as was previously allowed, and/or
- New restrictions on repair or maintenance of the existing appurtenance.

In fact, any new restrictions on use, repair or maintenance of existing appurtenances may result in the appurtenance becoming an eyesore, or an attractive nuisance, due to deferred (prohibited or discouraged) maintenance/repair, thereby also affecting the values of neighboring homes.

4. Buffers and Vegetative Buffers

As explained in some detail in both our *White Paper* and in other comments the City has received, the Shorelines Act does not allow the City to impose new regulations, or requirements for new exactions, on existing preferred shoreline uses, such as single family homes, absent some showing of continuing degradation of shoreline functions below current levels.

There are three “touchstones” that anchor the central legal challenges the City is confronting in this regard with respect to two related, but distinctly different, proposals:

- Expanding buffers from 20’ to 65’ (consisting of a 50’ buffer, plus an additional 15’ setback that effectively serves as a defacto “buffer of a buffer”).
- New 150’ Vegetative Buffers

The three primary challenges with regard to these two different proposals are as follows:

1. These proposals amount to widely-applicable uniform generic buffers. Recent case law in this state calls this approach into serious question in a way that creates the specter of financial liability for the City.⁴

It’s a potential financial liability the City could – and should – avoid.

⁴ It is perhaps worth noting that earlier this month (on July 14th) in a case involving the *Florida Beach and Shore Preservation Act of 1961* a plurality of the United States Supreme Court opined in dicta that “Takings” liability under the United States Constitution should not be limited to actions of the executive and legislative branches of government, and thus, liability for unconstitutional takings could be imposed on a state court of final jurisdiction (i.e., a State Supreme Court). That case has not yet arrived, but given the signal sent by the plurality of U.S. Supreme Court Justices earlier this month, some state supreme courts may be significantly more leery of giving local governments ‘a pass’ in connection with actions alleged to have resulted in private property owners losing some of the rights to their property that the owners had previously enjoyed.

2. The proposal for a new 150' vegetative buffer (in addition to the new 65' buffer) is likewise problematic, but perhaps more so due to proposals for attendant new regulations and exactions that fare exceed those associated with the 65' buffer.

Here is just one of several examples of the problematic nature of the proposal for a new 150' vegetative buffer: Multiple speakers have identified the dysfunctional nature of the proposal due to high bank slopes landward of existing single family homes along the shoreline that would likely make compliance with the 150' requirement either not possible, or untenably expensive.

3. As discussed in some detail in our *White Paper*, the *Swinomish Indian* case highlights the legal problems resulting from jurisdictions seeking to establish "natural buffers" in areas where the natural features have already been substantially degraded or completely altered. Importantly, the information in the City's SMP Update record identifies (and discusses in some considerable detail) the fact that Burien's marine shoreline is already largely altered with single family homes, bulkheads, appurtenances and docks, except for the City's existing waterfront park property. Similarly, the lake's natural features have also been substantially altered and degraded compared to conditions existing prior to European settlement of the area.

5. Public Access

The City has appropriately recognized that the Shorelines Act identifies public access as an important goal. There are two cautionary notes that are appropriate for the Council to keep in mind as it moves forward on the issue of public access:

- The first involves the use of existing easements for purposes of implementing public access.

We believe it would be unwise and problematic for the City to attempt to unilaterally convert existing easements that the City acquired for transportation or utility improvements into easements for public access to shorelines.

If the City wants to expand the scope and uses allowed in its existing easements (which do not currently reference shoreline access in the terms of the grant of easement), it should do so through negotiations with property owners on whose property the easement is located, or through the condemnation process, in each case paying for the additional value lost by the property owner.

- The second involves Neighborhood Impacts

One understandable concern that has been expressed to the City is the nature and magnitude of impacts on adjacent and neighboring properties resulting from City efforts to enhance public access. Allowing public access across City-owned property is perhaps the easiest

case. The more difficult kinds of situations involve neighborhood traffic impacts from the creation of new public access, as well as disproportionate impacts on property owners immediately adjoining the public access.

The cautionary note with regard to Neighborhood Impacts involves the adequacy of the City's SEPA analysis of such impacts, and the potential for any deficiencies in that SEPA analysis to result in an appeal to the growth boards, or perhaps result in judicial review.⁵

6. The Importance of Non-Regulatory Approaches

Most of our comments thus far regarding the SMP Update have focused on challenges associated with the City's proposals for new regulatory enactments.

But the Shoreline Act is clear that such regulatory enactments are only one of the approaches the City should pursue.

The Act specifically and expressly calls out the importance of municipal projects and investments. Such City actions are especially important because it is with those actions that the City has the opportunity to pursue remediation and enhancement of Burien's Shorelines and Shorelands.

The rub, of course, is that it costs money for the City to undertake such actions. Nevertheless, those actions are important. For this reason, we recommend a six-pronged approach as it relates to City action:

1. Clearly acknowledge the difference between the City's significant opportunities to achieve remediation and enhancement through its own investments, and the problems associated with attempting to secure enhancement or remediation from the owners of existing shoreline uses by shifting the community's costs for enhancements and remediation to a relatively small handful of property owners.

⁵ The City did not do a SEPA Threshold Analysis, or an EIS, in connection with the City's SMP Update. Instead, it appears the City prepared a two-page addendum to the environmental analysis for the City's 1997 Comprehensive Plan. There is no administrative appeal that we are aware of for such an addendum. As such, the normal SEPA appeal periods would not yet have begun to run (because the commencement of any appeal period has not yet been triggered due to the lack of a Threshold Determination, EIS Scoping, or the Issuance of a DEIS). It's our impression that some cities have attempted to suggest, but no court has yet supported the assertion, that there is *No Appeal of Any Kind* available for contesting the sufficiency of an addendum. Give the strong feelings that have already been voiced concerning potential neighborhood impacts associated with public access, the City may want to consider whether or not it wants to chart a course that could leave it in a position to be the "Test Case" on this SEPA issue. The logical extension of such an assertion (that there is *No Appeal of Any Kind* available for contesting the sufficiency of an addendum) is that by using addenda rather than Threshold Determinations, or Environmental Impact Statements, a jurisdiction could permanently insulate itself from any future challenges to the sufficiency of required environmental reviews. That notion could prove to be a very "tough sell" to the appellate courts of this state.

2. To the extent shorelines, fish and other marine and freshwater life continue to be a priority for the City, ensure that the City's process for development of its CIP is very intentional about the way "needed" shoreline enhancement and remediation projects are addressed.

3. With regard to what is "needed" (and for purposes of prioritizing expenditures as referenced in item # 4 immediately below), work to establish clearly defined *Shoreline Functions in Burien*, together with *Quantitative Measures of those Shoreline Functions*.

One of the rather disappointing and discouraging things that came to light in the scientific panel presentation on June 14th - and which was reinforced in the presentations on June 21st - is that DOE does not have any such definitions and metrics available. Instead, as their representative acknowledged on June 14th, they rely on substitute or "indicator" metrics - such as number of feet of bulkhead - which they are not able to directly correlate to shoreline functions. Nor are they able to quantify the magnitude of the shoreline functions gained or lost with the removal or construction of 100 feet - or 1,000 feet - of bulkhead.

4. Use the City's augmented shorelines inventory - together with the various additional data bases that will become available to the City over time - to:

- Conduct comparative analysis over time to identify any changes to shoreline functions, and to help identify the most important opportunities to make the biggest impact with regard to restoration and enhancement, and
- Be very specific and targeted in terms of maximizing the quality of shoreline functions with City investments.

The City's efforts will be far more effective if it moves beyond intuitive approaches, or DOE's approach of simply counting lineal feet of bulkhead because it's easy to measure, and is able to identify specific shoreline functions, the degree to which those are degraded or improving, and the measure of the direct benefit to the specific shoreline function(s) that can be achieved by each proposed investment of City funds.

We anticipate, but would not presume in the absence of the kind of data-drive analysis we have discussed, that the greatest opportunities to make a real and meaningful difference, and to enhance the functions of Burien's shorelines, will be at the City's marine park lands.

5. Several speakers have suggested that the greatest challenge to the functions of the City's shorelines lies in the uplands, rather than with what is happening with existing shoreline uses. In particular, they point to contaminated runoff from upland roadways that makes its way to Burien's marine waters.

One Councilmember, Gordon Shaw, has suggested that the opportunity to have the greatest impact on the quality and effectiveness of Burien's shoreline functions involves capturing (mechanically) the pollutants contained in the runoff from the uplands before those pollutants can reach the waters of Puget Sound.

One alternative he has suggested involves working cooperatively with property owners to place mechanical devices behind bulkheads in those areas where the risk is greatest that polluted runoff from the uplands could reach the waters of the Sound.

We think it's an idea the Council should take up. We don't pretend to be environmental engineers, but we know that there are a variety of techniques used to prevent polluted or turbid runoff from leaving construction sites. We know that oil-water separators are a pretty well-developed technology. We know that cities have stormwater catch basins that collect pollutants and particulates that are then vacuumed out of the catch basins. We know that even some paint shops have separators or catch basins. The technology and mechanics required to implement such a solution are likely within reach.

The key to moving forward involves working cooperatively with shoreline property owners to gain their permission for the City to place such mechanical devices behind the bulkhead (or otherwise between the uplands and the marine waters) in priority locations. The financial burden for the cost of installing and maintaining the capital improvements to protect the shorelines from the upland polluted runoff should be placed where it belongs: spread broadly across the users of the portion of the upland that drains through the shorelands and shorelines to the waters of Puget Sound.

There are likely to be a variety of incentives (and in most cases those incentives are likely to be other than cash) that the City could use to secure the cooperation and permission of shoreline property owners for the placement and maintenance of the City's capital investments needed to protect the shorelines from upland runoff. In this regard, it is probably fortuitous that the BMHA members are already fully engaged with the City in the Shoreline Update process, and might well be open to an informal discussion with members of the Council (at a publicly-noticed meeting) about the kinds of non-cash incentives that they would find most encouraging.

6. In the absence of City funding to pay for acquisition of additional shoreline properties, easements, or the expansion of allowable uses of existing easements, the City may wish to move forward – slowly, but steadily, and in a very focused and intentional manner – to create a highly structured program to invite and facilitate *Planned Giving* that will allow property owners to donate shoreline property, shoreland property, easements and/or funding that will allow the City to obtain properties, increase public access and make capital improvements to shorelines and shorelands.

If it would be helpful to you, at a future time I'd be happy to share some detailed thoughts with the City regarding important considerations in structuring such a program, including sharing some of the insights I gained from serving on the King County Council's Property Expert Review Task Force, and also representing a non-profit organization that had received

several donated properties which created a variety challenges for them due to the lack of a structured program for dealing with such gifts and bequests.

Conclusion

As REALTORS® we are strong supporters of the environmental values embodied in the State's Shorelines Act.

As you may know, our local Association established the 'First in the Nation' **REALTORS'® Environmental Council** that not only provides environmental education and classes for REALTORS®, we also annually undertake a significant environmental remediation or enhancement project here in King County:

- During the last three years our REALTORS® from throughout King County have planted thousands of riparian and wetland plants, shrubs and trees; In fact, by the end of this year we expect the total will exceed 20,000 plantings.
- Our efforts have remediated and enhanced locations as diverse as the Hylebos in Federal Way, the Mercer Slough and wetland areas of Kelsey Creek Farm in Bellevue. This year, on October 15th, we will undertake a planting project at Seward Park in Seattle.

Updating the SMP is a difficult job. It's not one the City requested, but instead is one that was given to you by the state.

It's a job made all the more difficult because (even though it involves environmental issues), it requires an approach that is significantly different from the GMA context that usually frames the Council's consideration of such matters.

We are very appreciative of the way the Council has been willing to immerse itself in these issues in a genuine and diligent effort to try to truly understand both the update process, and the options available to the Council given the considerable leeway afforded the City under the statute.

We have likewise been impressed by the effort put forth by City staff (and in particular the hard work of Scott, David and Mike).

We also appreciate the opportunity to offer these comments, as well as the way the Council has sought to ensure early and continuous public participation in the update process. As difficult as the additional work of accommodating and facilitating such public involvement may be, it is one of the very best efforts at civic engagement we have seen on SMP update issues...and by far the best attended in the county.

We look forward to completing our review of the recently released proposals for modifications to the Planning Commission's draft. We will attempt to have written comments on those proposed revisions to you prior to the Council's public hearing in August.

Thank you again for the opportunity to offer these comments.

Sincerely,
SEATTLE *KingCounty* REALTORS®

Sam Pace

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Housing Specialist

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Washington REALTORS®

RECEIVED

JUL 29 2010

CITY OF BURIEN

Presents

**A Background Paper on the
Shoreline Master Program Updates**

April 2010

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The purpose of this paper is to set forth background principles that underlie the Shoreline Master Program (SMP) update process in Washington State. Much more could be written on this subject, but this paper is limited to providing background principles and other information. Endnotes are used to provide specific citations with less interruption to the reader.

I. BACKGROUND AND PLANNING PRINCIPLES

A. Background and Relationship of SMA, and Comparison to GMA

The background and relationship of the Shoreline Management Act (SMA) and the Growth Management Act (GMA) is important to any discussion about updating the SMP. The SMA was enacted by a vote of the people as Initiative 43B in 1971. “The vote reflected the decision of the voters choosing between a citizen initiative and the legislature’s alternative.”¹ *Id.* As such, “[t]he SMA embodies a legislatively-determined and voter-approved balance between protection of shorelines and development.”² In balancing these goals, local jurisdictions containing “shorelines of the state” must prepare a SMP setting forth desired goals, and use and development regulations for shoreline areas, and must in doing so follow the current guidelines promulgated by Ecology.³ The SMP is defined as the “comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.”⁴ The SMA also requires local governments (cities and counties) to periodically update their SMPs and many local government are currently in the update process required by state law.⁵

Under the SMA, regulation of shorelines of the state, “is done [by the state] in coordinated fashion, in conjunction with local governments.”⁶ Specifically, once a local jurisdiction approves a SMP, it must be approved and adopted by Ecology before it is effective.⁷ Preparation of a SMP requires each local jurisdiction to employ “the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern,” including an inventory of the local jurisdictions’ shorelines.⁸ For any “shorelines of statewide significance,” the local jurisdiction must also establish shoreline designations that give preference to the uses enumerated in the SMA, namely public access, recreational use, single-family residences, and protection of property rights, among others.⁹ Only after Ecology reviews the proposed SMP for compliance with the SMA and approves the SMP, do the shoreline regulations become valid state regulations governing the use and development of shoreline property.¹⁰

Compared to the SMA, which was enacted in 1971, the GMA is a relative newcomer. The GMA was enacted in 1990 and 1991 (with almost annual amendments) to manage “uncoordinated and unplanned growth...[via] comprehensive land use planning.”¹¹ The GMA imposes a general obligation to adopt comprehensive land use regulations, including critical areas regulations, by balancing various expressly non-prioritized planning goals and requirements, including, in relevant part, designating and protecting critical areas while protecting private property rights.¹² Local jurisdictions that are subject to the GMA must periodically review and, if necessary, update their comprehensive plan and development regulations.¹³ The jurisdictions must designate and protect critical areas by including “best

available science” in its record and developing locally appropriate regulations based on local circumstances and the Act’s various planning goals and requirements.¹⁴

Unlike the SMPs, which require state approval via Ecology, the GMA is premised upon local control.¹⁵ A recent decision by the Washington State Supreme Court assists in drawing the stark differences at the core of the SMA and GMA:

The GMA has substantial requirements when actions might affect areas defined as “critical areas.” RCW 36.70A.172(1). Among other things, the GMA was amended in 1995 to require local governments to designate and protect critical areas using the “best available science”—a benign term with often a heavy price tag. **The SMA, with its goal of balancing use and protection, is less burdensome.**¹⁶

The SMA recognizes and accepts development of shorelines within the system coordinated planning in shoreline areas:

[T]he SMA does not prohibit all development in the shoreline. Rather, its purpose is to allow careful development of shorelines by balancing public access, preservation of shoreline habitat and private property rights through coordinated planning, i.e., shoreline master plans which must be approved by DOE.¹⁷

In this regard, the SMA mandates that shoreline property owners have the right to certain permissible uses of property and/or priority shoreline development.¹⁸

B. Reviewing Available Science, Public Input, and Making Reasoned Decisions

The Shoreline Guidelines provide the foundation for updating the SMP and frequent return to those Guidelines is strongly encouraged. The Shoreline Guidelines implement the SMA’s requirement to utilize science in developing updated SMPs.¹⁹ The Guidelines carefully describe the utilization of science and technical information in the update process, but also clarify that information from every source should be reviewed, and that the local jurisdiction retains the authority to make final decisions regarding conflicting data.

The Shoreline Guidelines summarize the utilization of science by stating that local jurisdictions shall, “base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available.”²⁰ The entire Guidelines provision is similar to, but not identical to, the GMA requirement to include “best available science” or “BAS” when designating and protecting critical areas under the GMA jurisdiction.²¹

At the same time, the Shoreline Guidelines recognize and respect that other information may be very important in adopting an updated SMP. The same provision of the Guidelines states as follows:

The requirement to use scientific and technical information in these guidelines **does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties** as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201(3)(b).²²

The Guidelines then clarify the role of the local jurisdiction in sorting through all the information collected, including the “information, experience, and anecdotal evidence provided by interested parties.” Namely, the local jurisdiction is to make a “reasoned, objective evaluation” of the conflicting data:

Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.²³

This decision making process is similar to the inclusion of BAS in the GMA context, namely that the local jurisdiction is **not required** to “follow” BAS when reliance on other reasonable factors is established: “Moreover, the GMA does not require the county to follow BAS; rather, it is required to ‘include’ BAS in its record.” “Thus, the county may depart from BAS if it provides a reasoned justification for such a departure.” *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd*, 161 Wn.2d 415, 430 (2007) (citing *Ferry County v. Concerned Friends*, 155 Wn.2d 824, 837-38 (2005)). The similar requirements stated in the Shoreline Guidelines indicate the same rule for updating the SMP—the City must review and consider available science but then shall make reasoned decisions about conflicts in all the data, including the science and other information.

C. No Net Loss of Ecological Functions: Protection and Restoration

The Shoreline Guidelines implement a standard of “no net loss of ecological functions” referring to “no net loss” based on current conditions. The Guidelines seek to implement this standard through protection and restoration of shoreline resources.

As a preliminary matter, the Guidelines are clear in distinguishing **policies and nonregulatory programs** from **development regulations**, and the SMP is to include both. For example, the Guidelines set forth as another Governing Principle that:

The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, **only one of which is the regulation of development**. Other means, as authorized by RCW 90.58.240, include, but are not limited to: The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public

or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.²⁴

The next Governing Principle emphasizes the importance of these other means of implementing the planning policies and that careful implementation of development regulations is necessary to protect private property rights:

The policy goals of the act, implemented by the planning policies of master programs, **may not be achievable by development regulation alone.** Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights [with reference to the Attorney General's publication on avoiding Unconstitutional Takings].²⁵

In other words, development regulations serve an important role, but must be utilized in a manner to protect property rights. The SMP should give significant attention to other means of protecting and restoring the shorelines—other local government programs for improving habitat.

The “no net loss of ecological functions” concept is stated as one of the “Governing Principles” of the Guidelines. The Governing Principles are comprehensive in nature but the basic principle states: “Local master programs shall include **policies and regulations** designed to achieve no net loss of those ecological functions.”²⁶ A later provision provides more definition to the concept and recognizes that the purpose is to protect existing environmental conditions, but also recognizes that development can and will occur:

The concept of “net” as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020 [including priority for single family uses and recreational moorage], master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before

implementing other measures designed to achieve no net loss of ecological functions.²⁷

Thus, the “no net loss of ecological functions” applies to no net loss of existing conditions through sequencing applied to authorized new development to ensure that the end result maintains existing conditions—sequencing refers to avoid, minimize, mitigate in that order.

The Guidelines then apply this “no net loss” standard to new development or redevelopment as follows:

(i) Local master programs shall include regulations and mitigation standards ensuring **that each permitted development** will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations ensuring **that exempt development in the aggregate** will not cause a net loss of ecological functions of the shoreline.²⁸

Thus, the Guidelines specifically impose a “no net loss” standard on new development or redevelopment, but distinguish “permitted development” from “exempt development.” That difference is reviewed later in this report.

Next, the Guidelines address “restoration” and distinguish “restoration” from the “no net loss” standard applied to development. The Guidelines explain that restoration of areas with impaired ecological functions is an important goal of the SMA as follows:

For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals.²⁹

However, the Guidelines then make it clear in the same provision that **the SMP is to implement nonregulatory policies and programs to achieve restoration, and not to use SMP development regulations** to directly impose restoration requirements as a condition of new development:

These master program elements regarding restoration **should make real and meaningful use of established or funded nonregulatory policies and programs** that contribute to restoration of ecological functions, and should appropriately

consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.³⁰

Some restoration may indirectly flow from regulations and mitigation, but restoration cannot be mandated as a condition of new development. “No net loss” encompasses “protection of existing,” but does not mandate restoration or enhancement. The definition of “restoration” is “the reestablishment or upgrading of impaired ecological shoreline processes or functions” and the definition goes further to state that: “Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.”³¹ In short, “restoration” means “enhancement” in the practical sense and does not require environmental perfection or a “turning back the clock” attempting to recreate the same natural shoreline that existed 200 years ago.

In this way, the SMA and Shoreline Guidelines follow the GMA in requiring new development to protect existing conditions, but not to mandate restoration or enhancement. The Supreme Court’s clear 8-1 decision in the *Swinomish Indian* case also made this point in relation to the GMA requirement that critical areas be protected.³² The Tribe argued that: “where an area is already in a degraded condition, it is not being protected **unless that condition is improved or enhanced.**”³³ The Supreme Court rejected the Tribe’s position that enhancement was mandatory and held that the county’s “do no harm” standard met the statutory requirement because it “protects critical areas by maintaining existing conditions.”³⁴

The Shoreline Guidelines are even more explicit by defining the “no net loss” standard and requiring new development to protect existing conditions, but not to affirmatively restore or enhance the shoreline as a condition of construction. Importantly, the Guidelines also recognize and encourage regulatory incentives for new development and other voluntary methods to achieve restoration and protection:

The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.³⁵

The intent of the Guidelines is clear. The SMP must regulate new development and redevelopment to ensure “no net loss of ecological conditions,” but “no net loss” does not mean “no development” or “no impact.” Rather, the SMP must balance competing objectives. New development and redevelopment in the shoreline area is expected to occur based on, for example, the SMA’s priority for single family uses and recreational moorage. At the same time, the SMP must endeavor to avoid, minimize, and mitigate shoreline environment impacts caused by that new development or redevelopment. The regulation should accomplish this on a project by project basis when shoreline permits are required, and on an overall, aggregate basis for projects exempt from shoreline permitting. In addition, the SMP should promote restoration efforts through nonregulatory programs and through promotion of voluntary actions by property owners proposing new development.

D. Early Attempts to Integrate the SMA and GMA Originally Resulted in an Erroneous Conclusion that All Shorelines of the State Were Critical Areas Under the GMA

In 1995, the Legislature partially integrated the SMA and the GMA by adding the SMA's goals and policies as an additional GMA planning goal and transferring jurisdiction for appeals of shoreline master programs from the shorelines hearings boards to the growth management hearings boards.³⁶ However, this partial integration led to confusion regarding the regulation of shoreline areas as critical areas, which affected all jurisdictions with regulated shorelines since all cities and counties were required to adopt critical area regulations under the GMA even if not subject to the GMA comprehensive planning requirements.³⁷ A controversial Growth Board decision ("Everett Decision") concluded, in the words of Justice Chambers that, "shorelines of statewide significance under the SMA were categorically critical areas under the GMA, and thus, shoreline management often had to comply with both acts."³⁸

E. Despite Controversy Over the Timing, The Updated SMP Will Govern Critical Areas Within the Jurisdiction of the SMP

The Growth Board Everett Decision "so conflicted with the law and the established practices that the Legislature acted the next session by enacting a law explicitly rejecting that board's interpretation."³⁹ The amended law, also commonly known as the "Everett Fix Bill," unequivocally stated that critical areas located within shorelines are to be regulated exclusively under the SMA:

The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act.⁴⁰

However, controversy developed regarding whether critical area updates adopted after 2003 would apply in shoreline areas, or whether changes to shoreline regulations could only be done through the SMP Update process in compliance with the regulatory requirements established by the Department of Ecology (known as the Shoreline Guidelines or Guidelines).⁴¹ Put another way, there was controversy about what rules applied **during the interim period** until the updated SMPs were adopted and approved by Ecology.⁴² The Supreme Court issued a split decision in the *Futurewise* case in 2008, and now that case has been followed up by other cases that are subject to different interpretations and new legislation.⁴³

Despite that controversy, there has been no dispute that **updated SMPs** would exclusively govern critical areas that were located within the jurisdiction of the SMA. The primary decision of Supreme Court stated that in ESHB 1933, "the legislature meant what it said....critical areas within the jurisdiction of the SMA are governed *only* by the SMA."⁴⁴ The dissent did not disagree with that principle, but believed that the time when that occurred was when Ecology approved a new SMP: "The 2003 legislature intended to transfer protection of the relevant critical areas from the GMA to the SMA as municipalities enact, and Ecology approves, new shoreline master programs."⁴⁵ Thus, despite controversy over the timing, there is no dispute

that the protection of critical areas within shoreline jurisdiction must be encompassed within the updated SMP.

In addition, the Growth Board has made it clear that existing critical area rules cannot be blindly incorporated into the updated SMP. Rather, existing critical area rules must be re-evaluated for compliance with the Shoreline Guidelines and must be subject to full public participation before incorporation of any part of the existing rules into an updated SMP. The Growth Board quoted directly from the Shoreline Guidelines and ruled that the public was, “entitled to ‘an opportunity to participate in the formulation of the regulations’ including ‘their incorporation into the master program.’”⁴⁶ This approach only makes sense to ensure that rules for critical areas in shoreline areas comply with the Shoreline Guidelines and to ensure that the public fully participate in the making of an updated SMP.

F. The Updated SMP Protects Only Those Specific Areas Located Within Shorelines That Qualify for Critical Area Designation

The GMA requires designation and protection of critical areas, which are defined to include the following: wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.⁴⁷ Thus, according to the GMA, shorelines are not defined to be critical areas simply because they are shorelines governed by the SMA.

Whether shorelines were automatically critical areas was another issue involved in the Growth Board Everett Decision, which held that “shorelines of statewide significance are critical areas subject to both the GMA and SMA.”⁴⁸ As previously indicated, ESHB 1933 was enacted to respond to the Everett Decision that, “so conflicted with the law and established practices that the legislature acted the next session by enacting a law explicitly rejecting the board’s interpretation.” The Legislature adopted a provision in ESHB 1933 that was directly counter to this conclusion. Namely, ESHB 1933 included RCW 36.70A.480(5), which reads as follows:

Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by [GMA] and have been designated as such by a local government pursuant to [GMA].⁴⁹

By requiring that the designation of shorelines as critical areas be limited to “specific areas,” the Legislature unequivocally rejected the notion that blanket designations of all shorelines of the state as critical areas was acceptable.

The Growth Board confirmed this understanding in the Whatcom County SMP decision.⁵⁰ The Growth Board referenced the parties, including even the Department of Ecology, and said that: “The parties are in agreement that shorelines of the state are not automatically critical areas and the Board concurs.” The Growth Board ruled that it was improper to designate all shorelines as critical areas, “without consideration of whether those shorelines qualified as critical areas.” Whatcom County designated the waters as critical areas—the marine waters and

shoreline lakes and rivers, and the Growth Board upheld this designation despite contrary evidence. Thus, the local government may choose not to designate the entirety of the waters where local circumstances and evidence warrant.

The SMP Update process involves review of the entire area under the jurisdiction of the SMA, which is generally all regulated lakes and rivers, plus the adjacent upland within 200 feet of the ordinary high water mark (OHWM). The SMA calls that upland area “shorelands” or “shoreland areas.”⁵¹ The statutory reference that “shorelines of the state” are not automatically critical areas must be viewed based on the term “shorelines of the state,” which defined to mean the entire area under the jurisdiction of the SMA. The critical areas most at issue in this regulated area are fish and wildlife habitat conservation areas (FWHCA) and wetlands. FWHCAs are defined to include the waters (whether marine, lakes, or streams), and are not defined to include the upland areas—the “shorelands” in SMA terminology. Thus, it is important to ensure that local governments designate only the waters as FWHCAs, and possibly not even all waters. Then, the SMP Update process must determine the appropriate measures to ensure protection for these critical areas, which should include local government sponsored restoration programs in addition to regulations.

G. Shoreline Critical Area Buffers, One Size Fits All, and Property Rights

Although a GMA case, the Supreme Court’s 8-1 decision in the *Swinomish Indian* case is also instructive on the important issue of buffers for shoreline critical areas. The Court addressed the conflict between encouraging agriculture and protecting critical areas since both are goals of the GMA. Specifically, the case involved the vast productive agricultural lands in the Skagit and Samish River Deltas which were identified as the “most significant watershed in Puget Sound” with protection of fish important under both the Endangered Species Act and as the resource for the fishing industry. As discussed above, the county adopted a “no harm” standard that was similar to the same as the “no net loss” standard of the Shoreline Guidelines. The county also concluded that mandatory buffers were not required to achieve the “no harm” standard, and that conclusion was challenged and decided by the Supreme Court in the *Swinomish Indian* case.

The Supreme Court’s observations are pertinent here. The Court carefully described the competing issues by starting with an explanation of buffers: “Buffers are strips of land contiguous to a watercourse, usually containing indigenous shrubs and trees.” These natural buffer areas are often protected as Native Growth Protection Areas such as City of Bellevue’s requirement that such an area is to be “kept free from all development and disturbance” to preserve “native vegetation, existing topography, and other natural features.”⁵² Skagit County determined that the natural environmental was substantially impaired, and that, “the vegetation that had made up the riparian buffers along streams and rivers was cleared long before there was a legal impediment to doing so.” Based on that fact, the County reviewed the BAS but decided not to impose mandatory buffers. As the Court explained: “Here, the county justified its decision to not require mandatory riparian buffers on the basis that doing so would ‘impos[e] requirements to restore habitat functions and values that no longer exist.’” The Supreme Court upheld the County’s decision not to impose mandatory buffers under those circumstances, and explained that imposing buffers:

would impose an obligation on farmers to replant areas that were lawfully cleared in the past, which is the equivalent of enhancement. Without a duty to enhance being imposed by the GMA, however, we cannot require farmers within Skagit County to replant what was long ago plucked up. The county need not impose a requirement that farmers establish riparian buffers.⁵³

The same principle applies to the “no net loss” standard of the Shoreline Guidelines.

The *Swinomish Indian* case highlights the inherent problem of seeking to establish “natural” buffers where the natural features have been substantially “degraded” or completely “altered.” For example, the Shoreline Inventory utilized by Whatcom County for its SMP Update makes it clear that much of Lake Whatcom is developed with dense and moderately dense urban area, while other areas have medium to low-density development. Whatcom County’s Shoreline Inventory recognized that another area was within the urban growth area (subject to annexation by the City of Bellingham), and that the area included single and multi-family residential development and industrial/commercial development (cement plant and fish processing). Yet, the CAO incorporated into the SMP imposed a 150 foot buffer for all these areas. In the City of Bellevue, the City’s own reports demonstrate that the shorelines of Lakes Washington and Sammamish have been subject to extensive development, legally accomplished, that has fundamentally and permanently changed the “ecological functions” occurring on the shorelines. For example, the City report states as follows:

The riparian shoreline of Lake Washington is highly altered from its historic state. Current and likely future land-use practices preclude the possibility of the shoreline functioning as a natural shoreline to benefit salmonids.⁵⁴

Yet, the City of Bellevue seeks to incorporate its CAO with a 25 foot buffer and an additional 25 foot building setback for all these shorelines.

As discussed above, the Shoreline Guidelines require regulation of new development that achieves “no net loss” of existing conditions, but without requiring new development to go beyond “protection” in order to achieve affirmative “restoration” of shorelines. The *Swinomish Indian* case demonstrates that mandatory buffers may also not be required to protect shoreline critical areas given the highly degraded existing conditions. Put another way, mandatory buffers would constitute an improper mandate for restoration or enhancement of upland areas that long ago were legally converted to, for example, residential uses with homes, docks, and landscaped yards.

The Shoreline Guidelines make it clear that SMPs “shall contain requirements for buffer areas zones around wetlands” within shoreline jurisdiction, but the Guidelines contain no such mandatory requirement applied to “critical freshwater habitats,” including lakes that so qualify.⁵⁵ Another general requirement for SMPs is “Vegetation Conservation,” but the Guidelines specifically recognize that such provisions cannot be fairly applied to existing development: “Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures.”⁵⁶

Another concern is that mandatory buffers and vegetation requirements would interfere with property rights protected by state law and constitutional principles. The Shoreline Guidelines expressly require that local governments recognize and protect property rights by first citing the principle in the SMA:

(h) Recognizing and protecting private property rights.

RCW 90.58.020:

“The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; . . . and, therefore coordinated planning is necessary. . . while, at the same time, recognizing and protecting private rights consistent with the public interest.”⁵⁷

The Guidelines go further to specifically reference protection of property rights through the limitations set forth in RCW Chapter 82.02, namely RCW 82.02.020, and through the need to avoid unconstitutional takings.⁵⁸

The key rule in state law holds that local government has the burden of demonstrating that conditions imposed on development must be, “reasonably necessary as a direct result of the proposed development.” RCW 82.02.020. While cities and counties have authority to impose conditions on development, the Court in *Citizens Alliance for Property Rights v. Sims*, made it clear that: “Washington courts have allowed such conditions only where the purpose is to mitigate problems caused by particular development.”⁵⁹ The cases make it clear that: “The burden to prove that a condition is reasonably necessary as a direct result of the proposed development is on the governmental entity imposing the requirement.”⁶⁰ Finally, these rules constitute statutory implementation of the nexus and rough proportionality requirements imposed under the Takings Clause of the state and federal constitutions.⁶¹

The “one-size-fits-all” approach in buffer requirements and conditions on development may run afoul of these requirements. Specifically, the *Citizens Alliance* court said:

Our supreme court has repeatedly held that this statute [RCW 82.02.020] requires ‘that development conditions must be tied to a specific, identified impact of a development on a community.’ The plain language of the statute does not permit conditions that are reasonably necessary for *all* development, or *any potential* development. Rather, the statute specifically requires that a condition be ‘reasonably necessary as a direct result of *the proposed* development.’⁶²

The regulation reviewed in the *Citizens’ Alliance* case was, “a uniform requirement for cleared area on each lot, unrelated to any evaluation of the demonstrated impact of the proposed development,” and thus, the condition was not “impact specific” and violated the “necessary proportionality that is required to fulfill the statutory exception.”⁶³ The cities and counties must ensure that any regulations in the updated SMPs comply with this standard.

II. PREFERENTIAL USES AND EXEMPTIONS

As explained above, the SMA seeks to balance development of shorelines with protection of shorelines. The SMA recognizes that development of shorelines will occur and gives priority to single family residential uses with appurtenant structures and docks. The SMA also limits intrusive requirements on these uses by providing important permitting exemptions for single family homes, docks, and bulkheads. The SMA also protects existing uses by exempting all maintenance activities from permitting requirements.

A. Single Family Residential Uses Are A Priority Use in the SMA

The SMA does not prohibit development in the shoreline areas and the SMA is not neutral about the preferred development that should occur in those areas. Rather, the SMA contemplates development and sets forth certain priorities. The SMA identifies "single family residences and their appurtenant structures" as priority uses in the shoreline areas.⁶⁴ The Shoreline Guidelines describe this concept as, "Preferential accommodation of single-family uses."⁶⁵

B. Bulkheads To Protect Single Family Residences Are Also a Priority Use

The SMA includes within the priority for single family residences protection of those homes from shoreline erosion with bulkheads or other structural and nonstructural shoreline protection methods.⁶⁶ Specifically, the SMA says:

Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.⁶⁷

The Shoreline Guidelines reflect this priority as well.⁶⁸ Clearly, if the SMA priority for single family residences is going to have meaning, then property owners must be able to protect those residences from erosion. The SMA recognizes this necessary accommodation by mandating standards allowing protection from erosion with bulkheads or other shoreline protection methods.

C. Residential Docks Are Also A Priority Use of Shorelines

The SMA recognizes that recreational uses including piers or docks are a priority use of the shorelines.⁶⁹ Special consideration is given to private noncommercial docks used for pleasure craft.⁷⁰ Docks are an integral part of shoreline living for single family residences and the SMA recognizes recreational docks as a priority to ensure the continued enjoyment of lakes by the citizens through recreational boating.

D. SMA Exemptions Must Be Respected in New SMPs

The SMA governs “development” within shoreline jurisdiction, namely along marine shorelines plus major lakes and rivers and on the uplands, called shorelands, defined as the land within 200 feet of shorelines. Development is defined broadly but with a limit:

“Development” means a use consisting of the construction or exterior alteration of structures; . . . filling . . . bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.⁷¹

The SMA regulates development and requires a shoreline substantial development permit for certain activities considered “substantial development,” but with numerous exemptions. The SMA defines substantial development and the relevant exemptions as follows with a bracketed shorthand reference to the exemptions:

“Substantial development” shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. . . .The following shall not be considered substantial developments for the purpose of this chapter:

(i) **[Maintenance or repair]** Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) **[Bulkheads]** Construction of the normal protective bulkhead common to single family residences;

...
(vi) **[Single family residences]** Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) [Docks] Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars;⁷²

Development, including development defined as exemptions, must comply with the rules in the SMP, but cannot be subjected to discretionary permitting review encompassed within the substantial development permit process.⁷³

This distinction is an important one. The SMP must identify standards, or safe harbors, governing “development” including the exemptions, and cannot impose discretionary permitting requirements on those uses. This system ensures protection of the shoreline, but without imposing unnecessary burdens on preferred minor uses. The exemptions are next reviewed further.

E. Non-Development and Exemption for Minor Development

The wording of the SMA definition of “development” encompasses most, but not necessarily all, typical activities in the shorelines, namely construction or exterior alteration of structures, filling, bulkheading, driving piles for docks, and especially any project interfering with use of the waters. Ecology long ago adopted regulations related to permitting and included additional definitions governing these issues.⁷⁴ Those Permitting Regulations include definitions for structure, fair market value and a number of definitions related the height limit of 35 feet (height, average grade level, natural or existing topography).⁷⁵ In particular, the definition of “structure” states:

“Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;⁷⁶

Thus, the SMA governs all activities in the shorelines including shorelands, and those activities which rise to the level of “development” must comply with the SMA and the local SMP.⁷⁷ For example, house painting is an improvement that would not constitute “development” (it is not an exterior alteration) and may proceed without worrying about compliance with the SMP. Other similar activities would fall below the definition of development.

Certain activities that otherwise qualify as “development,” i.e. construction or exterior alteration of structures, are considered “minor development” that is defined to be too insubstantial to require permitting, namely any development that does not exceed \$5,000 in fair market value indexed for inflation (currently \$5,718). These “minor development” projects on upland can be regulated, but cannot be required to go through shoreline permitting—in other

words, a building permit may be required, but not a shoreline permit (which requires planning and environmental evaluation). Thus, any small building project or exterior alteration that does not exceed \$5,718 in value must comply with standards in the SMP, but cannot be required to apply for permits to review impacts on the shoreline; rather, the standards, or safe harbors, must be clearly stated in the SMP.

F. Exemption for Maintenance and Repair

The SMA contains a clear and straight forward exemption for normal maintenance and repair: “Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements.”⁷⁸ The Ecology Permitting Regulations go further in defining “normal maintenance and repair,” which could be interpreted in a manner conflicting with the statute:

Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. “Normal maintenance” includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment.⁷⁹

The regulation goes on to address replacement structures:

Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;⁸⁰

Clearly, maintenance or repair of existing structures and developments requires sensitive treatment in the SMP since these activities, maintenance and repair, will generally not create any new impacts that need to be mitigated.

G. Exemption for Single Family Residences

The SMA contains an exemption for owner occupied single family residences on the shorelands (uplands).⁸¹ The Ecology Permitting Regulations go further in defining “single family residence” and allowed appurtenances:

“Single-family residence” means a detached dwelling designed for

and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.⁸²

Thus, the house and all structures normally included as part of the home are exempt from permitting. This exemption clearly implements the priority and preference in the SMA for single family uses in the shorelines areas.

H. Exemption for Bulkheads To Protect Single Family Residences

The SMA contains an exemption for "construction of normal protective bulkhead to protect single family residences."⁸³ The Ecology Permitting Regulations go further in defining the exemption:

Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and

when the project has been approved by the department of fish and wildlife.⁸⁴

Thus, bulkheads designed to prevent erosion of single family residences and appurtenant structures are exempt. The Ecology Permitting Regulations contain qualifications to the general rule in the SMA: cannot have purpose to create dryland, limit on backfill, repaired existing vertical walls to be no further waterward than necessary, and certain deteriorated bulkheads must be moved back. This exemption clearly implements the preference in the SMA for single family uses in the shorelines areas by ensuring that these uses can be protected from typical erosion problems. Nevertheless, even if these situations are consider beyond normal and thus beyond the exemption, the SMA still requires standards in the SMP to ensure protection from erosion for single family residences and appurtenant structures.⁸⁵

The Shoreline Guidelines impliedly accept the exemption for pure repair of bulkheads, but then provide special standards for replacement situations that might be considered repair.⁸⁶ Plus, the Guidelines define replacement as not including any addition or increase to a bulkhead, and thus, forces any such project into the tougher standards for new bulkheads.⁸⁷ The Guidelines treatment of replacement as requiring a showing of demonstrated need (and excluding additions) may be interpreted in a manner that is in conflict with the Permitting Regulations which can allow replacement with comparable structures as an exempt repair.

It should be noted that any work on bulkheads involving work in the water, or even some work that affects the water, is regulated by the strict requirements of the Washington State Department of Fish and Wildlife (WDFW) under Hydraulic Project Approvals (HPA). The HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. Some work on bulkheads is also regulated by the federal government through the Army Corps of Engineers (Army Corps) implementation of the Clean Water Act.

I. Exemption for New or Expanded Docks

The SMA contains an exemption for certain docks for pleasure craft.⁸⁸ The Ecology Permitting Regulations mimic state law:

Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior

construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.⁸⁹

Maintenance and repair of existing docks falls under the exemption for maintenance and repair. However, any expansion of existing docks would fall under this exemption. Use of this exemption has become limited in recent years due to the increased costs of construction, but still needs to be considered especially for minor expansion projects.

However, any dock construction faces additional regulations and permitting requirements by WDFW, the Army Corps, and Ecology. Specifically, the HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. The Army Corps regulates all dock construction and maintenance under the Rivers and Harbors Act and Clean Water Act, with additional Ecology certification (approval) of all Clean Water Act permits.

CONCLUSION

This paper ends at this point although many other important topics merit further discussion. This paper is intended as a general background paper and not a comprehensive review of the entire subject of Shoreline Master Programs. In particular, this paper does not address Engrossed House Bill 1653 adopted during the 2010 legislative Session, which affects the rules and process applicable during the interim period prior to adoption of new SMPs.

We hope this paper assists property owners and others to be effective advocates in the Shoreline Master Program Update process by providing them with important background principles and other information.

ENDNOTES

- ¹ *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 697 (2007)
- ² *Id.*; see also RCW 90.58.020
- ³ RCW 90.58.080, Chapter 173-26 WAC
- ⁴ RCW 90.58.030(3)(b)
- ⁵ RCW 90.58.080(4)
- ⁶ *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 687 (2007)
- ⁷ See RCW 90.58.090
- ⁸ WAC 173-26-201(2)(a), WAC 173-26-201(3)(c)
- ⁹ RCW 90.58.020, WAC 173-26-251(3)(c), RCW 90.58.100
- ¹⁰ RCW 90.58.090(7); WAC 173-26-030(2)
- ¹¹ RCW 36.70A.010
- ¹² RCW 36.70A.020; see also *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424-25 (2007)
- ¹³ RCW 36.70A.130
- ¹⁴ RCW 36.70A.172(1) 320, RCW 36.70A.3201; *Swinomish*, 161 Wn.2d at 426
- ¹⁵ See *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 125-26 (2005) “the GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs.” See also WAC 365-195-010(3) (The GMA “process should be a ‘bottom up’ effort...with the central locus of decision-making at the local level.”).
- ¹⁶ *Futurewise v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 242, at 244 (2008) *reconsideration denied* (2009) (emphasis added)
- ¹⁷ *Overlake Fund and City of Bellevue v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 761 (1998) (citing RCW 90.58.020)
- ¹⁸ See *Biggers*, 162 Wn.2d at 686, 706 (affirming a right to certain shoreline development as recognized in RCW 90.58.020 and RCW 90.58.100)
- ¹⁹ RCW 90.58.100(1), WAC 173-26-201(2)
- ²⁰ WAC 173-26-201(2)(a)
- ²¹ Compare WAC 173-26-201(2)(a) with RCW 36.70A.172
- ²² WAC 173-26-201(2)(a) (emphasis added)
- ²³ WAC 173-26-201(2)(a)
- ²⁴ WAC 173-26-186(4) (emphasis added)
- ²⁵ WAC 173-26-186(5) (emphases added)
- ²⁶ WAC 173-26-186(8)(b)
- ²⁷ WAC 173-26-201(2)(c) (emphasis added)
- ²⁸ WAC 173-26-186(8)(b) (emphasis added)
- ²⁹ WAC 173-26-186(8)(c)
- ³⁰ WAC 173-26-186(8)(c) (emphasis added)
- ³¹ WAC 173-26-030(27)
- ³² 161 Wn.2d 415 (2007) (interpreting RCW 36.70A.172(1))
- ³³ *Id.* at 427 (emphasis added)
- ³⁴ *Id.* at 430
- ³⁵ WAC 173-26-186(8)(e)
- ³⁶ Laws of 1995, ch. 347, § 108, amending RCW 36.70A.280
- ³⁷ RCW 36.70A.060(2).
- ³⁸ *Futurewise*, 164 Wn.2d at 249 (Chambers, J., dissenting) (citing *Everett Shorelines Coalition v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 17 [Corrected Final Decision and Order, Jan. 9, 2003])
- ³⁹ *Futurewise*, 164 Wn.2d at 244 (citing Engrossed Substitute House Bill 1933 or “ESHB 1933”)
- ⁴⁰ RCW 90.58.030 (Findings–Intent No. 3), Laws 2003, ch. 321, § 1(3)
- ⁴¹ WAC Chapter 173-26
- ⁴² The only issue is whether the legislature meant the GMA to apply to critical areas in shorelines covered by shoreline master plans until Ecology has approved a new or updated shoreline master plan. *Futurewise*, 164 Wn.2d at 245.
- ⁴³ Engrossed House Bill 1653, adopted during 2010 legislative session.

- ⁴⁴ *Futurewise*, 164 Wn.2d at 244-45
- ⁴⁵ *Id.* at 251 (dissent)
- ⁴⁶ *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009) (citing WAC 173-26-191(2)(b))
- ⁴⁷ RCW 36.70A.030(5) and .170
- ⁴⁸ *Everett Shorelines Coal. v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 11 (Corrected Final Decision and Order, Jan. 9, 2003)
- ⁴⁹ RCW 36.70A.480(5) (emphasis added)
- ⁵⁰ *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009)
- ⁵¹ RCW 90.58.030(1)(f)
- ⁵² City of Bellevue Land Use Code Section 20.25H.030.B.2
- ⁵³ *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd.*, 161 Wn.2d 415, 430-431 (2007)
- ⁵⁴ 2005 Best Available Science (BAS) Review, § 7.2.1, pp. 7-5 to 7-7, § 7.2.2, pp. 7-7 to 7-9 (similar statement for Lake Sammamish) § 7.2.3; *see also* Draft Shoreline Analysis Report § 5.1.3, page 79 (same statement for Lakes Washington and Sammamish).
- ⁵⁵ Compare WAC 173-26-221(2)(c)(i)(B) with -221(2)(c)(iv)
- ⁵⁶ WAC 173-26-221(5)(a).
- ⁵⁷ WAC 173-26-176
- ⁵⁸ WAC 173-26-186(5)
- ⁵⁹ *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 664 (2008) *review denied* (2009) (citing *Isla Verde Intl. Holdings v. City of Camus*, 146 Wn.2d 740 (2002))
- ⁶⁰ *Citizens' Alliance*, 145 Wn. App. at 657
- ⁶¹ *Id.* at 657, 664 (citing *Trimen Dev. Co. v. King County*, 124 Wn.2d 261, 274 (1994) [citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994)])
- ⁶² *Citizens' Alliance*, 145 Wn. App. at 665 (citations to *Isla Verde* omitted)
- ⁶³ *Id.* at 668
- ⁶⁴ RCW 90.58.020
- ⁶⁵ WAC 173-26-176(3)(i)
- ⁶⁶ RCW 90.58.100
- ⁶⁷ RCW 90.58.100(6)
- ⁶⁸ WAC 173-26-176(3)(i)
- ⁶⁹ RCW 90.58.020
- ⁷⁰ RCW 90.58.030(3)(e)(vii)
- ⁷¹ RCW 90.58.030(3)(d) (relevant part)
- ⁷² RCW 90.58.030(3)(d)
- ⁷³ RCW 90.58.140(1), (2)
- ⁷⁴ WAC Chapter 173-27
- ⁷⁵ WAC 173-27-030
- ⁷⁶ WAC 173-27-030(15)
- ⁷⁷ WAC 173-27-040(1)(b)
- ⁷⁸ RCW 90.58.030(3)(d)(i)
- ⁷⁹ WAC 173-27-040(2)(b)
- ⁸⁰ WAC 173-27-040(2)(b)
- ⁸¹ RCW 90.58.030(3)(d)(vi)
- ⁸² WAC 173-27-040(2)(g)
- ⁸³ RCW 90.58.030(3)(d)(ii)
- ⁸⁴ WAC 173-27-040(2)(c)
- ⁸⁵ RCW 90.58.100(6).
- ⁸⁶ WAC 173-26-231(3)(a)
- ⁸⁷ WAC 173-26-231(3)(a)(iii)(C)
- ⁸⁸ RCW 90.58.030(3)(d)(vii)
- ⁸⁹ WAC 173-27-040(2)(h)

July 28, 2010

To: Burien City Council
Larry Blanchard, Public Works Director

Re: Burien's Six Year Transportation Improvement Project (TIP)

From: Carol Jacobson
3324 SW 172nd St.
Burien, WA 98166

RECEIVED

JUL 29 2010

CITY OF BURIEN

First, thank you to Mr. Blanchard, Ramesh Davad, and Doug Lamothe for taking the time to meet with some of the residents on SW 172nd street about our concerns. We appreciate your time and your willingness to work with us to achieve a good solution to any transportation issues in our neighborhood.

We do have some concerns about line item #13 in the TIP related to plans for SW 172nd St.

1. **We think the street is misclassified as a collector arterial.** According to the definition of collector arterial in the City of Burien 2008 Road Design and Construction Standards: *Collector Arterial – intra-community roadways connecting residential neighborhoods with community centers and facilities. They accumulate traffic from local roadways and distribute that traffic to roadways that are higher in the hierarchy of classification. Access is partially restricted.*
 - a. The west end of SW 172nd from Maplewild to Secoma Blvd. along the water is different from the eastern portion going toward Sylvester Rd. The west end does not collect traffic from any roadways. It is merely a local road serving the residents who live there and along Maplewild.
 - b. We believe that SW 172nd better fits the definition of **Subcollector**: *provides circulation within neighborhoods and typically connects to neighborhood collectors.* The east end of SW 172nd may fit the definition of a Neighborhood Collector because it collects from SW 173rd St. and connects to Sylvester Rd., but the west end should be classified as a subcollector.
 - c. The typical right of way width for a subcollector is 48 ft (Table 2, pg 23 of Road Design and Construction Standards). This plan lists the ROW width at 60 ft.
2. The proposed plans to add bicycle lanes and sidewalks on both sides of the street along with street lighting, curbs, gutters, and parking would require a minimum of 44 ft of roadway to accommodate the plan – and that doesn't include any parking.
 - a. Of the 41 lots along this stretch of SW 172nd St:
 - 5 have no property across the street and would require a new bulkhead and fill to support a road this size.
 - 36 would lose parking. For many of the homes on this street, the only parking available is across the street.

(FTR: 08/16/10
cc: Public Works

- At least 10 new bulkheads would be needed to protect the road, and that assumes that some of the existing bulkheads are considered adequate. Otherwise there are 41 lots that need to be armored to support/protect this proposed roadway.
 - b. This proposed addition would be around 81,752 sq ft of impervious surface along the shoreline, which is an addition of over 48,000sq ft beyond what exists now.
 - c. The cost of such a project would be astronomical
3. The residents along SW 172 do not want this project for several reasons:
- a. It would create a safety issue by encouraging cars to go even faster along this road, putting bicyclists, pedestrians, and the residents themselves at risk. We have to cross the road many times a day to access our property on the other side. People open their front doors directly on to the street and have to drive their cars directly on to the street from garages or parking spaces, so sight distances and traffic speeds are critical issues. Such a project would create a dangerous situation on this street.
 - b. Lighting is not necessary or desired along the street because our homes are so close to the road that any lighting would shine directly into our bedrooms at night. In terms of safety, there is enough light that comes from the homes that it has never been considered an issue.
 - c. Curbs are among the most unsafe things for bicyclists because there is no escape route to a shoulder when you have to get out of the way in a hurry. Bicyclists and pedestrians have used this street in harmony for decades and there are no accident statistics to support a need to create bike lanes or sidewalks on this street.
 - d. The Burien Pedestrian and Bicycle Facilities Plan only recommends signage along SW 172nd and Maplewild : “Signage indicating presence of pedestrians and bicyclists (warning to drivers). This Plan also recommends that the City and neighborhood work together to find pedestrian and bicycle safety solutions on this roadway.” (Figure 7 of Burien Pedestrian and Bicycle Facilities Plan)

Based on the fact that the residents don't want this plan, there isn't enough space to accommodate the plan, and the cost would be prohibitive, we respectfully request that line item #13 be reworded to reflect the following:

- SW 172nd classified as a subcollector
- The project description revised to reflect the City's intent to maintain the existing traveled roadway in good condition.
- Remove reference to sidewalks, bike lanes, curbs, street lighting, and parking; keeping existing parking for residents' use.
- Indicate that the street will be a shared roadway for traffic and bicyclists.

We look forward to working with you to create a Transportation Master Plan that meets the needs and requests of our neighborhood community.



Lisa Clausen

From: Public Council Inbox
Sent: Wednesday, August 11, 2010 4:42 PM
To: 'l_kennel@comcast.net'
Subject: RE: Clean Up City and Generate Revenue

Dear Mr. and Mrs. Kennel:

Thank you for your e-mail to the City Council, dated July 28, 2010. I have been asked to respond to your inquiry. I referred your correspondence to appropriate City staff for review.

As of today, City staff has reviewed the current City code, which prohibits tall grass that may be a fire hazard. (The relevant code section is BMC 8.45.020(9)(c)(vii).) The staff has also looked into Lynnwood's and nearby cities' codes, which vary considerably in setting height limits for lawns and overgrown vegetation. City staff is continuing to confer about this matter and what, if anything, the City would be willing and able to do differently.

Please be advised that the issue of rats is another matter. There is a separate provision in the City code that prohibits any accumulation of material that constitutes vermin habitat. (See BMC 8.45.020(9)(c)(iii).) If such a problem is occurring in your neighborhood then the City code enforcement staff should be informed, in order to work with the County Health Department to take the necessary steps to address it.

To report such a problem please visit the City of Burien Web site at www.burienwa.gov and click on "I want to..." then "Report" and "Code Violations." Forms are also available at City Hall, 400 SW 152nd Street, 3rd Floor.

Lisa Clausen
Burien City Manager's Office

From: l_kennel@comcast.net [mailto:l_kennel@comcast.net]
Sent: Wednesday, July 28, 2010 10:22 AM
To: Public Council Inbox; Public Council Inbox
Subject: Clean Up City and Generate Revenue

Good morning.

I would like to make a suggestion which will clean up the City of Burien AND generate revenue.

May I suggest that Burien adopt a law that requires people to maintain their lawns, both front and back? Specifically, the lawn can not grow any taller than 6 inches. The person violating the law would receive a 24 hour notification to mow their law or the City of Burien, ie, Parks Department, will mow their yards and bill the offender \$200 for the first offence. If a second notice is given to the offender, the fine would increase to \$300. On third offence, no 24 hour notification would be given, rather, the Parks

CFTR: 08/16/10

Department would immediately mow the offender's lawn and bill the offender \$500 with each offence thereafter.

I believe the City of Lynnwood has a similar law on their books. Therefore, you may want to investigate how they address this issue.

We have several neighbors this would affect. Many of which also "feed" the rat population through their clutter and dumping of their garbage in their back yards. When we purchased our home 17 years ago, we had a significant issue with rats. We cleaned up our property and put out bait to kill the rats. Now, we have the onset with the same issue!

Thank you for your time and consideration.

Sincerely,
Loren and Lola Kennel
682 SW 137th Street
Burien, WA 98166-1346

RECEIVED

JUL 29 2010

CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have perfect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve as contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

It would be a travesty to ruin Lake Burien,
Burien's last fresh water sanctuary for wildlife,
because of a few inconsiderate people that don't
care anything about the ecology of the lake.
People will trash the lake!

(FTR: 08/16/10)

Greg R. Deism
533 S. 165th St
Burien, WA. 98148

RECEIVED

JUL 29 2010

CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

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5. exceeding the carrying capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
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Sincerely,



14617 25th Ave SW
Burien WA 98146

CFTR: 08/16/10

Lisa Clausen

From: Dick Loman
Sent: Wednesday, August 11, 2010 9:43 AM
To: neurocon@comcast.net
Cc: Steve Gilbert; Lisa Clausen
Subject: Parking Fine

Dear Mr. Klettke,
Your letter of July 31st to the Burien City Council has been referred to me for reply.

It has been almost five years since our business community, acting through the Burien Economic Development Partnership (BEDP), an economic advisory committee to the Burien City Council, asked the City to rigorously enforce existing parking limits in our downtown commercial district in order to discourage use of our limited on street parking by downtown employees and overflow parkers from the Metro Park and Ride lot. The theory was that 2 Hours during the day was sufficient for dining and shopping needs. We checked this week with neighboring cities and found that SeaTac is also at \$50 and Seattle is at \$42, respectively for parking fines. Des Moines is at \$20, but feel that they should be at the \$50 -\$75 level to cover administration, police and court costs as well as to maintain an effective deterrent. One east side city with limited street parking fines up to \$125 for repeat parking violations. Our street signs omit the amount of specific fines because of the \$100 cost per sign associated with changing the information, when change is needed.

Receiving a parking ticket is never a pleasant experience, but I hope this answers your questions.

Sincerely,
Richard F. Loman
Economic Development Manager
City of Burien
206-248-5528

...

CFTR: 08/16/10
CC: Economic Development

July 31, 2010

RECEIVED

AUG 03 2010

Burien City Council

CITY OF BURIEN

I live in West Seattle near Burien and frequently enjoy the Burien King County Library and spend time in the restaurants and shops especially along 152nd Street and some specialty shops nearby.

Yesterday, I met a Chinese immigrant at the library as a volunteer tutor to help her with her SSCC courses and parked across from the library on 152nd Street. She was a little late and I had spent more time helping her than planned, and when we parted I was hungry so walked to a restaurant about a block away. When I returned an officer was writing a parking ticket, rightfully so, since I had surpassed the 2-hour limit. Although he claimed to have marked my car 10 minutes before I had even arrived, and then gave a dumb answer when I told him so, he was right in that I had surpassed the limit and so I'm paying the fine.

I was quite shocked to find that the fine was so high, \$50. I would have appreciated such a high fine to be posted at the parking sites. If it was, I certainly would have paid closer attention to the time. From looking on internet blogs I see complaints about red-light camera violation fines of \$101 which I also think is rather excessive. An employee at one of the businesses below apparently was fined for not coming to a COMPLETE stop when turning right on a red light at a camera-controlled intersection.

At any rate, I have no control over the fine-setting and since I was in violation I have paid the fine. However, I do have control over where I go shopping, and as a form of protest, I will no longer be shopping in Burien for one year and will be forwarding this letter to businesses I have recently patronized. Although I will be particularly sad by this, since the Aussie pies are authentic, the Danish Bakery makes the best Kringle and Danish in the state (if not the country), Han's really IS German, and Burien Honda has noticeably better prices and services than Seattle, I really feel I don't have much choice in order to be serious about my individual protest.

Ken Klettke
West Seattle

cc:

Paul's Burger Joint
King Wha Restaurant
Danish Bakery
Hayes Feed
Burien Honda
Han's Sausage & Delicatessen
Aussie Pie Company
The Highline Times
B-Town Blog

CFTR: 08/16/10
cc: Economic Development

Lisa Clausen

From: Public Council Inbox
To: Cyndi Upthegrove
Subject: RE: Why the weir?

Thank you for your message. It will be included in the Correspondence for the Record for an upcoming City Council meeting.

L. Clausen
Burien City Manager's Office

From: Cyndi Upthegrove [mailto:cyndiu@comcast.net]
Sent: Sunday, August 01, 2010 2:13 PM
To: Public Council Inbox
Subject: Why the weir?

CFTR: 8/16/10

July 31, 2010

To: Burien City Council

From: John Upthegrove
1808 SW 156th

Re: Why the weir?

While attending a meeting of the SMP Advisory Committee in the fall of 2009, I overheard a strange conversation. The committee was beginning its review of the flood section in the draft SMP. Don Warren asked what areas of the city were considered flood problems. David Johanson listed the areas, none of which included the Ruth Dykeman Center.

Mr. Warren then asked why this section contains the following language, "The City of Burien will maintain the Lake Burien weir." In other words, what does the Lake Burien weir have to do with flooding? At this point Mr. Warren recommended the language be removed from the draft.

One member of the committee, who was also a member of the Planning Commission, asked if the Lake Burien Shore Club was willing to assume liability for the weir? She further opined that the shore club would need a permit to maintain the weir. Mr. Warren pointed out that the shore club has cared for the weir for almost 80 years and that inquiries to the state have determined no permit is necessary. **It was discussed and also noted that other than Mr. Warren, no Advisory Committee member, city staff member or consultant knew the location of the weir or what it is for.** However, Mr. Warren's request to remove this language from the SMP was denied. Within a week or two Mr. Johanson went to the Ruth Dykeman Center, asked to see the weir and photographed it. According to their staff he left the impression that there was some sort of liability attached to caring for the weir.

At this point I began inquiring as to *who* initially introduced the weir language into the draft plan. No one can tell me. Staff, consultants and SMP Advisory Committee members said they did not know. Interestingly, as the draft plan passed from the Advisory Committee to the Planning Commission, the language was changed. It now reads, "the weir will be maintained," with no reference to *who* will maintain it or *how* it will be maintained. The unusual aspect of this is that it was not discussed or recommended either by the Advisory Committee or the Planning Commission. The decision-making has not been transparent on this issue.

I have asked David Johanson, Councilmember Bennet and Mr. Martin who introduced the weir language and no one can give me an answer. If none of these people know why it is there, or who placed it there, let's simply remove the language. **If the city didn't put it there in the first place, I fail to see its necessity.** Please remove this superfluous language from the Shoreline Master Plan.

To : City Council, City of Burien
City Manager, Mike Martin
Community Development Director, Scott Greenberg
Sr. Planner, David Johanson
Monica Lusk for inclusion in public record

From : Don Warren, Lake Burien Shore Club, President and Lake Steward

Date : Monday, August 02, 2010

Re : Requested changes to the Burien Shoreline Master Program, Staff version 14 July 2010

I have a number of important points and requested changes to share with you this evening, so I have handed to each of you and to staff printed copies of this briefing.

- 1) **Regarding 20.30.030 [1.f] – Flood Hazard Reduction, Policies, The weir at outlet from Lake Burien** – As noted in previous meetings there is no history of flooding associated with Lake Burien or the outlet from the lake in more than 100 years. The weir assures the Lake, which has no outflow for about 6 months of each year, can be maintained near the ordinary high water mark a little longer than without the weir after the inflow is reduced in mid-spring. The Lake Burien Shore Club has maintained the weir in its own self interests since the weir was built, about 60 years ago. Any responsibility and liability for its maintenance falls to the Lake Burien Shore Club. The Shore Club thanks you in advance for removing the references to the weir from the SMP, as advised by staff in the changes Matrix, item # 6 in tonight's packet. We want to clarify that both [1.f] AND the erroneous reference to the weir as flood control structure in the introductory paragraph of 20.30.030 should be removed.
- 2) **Regarding 20.30.075 [2.g] – Over Water Structures (OWS :: Docks, Piers, and Floats), Limit one for each Single Family Detached Residential lot** – In the final Planning Commission meetings in March of 2010, The Planning Commission recognized that the Marine and Lake environments differ substantially in that no salmonids exist in Lake Burien. They advised that Lake Burien Private Property owners should be able to build whatever would be allowed by Dept of Fish and Wildlife and Army Corps of Engineers. References by staff to Lake Burien residents commenting on visual impairment and navigation issues are unfounded. In recent discussions with all of the Shore Club members recently, no one recalls any comment of the kind ever being made. **[2.g] can be modified as requested by the City Council as requested in Change Matrix item 17. "On Lake Burien, each single family lot may have one dock or pier, and one float.** (note that barges are boats/vessels and not considered as floats. If need be for clarity, the council can suggest a definition be added or that the definition of float be modified to distinguish that barges are vessels and not floats)
- 3) **The Shoreline Permit Matrix – 20.30.001 – Figure 4 –**
 - a. **Docks, Piers, and floats (Over Water Structures (OWS))– suggested change to "SDP" (Substantial Development) with footnote to show that Lake Burien OWS's need to adhere only to the guides of Dept of Fish and Wildlife and Army Corps of Engineers as**

advised by Planning Commission, and thus neither the SDP nor the CU apply to Lake Burien over water structures. The item presently shows Conditional Use (CU) Permit required which triggers a requirement for a Dept of Ecology review. I have attached to this document an email exchange between Kathi Skarbo of Lake Burien, Dave Douglas of Integrity Shoreline Permitting, and Sr. Planner David Johanson. It notes that the CU Permit requirement, should it stand in Burien's SMP would not only be outrageously unique from all other municipalities, but it would as well obviate the Planning Commission's advice and also cause an undue burden on the home owner and the Dept of Ecology. Please make the requested changes per Planning commission advice and commitment.

- b. Government Facilities – in column “Shoreline Residential” – shows as Substantial Development Permit (SDP) – **Please change to Conditional Use (CU) Permit.** David Johanson told me this row was entered into the matrix to handle the facilities in Seahurst Park, which is in the Urban Conservancy column NOT the Shoreline Residential column. Government Facilities are expected to include a higher point use and ecological impact than a single family residential use. Therefore, due diligence requires an environmental review by Dept of Ecology for this sort of use. **I leave it to the council to change the “SDP” reference to either “CU” (Conditional Use Permit) or “X” (Prohibited) in the Shoreline Residential column.**
- c. Residential Multi-Family – in column Shoreline Residential – Shows as SDP (Substantial Development) should be CU (Conditional Use) permit. Shore Residential for both Marine and Lake Burien is zoned for single family at this time. There is no reason that the SMP should be out of sync with the Zoning in the Comprehensive Plan. Therefore, this type of development should be “X” (prohibited) instead of SDP.
- d. Community Residential Facility – a footnote could be added referring to Ruth Dykeman Children's Center as an existing facility. And could note that existing facilities require only a SDP (Substantial Development Permit). RDCC, having been there for 80 years, has been and can be expected to be an ongoing good steward of the ecological function of the lake and shoreline. No development is presently possible water-ward of the existing buildings.
- e. Transportation Facilities and Parking – in Shoreline Residential column – Shows “SDP” (Substantial Development Permit) where it should be either “CU” (Conditional Use) or “X” (Prohibited) - **Due to the expected lack of compatibility to ecological function that a parking/transportation facility would assure by drawing a dramatic increase in point sources of oily pollution and human access, this type of development should not be encouraged (“X” prohibited) or it should be assured in its design to achieve no net loss of ecological function by requiring a “CU” permit, which would have to be reviewed and approved by Dept of Ecology.**
- f. Public Parks and Recreation Facilities – Shows “SDP” (Substantial Development Permit) where it should be either “CU” (Conditional Use) or “X” (Prohibited). Public Parks and Recreation Facilities under review for development would have a high likelihood of promoting a net loss of ecological function. **Therefore, this particular use should be**

changed from “SDP” to either “X” (prohibited) or “CU” (Conditional Use, which requires Dept of Ecology review and approval), in order to require proper due diligence towards best assuring no net loss of ecological function of the shoreline and associated waters.

- 4) **20.30.085 [2.h] – Recreational Development, Regulations** – Staff has provided suggested language in the Changes Matrix in packet for tonight. See item #18. Staff’s suggestion for language is pretty good and would best be stated as “Should physical public access occur on Lake Burien, No watercraft access is allowed through that public access point”. Some boats that have been in other lakes in the area will have fragments of milfoil, elodea, or other invasive submerged plant species. The introduction to the lake of any of these will cause a net loss of ecological function of the waters of the lake as noted in Lake Burien Shore Clubs scientific reports from Herrera and also from Cooke. These sorts of invasions are not possible to mitigate but through prohibition of and constant proactive prevention of entry into the lake.
- 5) **Changes Matrix – Item 20 , Inventory and Appendices** – To include the Burien Marine Homeowners Association baseline analyses and Lake Burien Shore Club’s scientific reports in the appendices to the Burien SMP. – Although staff is correct in noting the items have been submitted in the public record, including these items in the appendices to the SMP is a stronger show of support for an accurate baseline and inventory. Any future development considerations would be much better informed were they to use these documents. Failing to include them in the SMP appendices assures the permitting process need not consider them as baseline conditions for subsequent adjudication of “no net loss”. We strongly urge and request that you include these honest and factual references in the appendices of the SMP.
- 6) **Physical Public Access to Lake Burien will result, with the highest likelihood, in the net loss of ecological function of the shoreline and the associated waters. Please make the changes requested in our Lake Burien Shore club red line request of June 2010 (see excerpt below) for the following reasons..** Physical Public Access cannot be properly monitored. The police department of Burien already acknowledges it cannot be everywhere at once and controlling parks and their uses will never be a top priority when simultaneous, situational needs conflict. Therefore, physical public access WILL result in someone bringing a boat to the lake regardless a prohibition in the regulations. A law without enforcement is as good as no law at all. If boats are brought to the lake, sooner or later, one of them will carry a fragment of a fast growing and over competitive submerged plant species such as milfoil. At the likely occurrence of that event it would take about two years for 60% of the lake to become infested with the invasive plant. (submerged plant growth occurs in up to 12 feet of water on average. More than 60% of the lake is less than 12 feet in depth.) Our scientific reports show this would lead to a chemical change in the lake promoting a large spike in blue-green algae populations. This produces a toxic result to lake and people. The “no net loss” requirement of the Washington State Shoreline Management Act requires mitigation according to a hierarchy with the first step being to not perform the development, in this case a physical public access point. **Bob Fritzen repeatedly answered “NO” when asked if the City must provide physical access to ever reach of every shoreline of the state.** He said “NO” in the Shoreline Advisory Committee meetings multiple times. He said “NO” in the Planning Commission meetings multiple times. He said “NO” in the

forums with the city council in recent months. **It is your responsibility to assure not net loss by promoting a Draft SMP to Dept of Ecology that protects Lake Burien in the only way you can; please prohibit Physical Public Access specifically in the SMP as advised and requested below..**

20.20.015 Shoreline Public Access Element

Pol. PA 5: The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline. However, the City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

20.30.035 Public Access

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

Don Warren

From: Kathi Skarbo [kskarbo@comcast.net]
Sent: Monday, August 02, 2010 2:19 PM
To: Chestine Edgar; Robbie & Robert Howell; Cyndi & John Upthegrove; Don Warren; Sandy Lievero; Tanya Engeset; Linda Plein; Greg & Paula Anderson
Subject: Comments from Dave to DJ

Following is a message from Dave Douglas to David Johanson. There are a few good points if anyone wants to speak to this issue tonight.

Kathi

-----Original Message-----

From: Dave Douglas [mailto:integritypermitting@hotmail.com]
Sent: Monday, August 02, 2010 12:10 PM
To: David Johansen
Cc: Barbara Trenary; Kathi Skarbo; Andy Ryan
Subject: RE: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Thanks.

First off, I am in disbelief based on my experience over the past few years with the SMP Update process. Are there plans to change this back to the appropriate permit classification so it aligns with all other local government SMPs or does the City of Burien plan to totally abandon its responsibility for managing its own shorelines and turn review, approval and all control for the permitting of all such structures over to the state?

I'm not one to question how Burien conducts business on behalf of its citizens but as a resident of the state and someone extremely familiar with the shoreline permitting process can you explain the City's thinking on this and the position of the Planning and Land Use Department? There is no other Land Use and Planning Department in the area, maybe even the entire state, that would turn over the shoreline management and fate of their residents to the state except in the already accepted situations for variances and the most unusual of projects. Conditional uses, just like variances are an exception not the norm. Ecology has also stated their goal through the SMP Updates is not to take on more work through the review of additional project. Docks, piers and floats are routine water-dependent accessory structures and should not require Conditional Use permits. This process takes longer and is more expensive and at a time when the state is cutting staff to cover budget shortfalls it cannot be good for your property owners or the state. State and federal permits are totally covered by tax dollars so this means more work with no additional revenue. What is the state's position on this approach by the City?

Section 20.30.705 outlines some minimal requirements for Over-Water Structures. Why include this section in the City's SMP if review and approval is required by Ecology under the Conditional Use process? Did the City just need to put something in writing that would pass the state SMP Update litmus test? WA Department of Ecology essentially has no design parameters for these structures so they depend and require local governments to assign standards. How is the City meeting this responsibility?

What has been the reaction of property owners, homeowner groups and any their legal counsel? Has this been a point of discussion or simply passed by because people don't understand what this means in terms of restrictions, process and cost?

I am quite puzzled by this approach and hope you can provide some answers to all the questions above. I appreciate your time, energy and expertise.

Sincerely,

Dave Douglas
Permit Manager/Shoreline Consultant
Integrity Shoreline Permitting
"Putting the Property Owner First"

integritypermitting@hotmail.com

C: (425) 343-2342

F: (206) 220-3737

From: DAVIDJ@burienwa.gov
To: integritypermitting@hotmail.com
Date: Mon, 2 Aug 2010 11:02:53 -0700
Subject: RE: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Mr. Douglas

Thank you for your e-mail. We should have pulled out the document while you were here, I believe I was recalling a change that was made regarding bulkheads (See page IV-1, Figure 4). The draft dated July 14th does show dock, piers and floats as a conditional use permit.

David Johanson, AICP
City of Burien, Senior Planner
400 SW 152nd Street, Suite 300
Burien, WA 98166

Phone: (206) 248-5522

From: Dave Douglas [<mailto:integritypermitting@hotmail.com>]
Sent: Monday, August 02, 2010 9:47 AM
To: David Johanson
Cc: Barbara Trenary; Kathi Skarbo; Andy Ryan
Subject: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Hi David,

Thanks for meeting with me to discuss the Kathi Skarbo project on Friday.

During our discussion I asked you why a Single Family Residential (Shoreline Residential) Dock, Pier and Float required a Conditional Use Permit. You said I must have seen an old draft and it was changed to a Substantial Development Permit. I checked the July 14, 2010 City Council Draft over the weekend and those structures are indeed listed as Conditional Use on the Shoreline Permit Matrix on page IV-1. Can you confirm that a change was made at a recent meeting and is not yet reflected on the city website and will show up in the next draft?

If Burien does require a single family dock, pier or float to go through the Conditional Use process for a structure that is considered a water-dependent accessory use to a preferred shoreline use (single family residence) it will be the only City in the Puget Sound Area taking such action against its waterfront property owners. I would question the strength of this position since I don't believe the WAC, RCW or SMA would support it.

If I am reading the matrix in error or if a recent change was made I will gladly accept correction and direction. Please respond to this e-mail as soon as possible. Thanks.

Sincerely,

Dave Douglas
Permit Manager/Shoreline Consultant

Integrity Shoreline Permitting
"Putting the Property Owner First"
integritypermitting@hotmail.com
C: (425) 343-2342
F: (206) 220-3737



CITY OF BURIEN, WASHINGTON

Written Public Comments For Meeting Of Aug 2, 2010

For those who do not wish to speak, but would like to make comments, please use this sheet. Your comments will be summarized and become part of the permanent record for this Council meeting. You may leave your completed sheet with the City Clerk. Thank you.

King County historical record shows that water bodies with little to no physical access by humans and pets can maintain their ecological functions.

When unfettered physical access is allowed, the water quality quickly degrades and is often irreversible regard less ~~the~~ the technology or money thrown at it.

Lake Burien will suffer the same fate as all other water bodies if physical public access is not prohibited.

Name: Bob Edgar

Address: 15674 Shorewood Dr SW

City / Zip Code: Burien 98146

Telephone: _____

Please stipulate in the SMP that physical public access should be prohibited on Lake Burien

August 2, 2010

Honorable Mayor and Council Members,
Our names are Robert and Robert Howell
We live at 15240 20th Ave SW
Burien, 98148
98

We recommend that the city council delete SMP 20.25.015 item B. under Management Policies in Chapter 3 City Council Draft, 7-14-10 and add to the proper place in the SMP "there will be no physical public access to Lake Burien."

20.25.015 reads Public Access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts such as importation of invasive species to Lake Burien can be mitigated.

The Regional Eurasian Milfoil Control Plan for King County December 2002 page 6 states prevention is the most efficient and least expensive strategy and appropriate for all lakes where no milfoil currently exists.

Large lakes of almost 500 acres have a better chance of temporary Eradication once milfoil has been imported into the lake. Lake Burien is only 44 acres. It's deepest part which is only a small section is only 29' Eradication is temporary because wherever there is public access milfoil is imported over and over again by the public.

Although eradication is possible, it requires a great deal of **financial commitment on the part of the lake group. It requires continual monitoring to detect re-introductions or "missed" plants. Without these efforts eradication is only temporary** and plants almost always return within two to three years. Most eradication efforts really result in suppression because of the high probability of re-infestation from outside the lake. Lake Twelve is an example of an unsuccessful eradication program. For two years after treatment with fluridone it was milfoil free. The third year a few plants were observed and hand removed. However, this monitoring was discontinued and the entire lake is now infested again.

Some General Information from King County

- There are Physical, Chemical and Mechanical Control Methods but they all have different negative impacts to the environment of the fish and

CSTR: 08/16/10

wildlife habitats and they all have to be permitted by the state or Federal Government.

- No matter which strategy is chosen it will need to be for at least as long as there is public access. Eurasian Milfoil was first discovered in Lake Meridian in 1965 and they have been trying to get rid of it ever since.
- When there is money available there are small grants that you can apply for from the state but they do not completely cover the costs. As noted **above Eradication requires a great deal of financial commitment on the part of the lake group.**
- Some lakes like **Sawyer Lake** have no plant management history and that lake is heavily impacted by Eurasian milfoil. People bringing boats and water toys from lakes like this to Lake Burien are carriers of milfoil.
- Waterbodies suitable for individual home control options include lake or ponds heavily infested with milfoil, **where there has not been a comprehensive or lake-wide milfoil management plan developed and implemented.** Or, where a plan has been developed and it calls for homeowner control. **in these situations it is up to each homeowner, at their expense, discretion, and with proper permitting, to remove milfoil.** Some of these methods may not be suitable in waterbodies **experiencing an early infestation of milfoil because fragments may be created and cause increased spread.**

It should appear obvious that there can be no effective mitigation for infestations of Regional Eurasian Milfoil, and even with treatment the lake and the homeowners will suffer non-recoverable net loss. There will be significant ecological impacts such as importation of invasive species to Lake Burien if public access is allowed.

We hereby ask that all references to physical public access to the lake be removed.

Thank you for your consideration.

Robbie and Robert Howell

20.25.015 Urban Conservancy

1. Purpose

The purpose of the “Urban Conservancy” shoreline environment designation is to protect and restore ecological functions of open space, floodplains, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. This designation focuses on providing public access for the enjoyment of marine and lake shorelines by allowing the development of public recreational facilities.

2. Criteria for Designation

An “Urban Conservancy” environment designation is assigned to areas within shoreline jurisdiction that are suitable for public access, water-enjoyment recreational uses and active recreation developments. These are areas that are developed at a low density including residences and outdoor recreation.

3. Management Policies

- a. Uses that preserve or restore the natural character of the shoreline area or promote preservation of open space and critical areas should be the primary allowed uses.
- b. Public access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts, ~~such as importation of invasive species to Lake Burien,~~ can be mitigated.
- c. Water-oriented uses should be given priority over non-water-oriented uses with water-dependent uses given the highest priority.
- d. New development should be designed and located to preclude the need for shoreline armoring, vegetation removal, flood control, and other shoreline modifications.
- e. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

APPENDIX A
LAKE CHARACTERISTICS
&
AQUATIC PLANT SURVEY MAPS

Introduction Table A-1 is a summary of general lake information and plant management history for all 38 lakes surveyed. This table is followed by 18 maps. The first four maps display regional information: the first depicts the location of all the King County lakes surveyed, the second depicts those surveyed that contained milfoil, the third depicts where loosestrife (another invasive plant problem) was observed in Lakes Washington and Sammamish, and the fourth depicts Chinook Salmon use areas. These last two of the regional maps have been included because this information may be useful in the IAVMP planning process.

The four regional maps are followed by maps of each of the 14 lakes where milfoil was observed. These maps are provided in alphabetical order. The maps indicate where milfoil was found in the lake and the extent of the population. Only one level of infestation is indicated per lake, so areas within each lake that might have other densities of the plant were not differentiated.

Table A-1. Summary of King County Lake Characteristics and Plant Management History.

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Lake Alice	Raging River	King County	33	No	Not Immediately Available
Angle Lake	Green River	City of Seatac	102	No	Not Immediately Available
Bass Lake	Green River	King County	24	Yes	Not Immediately Available
Beaver Lake	Lake Sammamish	City of Sammamish	63	No	DOE has denied herbicide treatment requests by residents to target non-native water lily growth. There is active citizen lake monitoring.
Boren Lake	May	City of Newcastle	15	No	Not Immediately Available
Cottage Lake	Bear	King County	63	No	Not Immediately Available
Desire Lake	Cedar River	King County	72	Yes	Not Immediately Available. Small population of plants.
Dolloff Lake	Mill Creek	King County	21	No	Not Immediately Available
Fenwick Lake	Green River	City of Kent	18	No	An extensive infestation of Brazilian Elodea (<i>Egeria densa</i>), another invasive noxious weed, dominates the littoral zone. An IAVMP was submitted to Ecology in 2000 and approved.
Fivemile Lake	White River	King County	38	No	Not Immediately Available
Lake Geneva	Mill Creek	King County	29	No	Selective treatments were made in the 1980s to reduce the population of non-native water lily. The water lily communities have re-colonized much of the lake shoreline. This species of water lily (<i>Nymphaea odorata</i>) is on the 2002 state noxious weed list.
Lake Jeane	Lower Puget Sound	City of Federal Way	15	No	Management activities by the Twin Lake Golf and County Club have included regular inspections of the lake by a commercial applicator, treatment with contact and systemic herbicide for suppression of problem aquatic weed growth, and spot treatment for filamentous algae growth. The community has also undertaken water quality monitoring and is considering an aeration system.

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Lake Killarney	Hylebos	King County	31	No	In the mid 1980s, Lake Killarney was heavily infested with Eurasian milfoil. The lake residents formed a milfoil committee in 1986 and obtained the necessary permits to treat the lake in 1987. A treatment with Sonar aquatic herbicide eradicated the Eurasian milfoil during that year. In each of the following years, licensed applicators have inspected and treated problematic weed growth. In the early 1990s the lake community worked with King County to develop a Lake Management Plan.
Langlois Lake	Tolt River	King County	40	No	Not Immediately Available
Lake Lorene	Lower Puget Sound	City of Federal Way	15	No	Management activities by the Twin Lakes Homeowners Association have included regular inspections of the lake by a commercial applicator, treatment with contact and systemic herbicide for suppression of problem aquatic weed growth, and spot treatment for filamentous algae growth. The community has also undertaken water quality monitoring and is considering an aeration system for this urban lake.
Lake Lucerne	Jenkins Creek	City of Maple Valley	23	No	Along with Pipe Lake which is directly connected to Lucerne, this lake system has been undergoing intensive control efforts targeting the invasive aquatic weed <i>Hydrilla</i> . A tjrovomg [p[I;atopm was discovered in the lake during a 1994 King County survey program. At that time, Eurasian milfoil was also present in great quantities. In 1995 King County and DOE instituted an eradication effort that continues to the present. The first four years of this program utilized Sonar aquatic herbicide. Eurasian milfoil was eradicated by the Sonar treatment in 1995. <i>Hydrilla</i> tubers continue to sprout from the lake sediments and eradication has not yet been achieved.

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Marcel Lake	Harris Creek	King County	19	No	During the 1980s the lake association regularly hired licensed applicators to treat submerged weed growth with aquatic herbicides. Marcel Lake was one of the first private lakes to get a permit for grass carp stocking as a biological control agent. The community has relied on biocontrol for aquatic plant management since that time.
Meridian Lake	Soos Creek	City of Kent	150	Yes	This lake is heavily impacted with Eurasian milfoil. An IAVMP was developed in 2000 and submitted to Ecology and approved.
Morton Lake	Covington	King County	66	No	Not Immediately Available
Neilson Lake	Green River	King County	19	Yes	No plant management history. This lake was observed to have pioneering infestations of Eurasian milfoil in 2001.
North Lake	Hylebos Creek	King County	55	No	There have been a number of permit applications made to DOE for the control of water lilies and submerged plants in the 1990s. It is not known what work was performed. The shoreline is heavily impacted with the noxious emergent weed Purple Loosestrife. This plant dominates the wetland areas on the west shoreline and is present in some yards along the east shoreline.
Phantom Lake	West Lake Sammamish	City of Bellevue	63	Yes	In addition to being heavily infested with Eurasian milfoil, there are colonies of Purple Loosestrife well established around the lake perimeter and in the adjacent wetlands.
Pine Lake	East Lake Sammamish	City of Sammamish	88	No	Not Immediately Available
Pipe Lake	Jenkins Creek	City of Maple Valley and Covington	51	No	Along with Lake Lucerne, which is directly connected to Pipe Lake, this lake system has been undergoing intensive control efforts targeting the invasive aquatic weed Hydrilla. See discussion of Lake Lucerne for history.
Sammamish Lake	Sammamish	Multiple Jurisdictions	4,893	Yes	This lake is heavily infested with Eurasian Milfoil despite efforts to eradicate the plant since the 1970s. Areas of Lake Sammamish around the State Park participated in the METRO harvesting program. There have also been some permits issued for the management of Eurasian milfoil for various homeowner associations on the lake.

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Sawyer Lake	Covington Creek	City of Black Diamond	279	Yes	No plant management history. This lake is heavily impacted by Eurasian milfoil.
Shadow Lake	Jenkins Creek	King County	50	Yes	Not Immediately Available. Populations of milfoil appear to be relatively small.
Shady Lake	Cedar River	King County	21	Yes	No plant management history. There are pioneering colonies of Eurasian milfoil in this lake.
Spring Lake	Cedar River	King County	68	Yes	No plant management history. This lake is moderately infested with Eurasian milfoil.
Star Lake	Green River	King County	34	No	This lake historically has had a major infestation of Eurasian milfoil. Residents formed a milfoil committee in the late 1990s to study control options. In 2000, they raised funding from homeowners and hired a licensed applicator to treat the lake with Sonar aquatic herbicide. Diver surveys in the summer of 2000 and 2001 show no milfoil present in this system. At this point, Eurasian milfoil has been eradicated from Star Lake.
Steel Lake	Lower Puget Sound	City of Federal Way	46	Yes	Pioneering colonies of Eurasian milfoil were found in Steel Lake in 2001. This lake was heavily impacted with Eurasian milfoil and non-native white water lily in the 1980s. Residents formed a lake management committee to selectively remove some water lily growth in 1989 and 90. They also helped the City of Federal Way obtain funding from DOE to eradicate Eurasian milfoil. A Sonar aquatic herbicide treatment was made in 1993 and the lake has been surveyed a number of times since showing no presence of Eurasian milfoil until the 2001 survey. The lake was treated with 2,4-D in 2002. Results are as yet unknown.
Trout Lake	White River	King County	18	No	Not Immediately Available

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Lake Twelve	Cedar River	King County	43	Yes	This lake has been the subject of intensive study and control efforts for milfoil. An IAVMP was developed in the 1990s. A Sonar aquatic herbicide treatment was performed in the mid 1990s. Diver surveys for two years after the treatment showed the lake to be free of Eurasian milfoil. The third year found some pioneering colonies present near the boat ramp and the west shoreline. These were mapped and hand picked. This weed has since expanded back to the point of pre-treatment. The littoral zone is heavily impacted with Eurasian milfoil.
Lake Union	Lake Washington	City of Seattle	598	Yes	No plant management history. The littoral zone is moderately impacted with Eurasian milfoil.
Walker Lake	Coal Creek	King County	12	No	Not Immediately Available
Lake Washington	Lake Washington	Multiple Jurisdictions	22,138	Yes	There is a long history of aquatic plant management in this lake. METRO pioneered Eurasian milfoil control efforts in this lake in the early 1980s using aquatic weed harvesters. They also funded research and other non-chemical milfoil control efforts in the region. METRO switched to a contract harvest program in 1985. The City of Seattle Parks Department has an ongoing program to treat the beaches they manage with diver removal and bottom barriers and harvest high use areas. Many eastside jurisdictions have utilized aquatic herbicides to treat Eurasian milfoil. Groups on Mercer Island, Newport Shores and Hunts Point have treated with herbicides in a maintenance capacity.

Lake Name	Basin	Jurisdiction	Area (acres)	Milfoil Present	Some History of Plant Management
Lake Wilderness	Jenkins Creek	City of Maple Valley	67	Yes	Lake Wilderness has a long history of Eurasian milfoil infestation. An IAVMP was developed in the mid 1990s. In 1998, the lake was treated with Sonar and Eurasian milfoil was eradicated from the system. Diver surveys each year since have found no milfoil until autumn 2002 when a few plants were found and hand pulled. The citizens formed a Lake Management District that is administered by the City of Maple Valley. Purple Loosestrife was observed at the Public Access. Those plants were hand pulled.

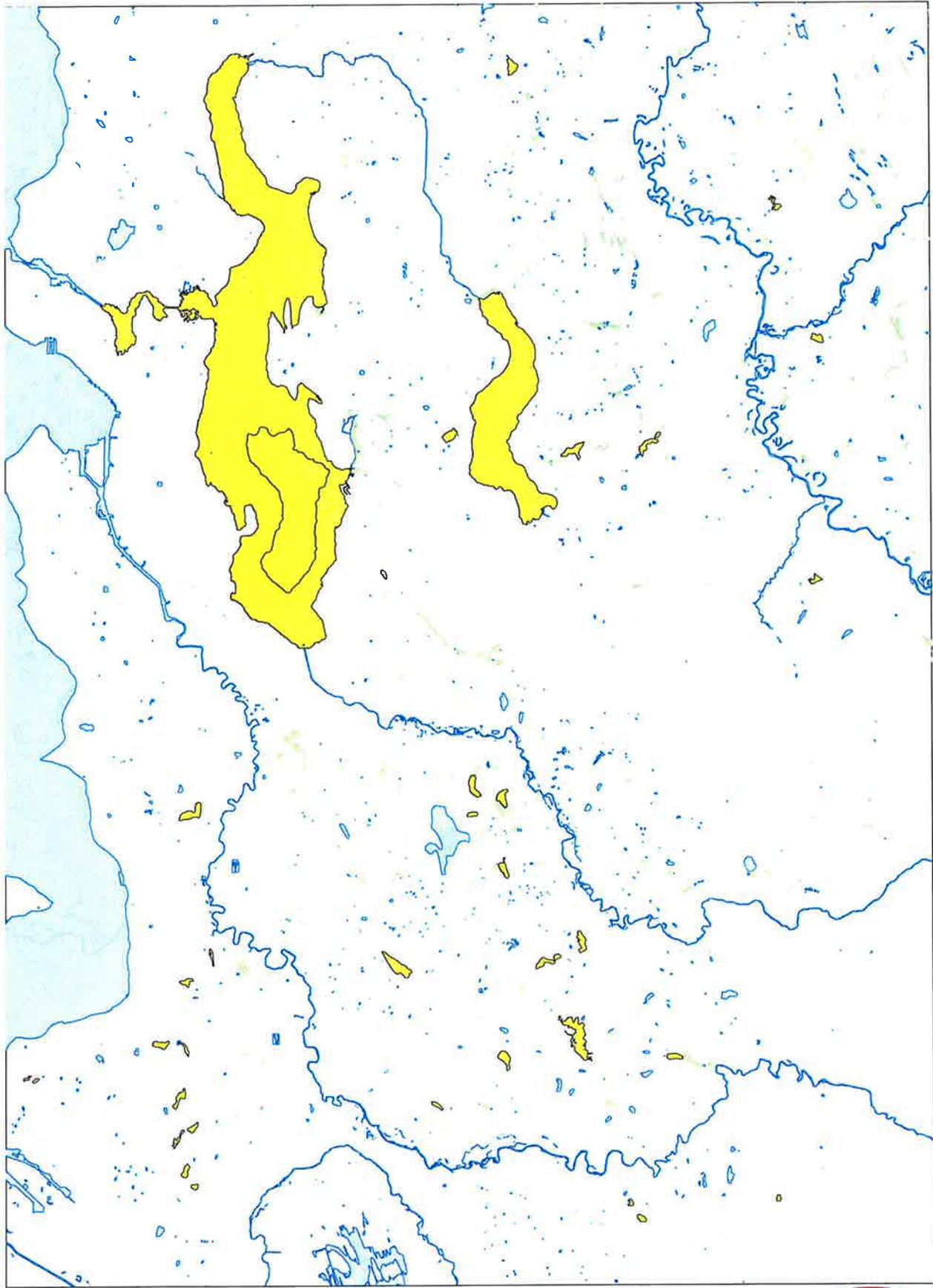


Figure 1. King County: Regional Map

 Lakes Surveyed



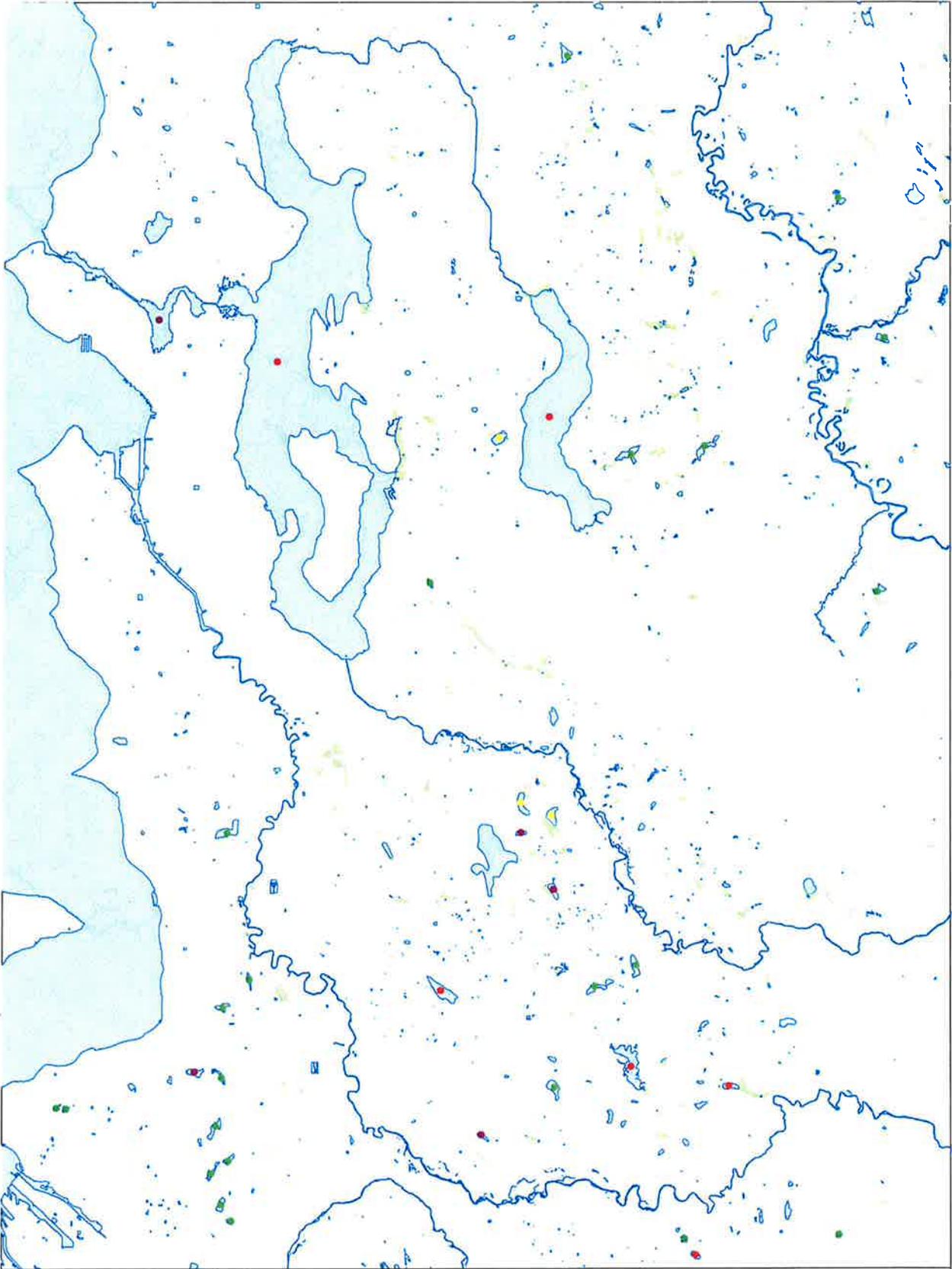


Figure 2. King County Surveyed lakes

- EWM established lake
 - EWM establishing lake
- EWM pioneering lake
 - No Eurasian Water Milfoil found



10 0 10 20 30 Kilometers

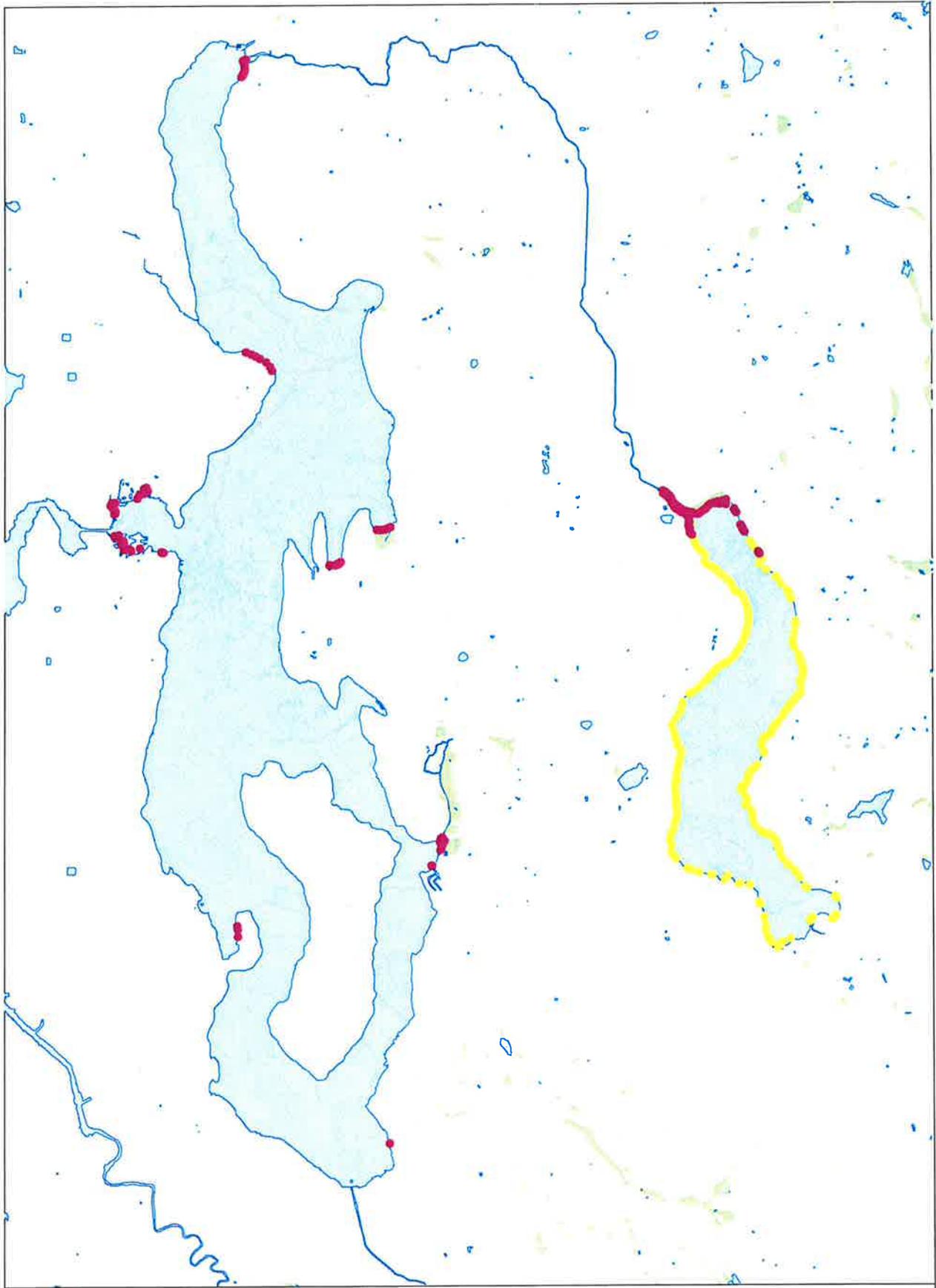


Figure 3. King County: Lakes Washington and Samammish Loosestrife Locations

- Purple loosestrife
- Garden loosestrife



10 0 10 20 Kilometers

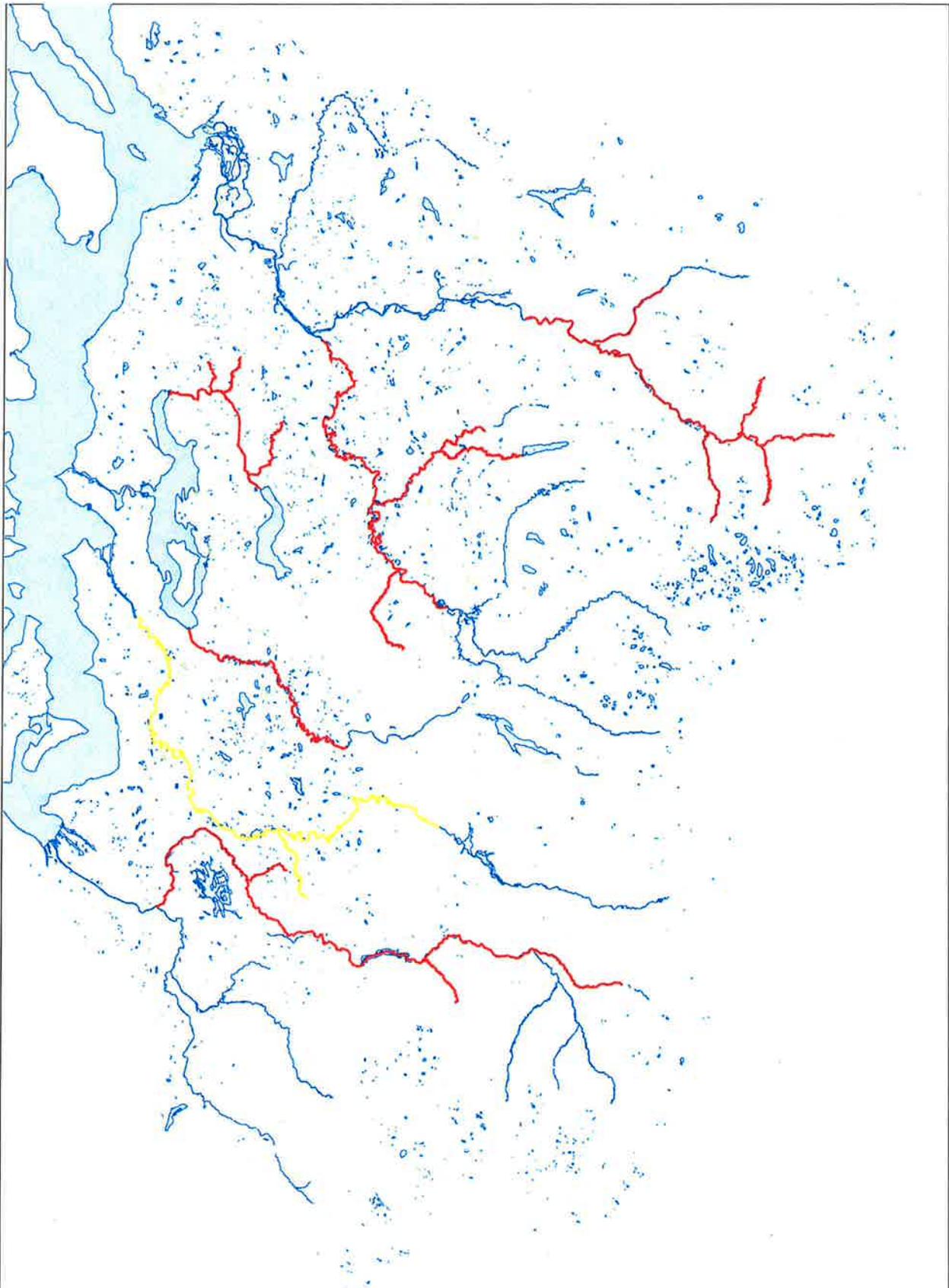


Figure 4. King County: Chinook Salmon Status and Distribution

 Critically Depressed Native Chinook River/Stream
 Health Chinook River/Stream



90 0 90 180 Kilometers



Figure 5. King County: Bass Lake

- EWM established lake
- Dense Eurasian Water Milfoil



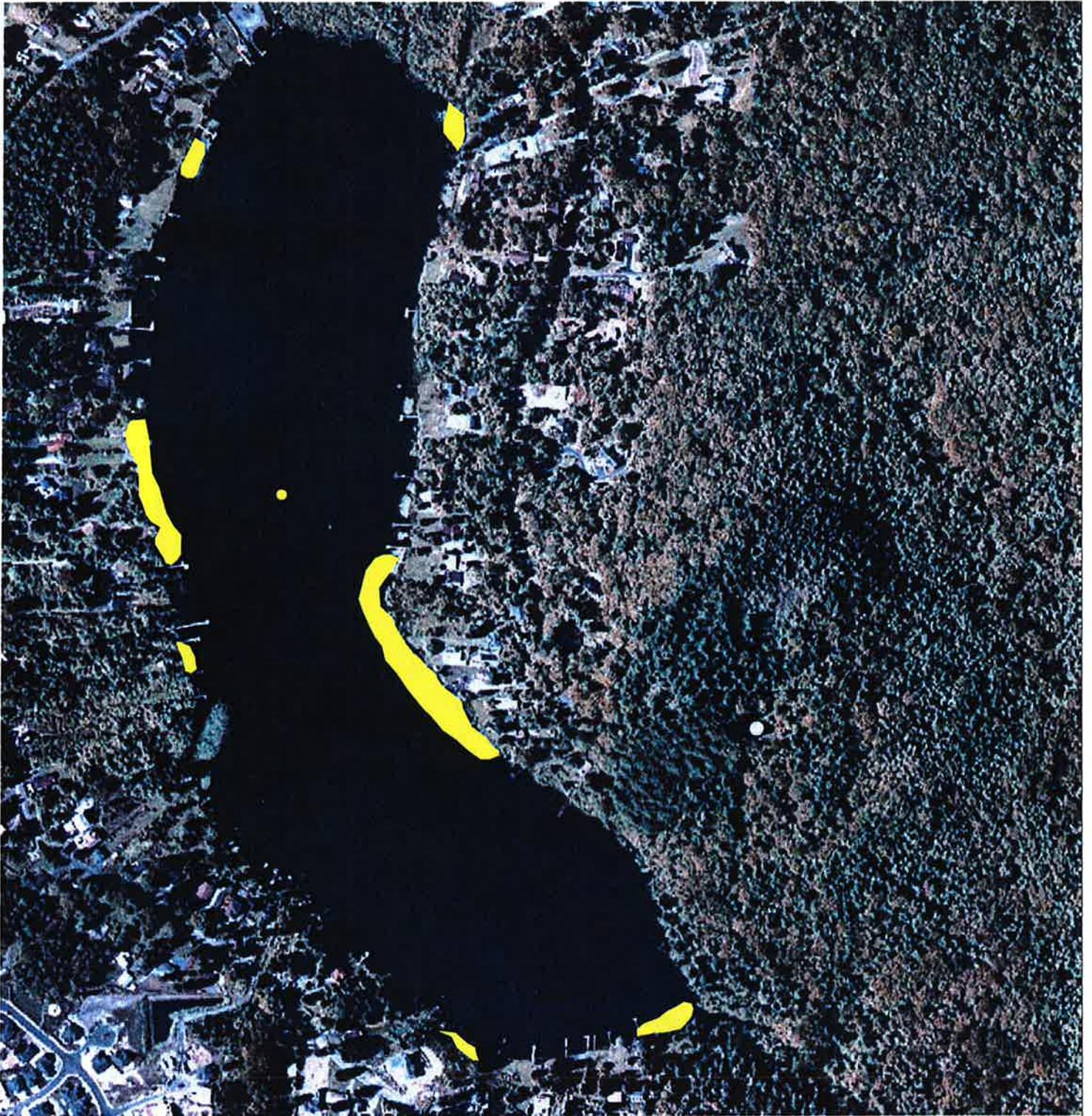


Figure 6. King County: Desire Lake

- EWM establishing lake
- Moderate Eurasian Water Milfoil



800 0 800 1600 Meters

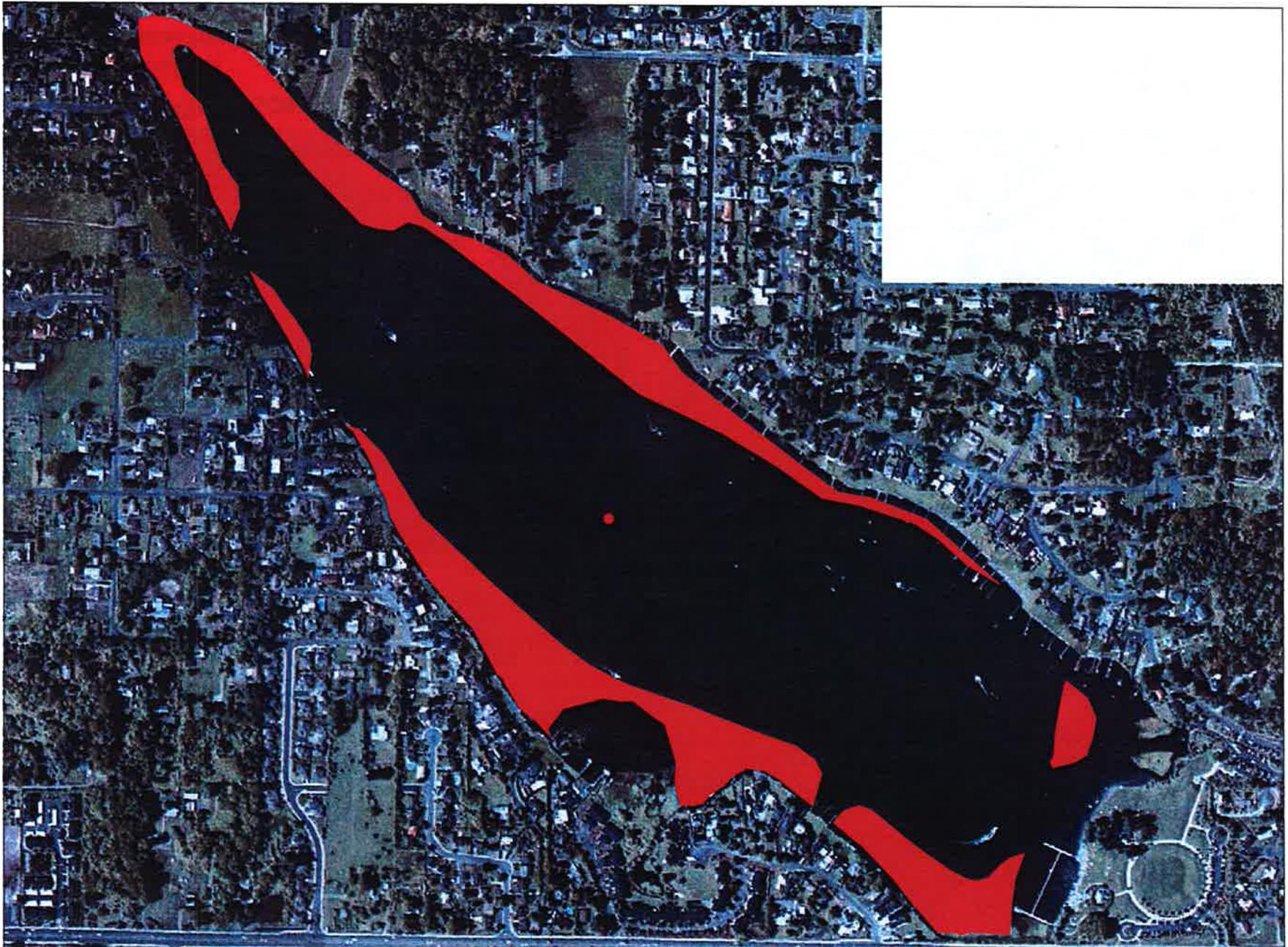


Figure 7. King County: Lake Meridian

- EWM established lake
- Dense Eurasian Water Milfoil

900 0 900 1800 Meters





Figure 8. King County: Neilson Lake

- EWM pioneering lake
- Sparse Eurasian Water Milfoil





Figure 9. King County: Phantom Lake

- EWM establishing Lake
- Moderate Eurasian Water Milfoil





Figure 10. King County: Lake Sammamish

- EWM established lake
- Dense Eurasian Water Milfoil

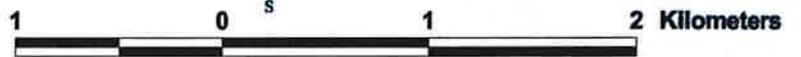


9 0 9 18 Kilometers



Figure 11. King County: Sawyer Lake

- EWM established lake
- Dense Eurasian Water Milfoil



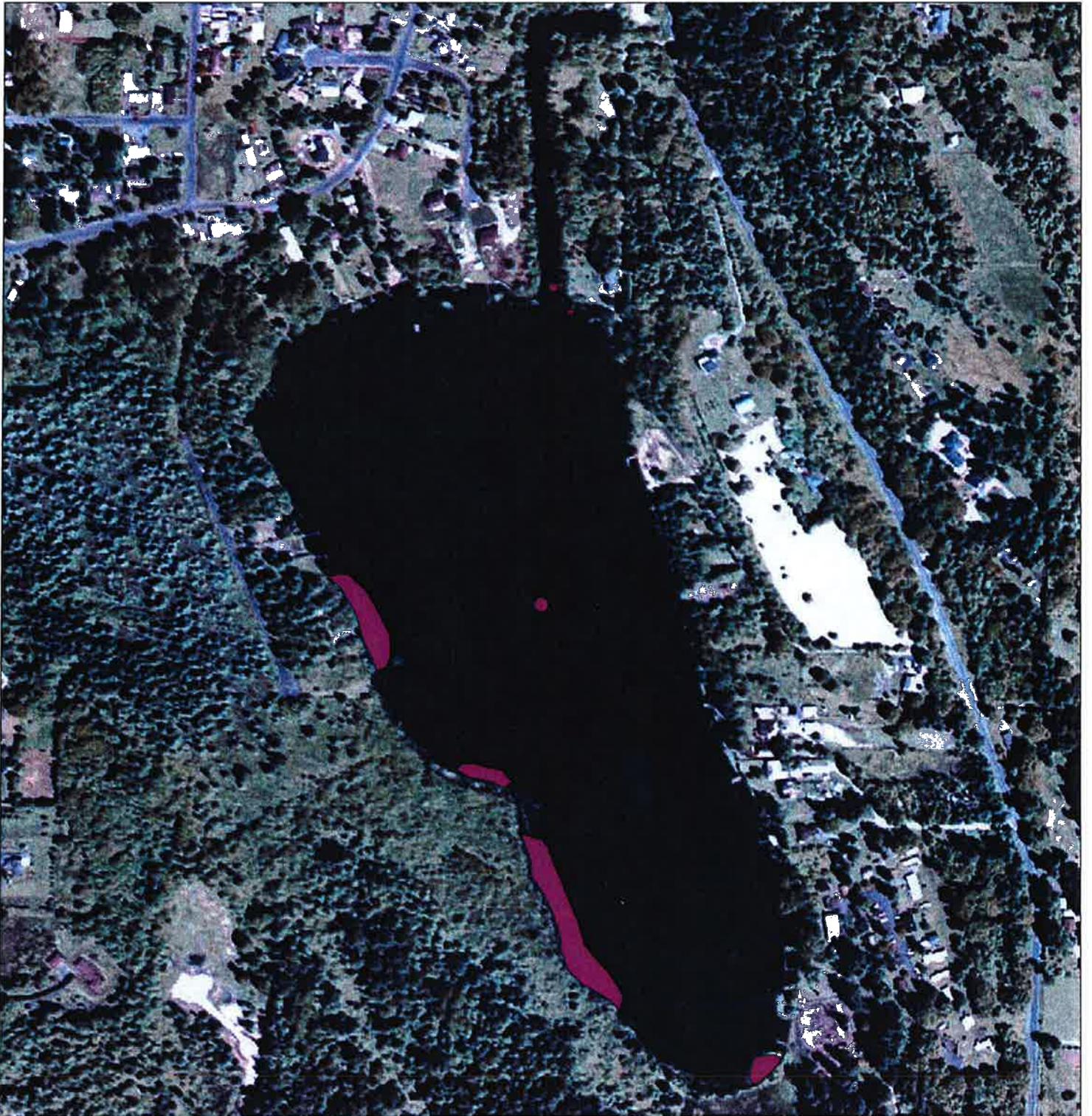


Figure 12. King County: Shadow Lake

- EWM pioneering Lake
- Sparse Eurasian Water Milfoil



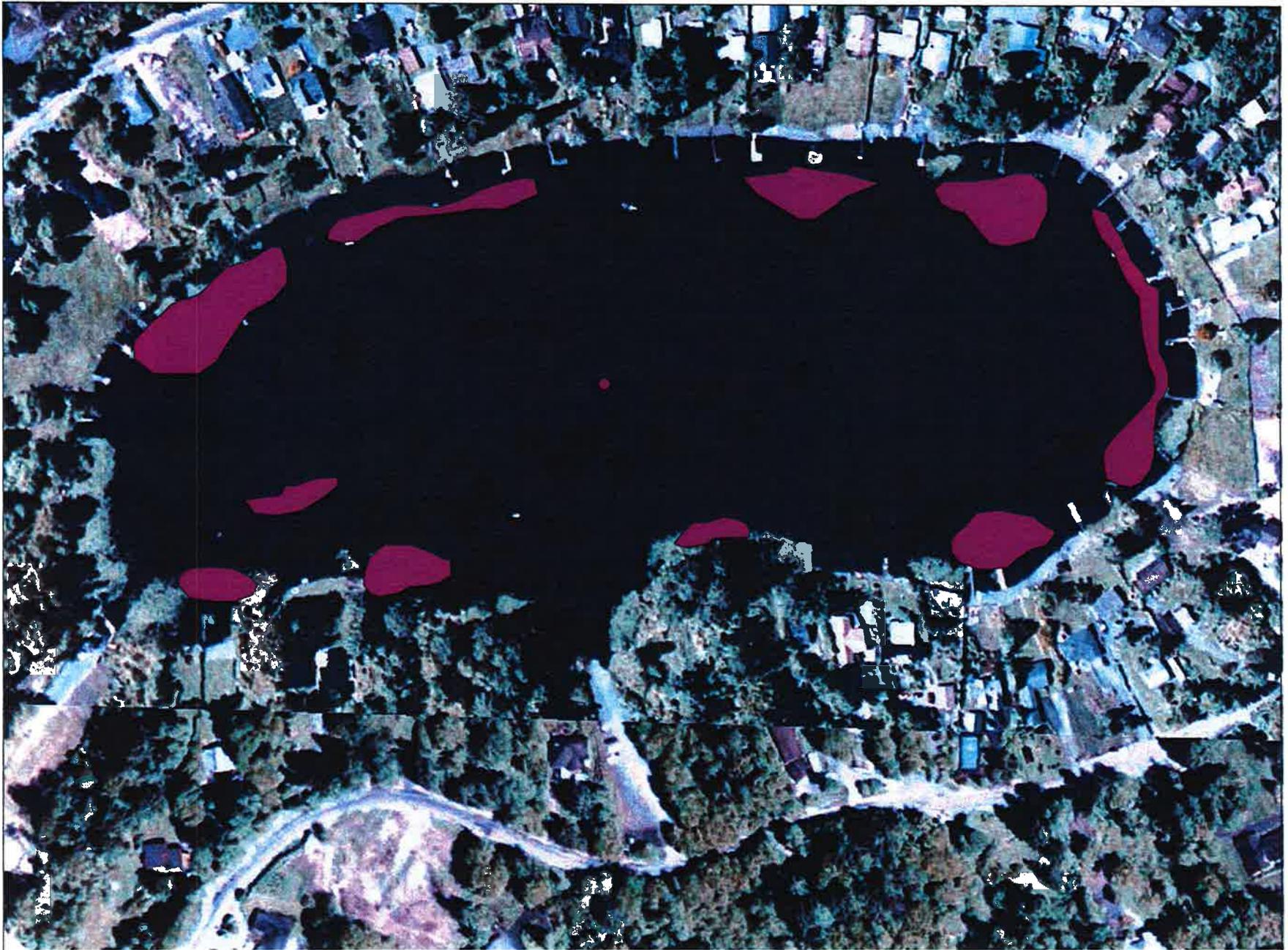


Figure 13. King County: Shady Lake

- EWM pioneering lake
- Sparse Eurasian Water Milfoil

300 0 300 600 Meters



AquaTechnex
"Advancing the Science
of Lake Management."



Figure 14. King County: Spring Lake

-  EWM establishing lake
-  Moderate Eurasian Water Milfoil



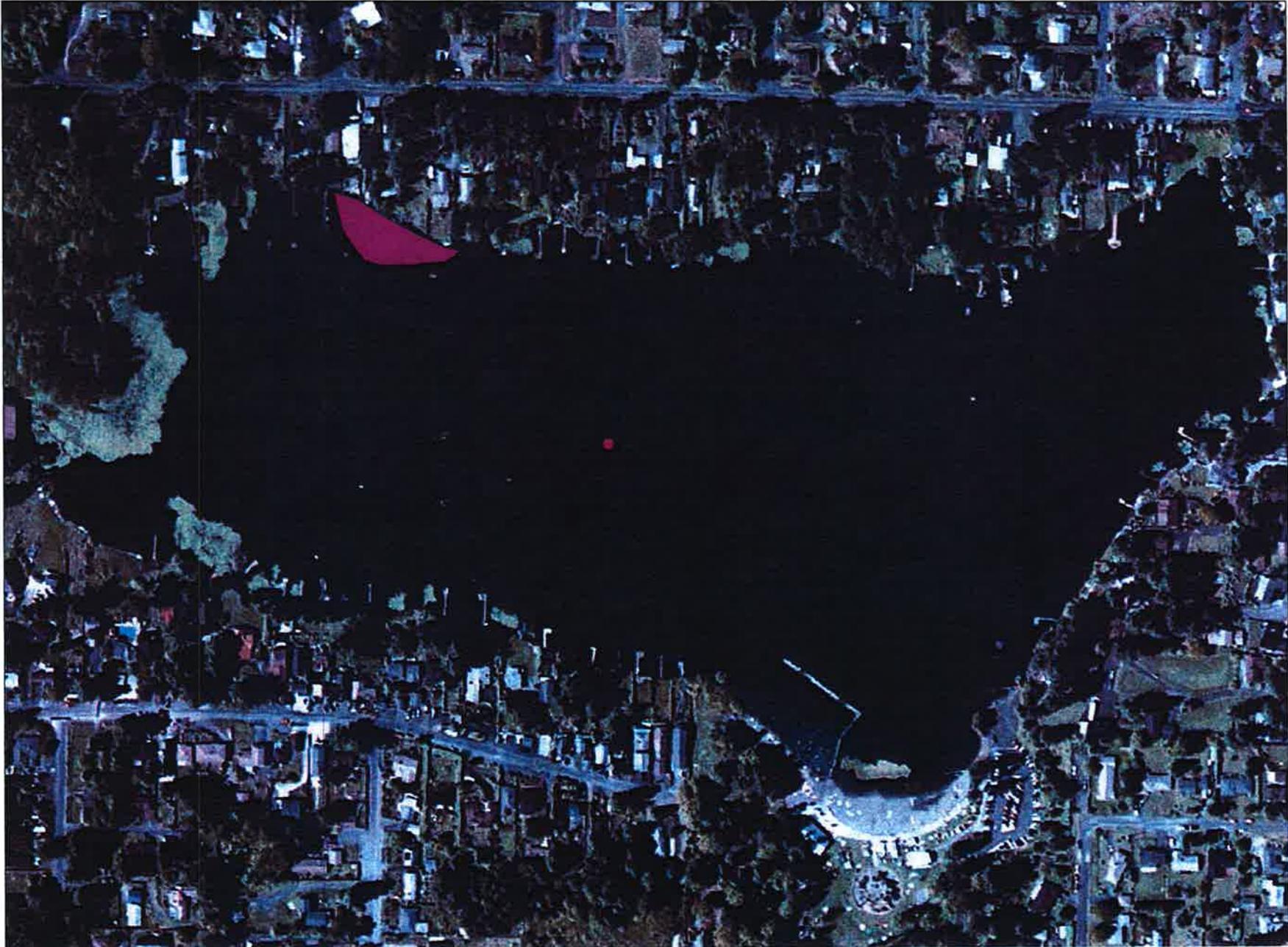


Figure 15. King County: Steel Lake

- Ewm pioneering.shp
- Sparse Eurasian Water Milfoil



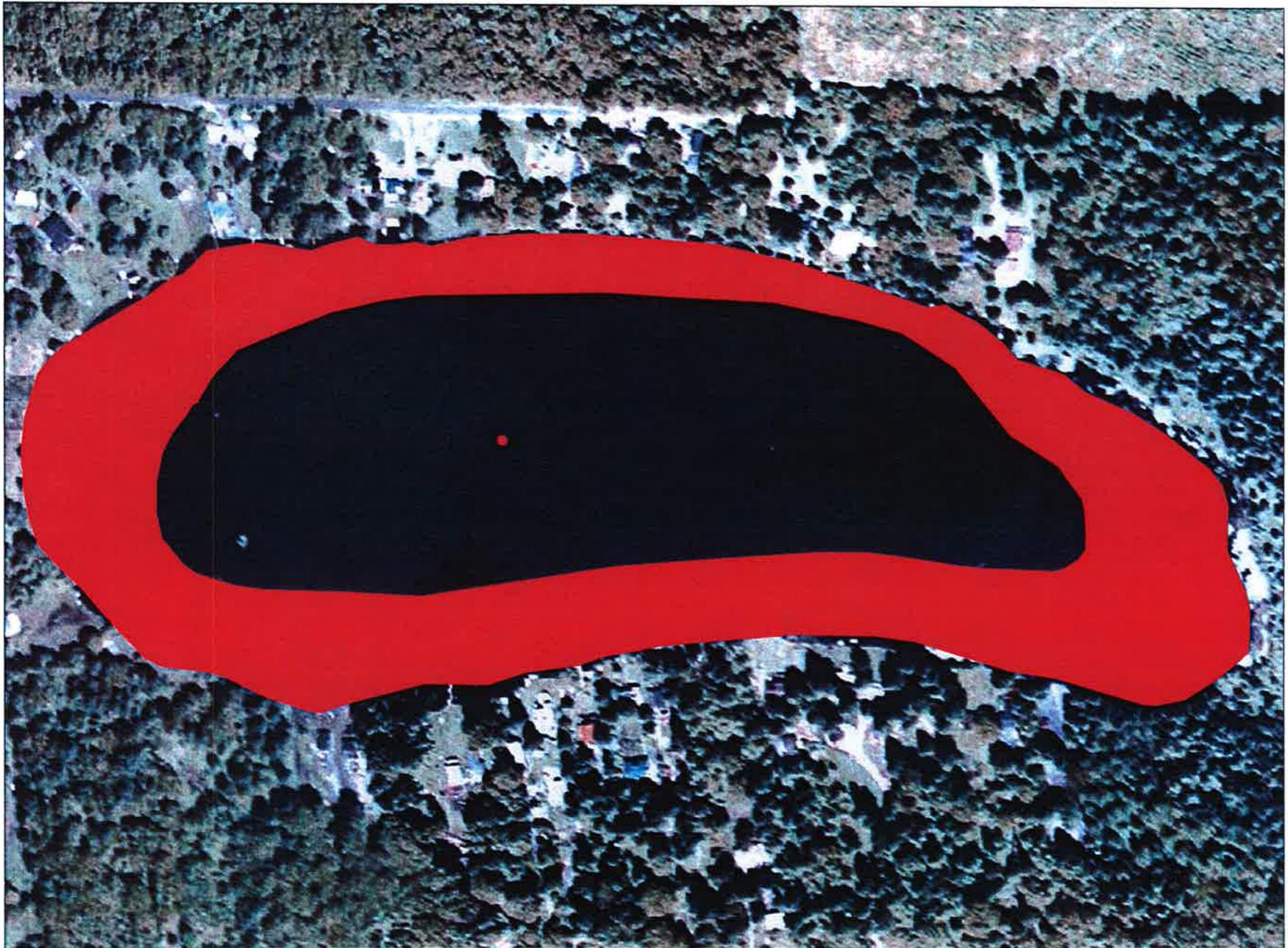


Figure 16. King County: Lake Twelve

- EWM established lake
- Dense Eurasian Water Milfoil



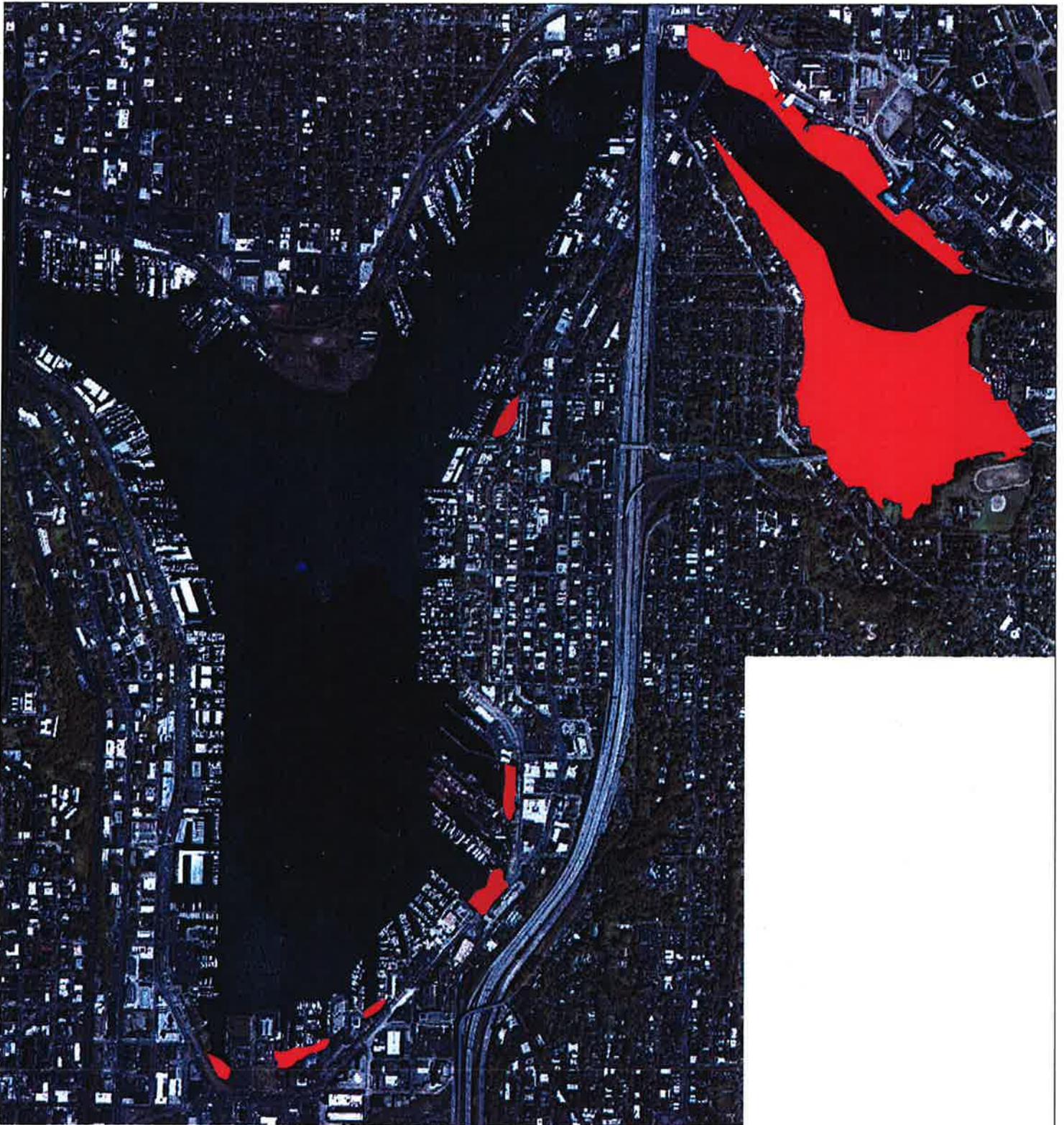


Figure 17. King County: Lake Union

- EWM pioneering Lake
- Dense Eurasian Water Milfoil

3000



0



3000 Meters



Figure 18. King County: Lake Washington

- EWM established lake
- Dense Eurasian Water Milfoil
- Moderate Eurasian Water Milfoil



10 0 10 20 Kilometers



Lisa Clausen

From: Public Council Inbox
To: Ryan's / McJunkin's
Subject: RE: SMP Sections 20.30.007 and 20.30.095

Thank you for your message. It will be included in the Correspondence for the Record for an upcoming Council meeting.
L. Clausen
City Manager's Office

From: Ryan's / McJunkin's [mailto:nordic44@comcast.net]
Sent: Sunday, August 01, 2010 12:27 PM
To: Public Council Inbox
Cc: Ryan, Andrew F
Subject: SMP Sections 20.30.007 and 20.30.095

I would like to thank the council for requesting staff to provide a response to my question regarding SMP language.

Unfortunately I do not believe the staff response provided to item 3 of the Summary of City Council Comments, City Council Draft dated 7/14/2010 was adequate as it only addressed the part of the question related to proposed BMC 20.30.007. The response in the matrix simply restated that:

"No changes recommended. 20.30.007 is clear that legally established appurtenances are conforming to the SMP."

While the current language is a huge improvement over previous SMP drafts, staff did not answer my question for clarification regarding how 20.30.007 is impacted by proposed BMC 20.30.095, (2)g which states: Accessory structures and appurtenances are not permitted within the riparian buffer (50' from OHWM) or building setbacks except for ...fences,buoys, docks, and floats.
(Note: underlined text is directly from SMP - bold emphasis is mine)

20.30.095 comes into play whenever there is residential development involving construction or exterior alterations to one or more buildingstogether w/ appurtenances....

Staff response also did not mention that 20.30.007 states: Any addition, expansion or reconstruction beyond the existing footprint of the single family home, appurtenance or other structure must comply with the SMP.

My interpretation of these 2 regulations is that my existing boathouse, which by it's very nature is in the riparian buffer, is conforming (if it was legally permitted when originally built - proof of which a problem in itself since it was here long before I lived here or Burien was a city) and therefore it can remain as long as:

1) per 20.30.007 - I don't add, expand, or reconstruct beyond the existing footprint of my single family home or appurtenance. Doing any of the above would require compliance w/ the SMP. Compliance w/ the SMP I assume would also include 20.30.095 which states appurtenances are not allowed.

2) per 20.30.095 - I don't do any external alterations to one or more buildings which again require that there be no appurtenant structures w/i the riparian buffer.

It looks like a Catch 22 to me - Our appurtenant structures are now legally conforming but to perform any work on our structures we have to comply with all aspects of the SMP which makes our appurtenant structures unallowable.

So, I'll try one more time to ask the question- Do the new regulations, in their totality, require that we remove our appurtenance structures if we add, expand, construct, reconstruct, or make exterior alterations to our properties, YES or NO? (and if No, where is that clearly stated?)

CFTR: 08/16/10

Thank you

Andrew Ryan

16525 Maplewild Ave SW

Burien WA

Lisa Clausen

From: Public Council Inbox
To: jnelson168@comcast.net
Subject: RE: Maplewild and SW 172nd St

Thank you for your message. It will be included in the Correspondence for the Record for an upcoming Council meeting.

L. Clausen
Burien City Manager's Office

From: jnelson168@comcast.net [mailto: jnelson168@comcast.net]
Sent: Monday, August 02, 2010 3:34 PM
To: Public Council Inbox
Subject: Maplewild and SW 172nd St

Dear Burien City Council, Mayor Joan McGilton, Deputy Mayor Rose Clark, Councilmembers Brian Bennett, Jack Block, Kathy Keene, Lucy Krakowiak and Gordon Shaw,

As a long time homeowner on SW 172nd St, I am very concerned about Burien's proposed changes to Maplewild and 172nd. The community's character would be irreversibly changed, and impacts to homeowners would be extreme. In addition, in many places the physical lay of the land seems to make it an impossible task as well as cost prohibitive.

These roads have served the area well through the years and with the fact that there is very little, if any, vacant land, there is no continuing growth that would require the changes; the area's population density is saturated.

As to safety, we already have problems with speeders around the Point, and that would only increase with these changes making it a less safe environment for everyone. In addition, it would inevitably attract new traffic creating more problems for homeowners. When driving these picturesque rural roads, it seems unimaginable to think of them as becoming city streets with sidewalks and bike lanes. This is not the place for that. We are not near city center where there are businesses within walking distance.

In conclusion, I ask that the proposal to add bike lanes and sidewalks in this area be stricken from the list of proposed improvements in Burien's six-year Transportation Improvement Program.

Thank you for your consideration of this request.

Sincerely,

Julie Nelson
3126 SW 172nd St
Burien, WA 98166

CFTR: 08/16/10

Aug 2, 2010

Thank you for this opportunity to speak tonight.

My name is Bob Tacy. I'm the son-in-law of Robert and Robbie Howell, who live on Lake Burien. I disclose this to let you know that although they are family, it's my love of nature and my passion for the environment that I'm here tonight.

I have visited the Howell's often over the last 10 years and have always been impressed with the way most, if not all of the residents take care of their homes, property... and most of all the lake. Without outside assistance or regulation they have been careful not to pollute or disrupt the natural habitat that provides for a large cross-section of wild-life. They agreed voluntarily not to allow gas powered water craft that can pollute the water. The shoreline of the lake is free of debris and trash. They are proactive, vigilant to potential threats and responsive to them. Lake Burien is simply a pristine lake that supports much wild-life.

We have a lake near our home in Puyallup – Bradley Lake Park. When we first moved to Puyallup in 2001, the park was undeveloped. Only a few people walked the dirt and gravel path around the lake. The lake water was fresh and clean. There were fish, Eagles and other wild-life both in and around the lake. A number of years ago the park was expanded and further developed. Hundreds more people visit every day. The result is, although the park is bigger and can serve more people... the lake is so polluted that wadding is not even allowed. The birds of prey have disappeared, we seldom even see ducks. You can find trash and litter along the shoreline. The park is nice... but the lake itself has been abused to the point that it's just for looking at. The shoreline is over-run with families of Geese who defecate both in and around the lake.

CFTR-08/16/10

I share my observations because when I visit the Howell's home I enjoy looking at water that is clear enough to see several feet down. I see the turtles sunning themselves on the logs along the shore. I watch several species of ducks eating from the lake, chasing small minnows that are down the food chain for the larger fish in the lake, fish that can often be seen jumping, usually around sunset. The lake is also a food source for several species of birds of prey, including Eagles and Osprey. About a month ago I was fortunate enough to see one swoop down and take a fish from the lake, then fly back to its nest in one of the large trees that surround the lake.

In this day and age we are being told by government and environmentalists that one of the most important things we must do is to save our environment... save our planet. Wild life, ducks, turtles and birds of prey are all dependent on their habitat for survival. Lake Burien is a vital, thriving ecosystem for dozens of species.

I sincerely believe that having hundreds more people using this beautiful lake on a daily basis will damage this natural habitat in the short term... and destroy it long term. It would seem prudent to have respected environmentalists study the lake and get their professional input before changing anything.

As I understand it, Lake Burien has been taken care of by the homeowners going back more than a hundred years. It appears they've proven to be good Stewards of the lake and its entire eco system. I hope all of you will put the environment ahead of any other agenda you may be considering and let Lake Burien remain the healthy, relatively undisturbed habitat that so many species rely upon.

Thank you very much.

**Bob Tacy, Jr.
8416 133rd St. E., Puyallup, WA 98373**

RECEIVED

To: The Burien City Council

August 2, 2010 AUG 02 2010

Subject: The Proposed Burien Shoreline Management Plan
Reference: E. Denton letter to the City Council dated May 3, 2010

CITY OF BURIEN

Dear Council Members,

As we reach this last opportunity for public comments to the proposed Shoreline Plan I want to take one more opportunity to speak to you.

FIRST, I want to thank you very much for the modifications that you have already made to the original Planning Commission document. This has shown your collective willingness to consider facts and to act responsibly and reasonably. I give you an 'A' for that effort.

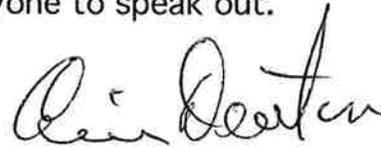
I have listened carefully to the individual comments that each of you have made during these many meetings and I have been very impressed with the consideration and reason that you each have already shown for the many issues involved with this Shoreline Plan.

There is still work to be done. I am aware that the City staff has recommended against the 20 foot setback and in favor of stringent vegetation requirements. These recommendations **make no sense**.

I ask that you ignore these staff recommendations, because I am almost certain that they will have little, if any, favorable impact on Puget Sound and will only be another example of unnecessary burdens placed on a significant number of citizens. You have already heard, and even commented on, the weak arguments from the D.O.E. Don't let Burien set another example of environmental regulations running wild.

Thank you very much for giving us this opportunity to testify. We are so thankful that we live in a society that allows everyone to speak out.

Sincerely,



Eric Denton P.E.

ps. As a token of our appreciation for your hard work we want council members to accept a remarkable photograph taken of a pair of creatures that occupied our wildlife raft last year. They could almost be an undiscovered species.

CFTR: 08/16/10



Photo taken 100 feet offshore at a pair of otters sitting on our wildlife raft that also attracts seals and birds of all kinds. I decided to name them:

'PUGET SOUND BEARDED BAY OTTERS'

In truth these are a pair of common River Otters that happened concurrently to each catch a whitefish and to locate identically shaped triangular pieces that looked like white beards. This was a trillion to one chance!

from Eric Denton @ 2423 S.W. 172nd St.

RECEIVED

AUG 04 2010

Subject: Lake Burien, The Jewel of the City of Burien

To: The Burien City Council Mayor McGilton

CITY OF BURIEN

Reference: The Shoreline Management Plan

There has been considerable discussion about the possibility of opening up this pristine lake to allow public access. Bases on testimony from the residents whose property encircles the lake, the waters provide refuge for a large variety of water birds, both local and migratory.

Evidence has been provided during the hearings that opening a lake to public access could eventually degrade it to a point where the waters are so polluted that no one can even swim there. This could take some time, but obviously the environment for wildlife would be adversely impacted immediately.

Our culture paves land with concrete and asphalt and unfortunately just happens to destroy wildlife habitat. A recent example of this occurred when the Port of Seattle constructed the third runway at our airport.

Not only did the Port eliminate wetlands by moving sixty-eight (68) acres to Auburn, but look what happened to the few acres that they left! They claimed to have 'enhanced' 102 of those acres, but then they prohibited (or at least seriously discouraged) bird life by placing netting over much of it to keep the birds away!

This means that Lake Burien is now the only pristine fresh water for those birds in the entire area. It would not be a surprise if the State Department of Ecology were to declare Lake Burien to be a State Treasure and thereby create some sort of conservancy to forever prohibit public use. It can be the almost exact offset for those 68 acres that moved away to Auburn. **IT IS TRULY THE JEWEL OF BURIEN.**

cc: Robbie Howell


Eric Denton 8/4/10

Attachment: Recent report from the Port of Seattle that documents the wetlands situation.

CFTR-08/16/10


OVER

The Port of Seattle is wrapping up the last major section of environmental mitigation related to building the third runway and other major improvements at Sea-Tac Airport over the past decade.

The five-plus-acre site is the former Des Moines Creek Nursery location on the east side of Des Moines Memorial Drive, just north of State Route 518, in the City of SeaTac.

Included are wetland restoration; wetland and riparian enhancement and buffer restoration with more than 13,000 new native trees and shrubs; enhancement of Miller Creek including installation of habitat features such as large woody debris; plus conversion of a storm drain pipe to a shallow, sloped area called an open "swale," for better treatment of rainwater runoff.

This brings the total number of mitigated wetland acres near the airport to more than 102.

The Port also created or enhanced 66 acres along the Green River in Auburn.

In a separate but related effort, the Port is converting four construction storm water ponds for permanent use. These ponds were originally built to manage runoff from the third runway project. They are being lined with weed control fabric and covered with netting to discourage birds, which can be hazardous to aircraft. With the new conversions, the airport has a total of 12 storm water vaults and detention ponds.

Thousands of recently planted native trees and shrubs help mitigate major projects at Sea-Tac, including the third runway, which has been open for more than a year.

Lisa Clausen

From: Jason Mulvihill-Kuntz [mailto:jason.mulvihill-kuntz@psp.wa.gov]

Sent: Thursday, August 05, 2010 2:13 PM

To: Joan McGilton

Cc: Scott Greenberg; David Johanson; Lakey, Kirk A (DFW); bob.fritzen@ecy.wa.gov; Osterman, Doug; stharinger@co.clallam.wa.us

Subject: Puget Sound Salmon Recovery Council letter regarding shoreline master program update

Dear Mayor McGilton:

Please find attached a letter from the Puget Sound Salmon Recovery Council, signed by the council chair, Clallam County Commissioner Steve Tharinger. The letter is in regards to the integration of salmon recovery information and priorities with the work to update and implement your shoreline master program. A hard copy will follow.

Please let me know if you have any questions at this time.

Regards,

Jason

--

Jason Mulvihill-Kuntz

Ecosystem Recovery Coordinator

Salmon Recovery / Action Agenda Implementation Team

Puget Sound Partnership

Office: 360-464-2011

Cell: 360-485-8954

jason.mulvihill-kuntz@psp.wa.gov

CFTR: 08/16/10

PugetSoundPartnership

our sound, our community, our chance

STATE OF WASHINGTON

Mayor Joan McGilton
City of Burien City Hall
400 SW 152nd St
Suite 300
Burien, WA 98166

July 28, 2010

Dear Mayor McGilton:

The Puget Sound Salmon Recovery Council is the policy body responsible for implementing the Puget Sound Salmon Recovery Plan. We are concerned and interested in supporting you in updating your Shoreline Master Program.

The Salmon Recovery Plan, which was locally developed and federally adopted, directs us to account for the restoration and protection of shoreline habitat forming processes. Comprehensive shoreline management at the regional and local scale is critical to the restoration and protection of habitat; the Shoreline Master Program is a key component of this work. Salmon depend on this area where the water meets the land to provide them with food, refuge, habitat, and clean water. The Shoreline Master Program update offers an opportunity to incorporate the needs of salmon, along with the needs of our communities, into how we manage our shorelines.

The salmon recovery effort offers several existing tools to help in your update, including: 1) the salmon recovery plan and its associated shoreline assessments; 2) local shoreline datasets and analysis tools; 3) annual implementation plans, called the "three-year work plan" with a list of projects and programs identified; 4) agency and tribal technical staff; and 5) a technical and citizen group experienced in prioritizing actions and tracking progress. Doug Osterman, the Lead Entity Coordinator for the Green/Duwamish and Central Puget Sound Watershed, along with yourself as the Recovery Council member, and Jason Mulvihill-Kuntz as the Ecosystem Recovery Coordinator through the Partnership, are resources to help explain how the salmon recovery information can most appropriately and effectively be incorporated into your Shoreline Master Program update. This could include identifying projects for the restoration plan, help tracking progress related to the no net loss element, or support in the inventory and characterization.

In addition to identifying salmon recovery information and resources, please let me know other ways the Recovery Council might assist you in your Shoreline Master Program update process. We look forward to partnering with you to help develop and implement a Shoreline Master Program that manages your city's shorelines to support the needs of salmon and your community.

Puget Sound Partnership

our sound, our community, our chance

STATE OF WASHINGTON

Sincerely,



Steve Tharinger, Chair

Attachment: List of Puget Sound Salmon Recovery Council Members
List of Puget Sound Lead Entity Coordinators

Cc: Scott Greenberg, City of Burien Community Development Director
David Johanson, City of Burien Senior Planner
Kirk Lakey, WDFW Watershed Steward
Bob Fritzen, Ecology Shoreline Planner
Doug Osterman, Green/Duwamish and Central Puget Sound Watershed Lead Entity
Coordinator

Puget Sound Salmon Recovery Council Members & Alternates:

Chair: Steve Tharinger (alt: Doug Morrill and Scott Chitwood) / Dungeness-Elwha Watersheds

Allison Butcher / ESA Business Coalition

Josh Weiss / Washington Forest Protection Association

Mike Shelby / Western Washington Agricultural Association

Jacques White / Long Live the Kings

Hilary Franz / Washington Environmental Council

Rob Masonis / Trout Unlimited

Darcy Nonemacher / American Rivers

Ken Berg / USFWS

Vacant, (alt: Elizabeth Babcock)/NOAA Fisheries

Tom Eaton / EPA

Michael McCormick (alt: Bernie Hargrave) / US Army Corps of Engineers

Terry Williams / Tulalip Tribe

Terry Wright / NWIFC

Vacant, (alt: Josh Baldi) / Ecology

Sara Laborde / WDFW

Randy Acker / DNR

Bob Kelly / Nooksack Tribe

Frank Abart / Whatcom County

Randy Kinley (alt: Alan Chapman) / Lummi Nation

Bob Myhr (alt: Barbara Rosenkotter) / San Juan County

Ken Dahlstedt (alt: Shirley Solomon) / Skagit County

Angie Homola (alt: Chris Luerkens) / Island County

Bill Blake (alt: Pat Stevenson) / Stillaguamish Watershed

Scott Powell (alt: Dave Somers) / Snohomish Watershed

Don Davidson (alt: Larry Phillips) / Lake Washington, Cedar-Sammamish Watershed

Joan McGilton (alt: Doug Osterman) / Green, Duwamish Watershed

Debby Hyde (alt: Tom Kantz) / Puyallup-White, Clover-Chambers Watershed

David Troutt (alt: Jeanette Dörner) / Nisqually Tribe

Jeanette Dörner / Nisqually Watershed

Sandra Romero (alt: Rich Duggess) / South Sound Watersheds

Scott Brewer (alt: Richard Brocksmith) / Hood Canal Coordinating Council

Linda Berry-Maraist / West Sound Watersheds

Puget Sound Salmon Recovery Lead Entity Coordinators:

San Juan County (WRIA 2) Lead Entity

Barbara Rosenkotter / 360-370-7593 / barbarar@co.san-juan.wa.us

Nooksack (WRIA 1) Watershed Lead Entity

Becky Peterson / 360-392-1301 / genevaconsulting@comcast.net

Skagit (WRIA 3, 4) Watershed Lead Entity

Shirley Solomon / 360-419-9326 / solomon@skagitwatershed.org

Stillaguamish (WRIA 5) Watershed Lead Entity

Pat Stevenson (Stillaguamish tribe co-lead) / 360-630-0946 / pstevenson@stillaguamish.nsn.us

Denise DiSanto (Snohomish County co-lead) / 425-388-3464 / denise.disanto@co.snohomish.wa.us

Snohomish (WRIA 7) Watershed Lead Entity

Tim Walls / 425-388-3781 / timothy.walls@co.snohomish.wa.us

Island (WRIA 6) Watershed Lead Entity

Chris Luerkens / 360-678-7810 / chrisl@co.island.wa.us

Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Lead Entity

Jean White / 206-206-263-6458 / jean.white@kingcounty.gov

Green/Duwamish (WRIA 9) Watershed Lead Entity

Doug Osterman / 206-296-8069 / doug.osterman@kingcounty.gov

Puyallup/White/Clover/Chambers (WRIA 10, 12) Watershed Lead Entity

Tom Kantz / 253-798-4625 / tkantz@co.pierce.wa.us

Nisqually (WRIA 11) Watershed Lead Entity

Jeanette Dorner / 360-438-8687, x2135 / Dorner.jeanette@nisqually-nsn.gov

South Sound (WRIA 13, 14) Watershed Lead Entity

Amy Hatch-Winecka / 360-427-9436 / wria13-14leadentity@thurstoncd.com

West Sound (WRIA 15) Watershed Lead Entity

Kathy Peters / 360-337-4679 / kpeters@co.kitsap.wa.us

Hood Canal (WRIA 14, 15, 16, 17) Watershed Lead Entity

Richard Brocksmith / 360-394-7999 / rbrocksmith@hccc.wa.gov

North Olympic Peninsula (WRIA 17, 18, 19) Lead Entity

Cheryl Baumann / 360-417-2326 / cbaumann@co.clallam.wa.us

RECEIVED

AUG 06 2010

CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have perfect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve as contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,



CFTR: 08/10/10

RECEIVED

AUG 10 2010

CITY OF BURIEN

Bruce Berglund
15643 Maplewild Ave. SW
Burien, WA 98166

August 9, 2010

Burien City Council

Dear City Council Members,

BALANCE sums up my concern over our amendments to the Shoreline Management Plan in that it needs to:

- Represent ALL Burien citizens.
- Consider future Burien citizens
- Actually does something to improve the quality of Puget Sound

At this point it does not appear Council will end up with a balanced plan.

A small number of radical, vocal private rights people have dominated the agenda. The Shoreline Advisory Committee had the same problem as one individual with a personal agenda kept us from adequately completing our assignment. It appears City Council is confronted with the same problem.

A private rights representative at a Council meeting talked about non conforming structures which appears to be extraneous to the question at hand in that every time a new building code is approved throughout Burien a question of non conformity is raised about existing structures.

Please include in your deliberations the factual information available about the pervasive danger signs on the health of Puget Sound, which is lifeblood for our area. Certainly one can pick out conflicting information, but the preponderance of evidence is we need to act now to protect this economic and natural resource. Back in 1951 I canoed The Sound and with joy watched school after school of fish. Not any more.

Yes, we do need to make compromises, but we should at least be aware of what we are compromising. As an example the SMA is already a compromise and as we further compromise it in a Burien plan we get further away from protecting the Sound and our economy.

As a member of Burien's first Economic Development Partnership we promoted the idea, Burien is a friendly place to do business. Extreme personal property right attitudes and keep out signs undercut that we are a place where people want to settle and do business.

Yours truly,



CFTB: 08/16/10

Lisa Clausen

From: Public Council Inbox
Sent: Wednesday, August 11, 2010 11:05 AM
To: 'sean wittmer'
Subject: RE: Shoreline Master Plan and Right of ways

Thank you for your message. It will be included in the Correspondence for the Record for an upcoming City Council meeting.

L. Clausen
Burien City Manager's Office

From: sean wittmer [mailto:seanwittmer@yahoo.com]
Sent: Tuesday, August 10, 2010 3:23 PM
To: Public Council Inbox
Subject: Shoreline Master Plan and Right of ways

Dear Madame Mayor and City Council Members,

We would ask you to review Chapter 4 section 20.30.25 2c. If a public road is located within the shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.

We live on SW 172nd St. We know that by now you have become aware of our concerns. One that concerns us is in regards to the road in front of our home. From our understanding, the city has a right of way for the road. However, the wording in this sentence is very open to interpretation. We feel that the only reference point for the sentence would be to SW 172nd St. If you were to remove 2c from the Shoreline Master Plan, there would be one less concern in this document.

Please ask the city staff what are the unused right of ways on the Burien shoreline and are there any plans to add public access to these areas in the city's 20 to 30 yr. plan? It's tough not to be paranoid with the current wording of the document. From our window there is no unused right of way in the shoreline jurisdiction.

Sincerely,
Sean and Julie Wittmer
3328 SW 172nd St

C-FTR: 08/16/10

RECEIVED

AUG 11 2010

CITY OF BURIEN

August 10, 2010

To: Burien City Council
From: Carol Jacobson
3324 SW 172nd St.

I am writing to you with some concerns about the public access issues in the SMP. Public access on the marine shoreline has not received as much attention as buffers, bulkheads, vegetation, and nonconforming language, but it is of critical importance to those of us on SW 172nd St. as well as to other shoreline residents. I want to try to clear up some potential misunderstanding about what we are asking the City Council to recommend related to this issue.

1. The city's broad policies and regulations related to public access do not specify that such access applies to publicly owned shoreline. The Shoreline Master Program Guidelines specifically state in 4 separate places and 5 different sentences that public access applies to "publicly owned areas of the shoreline" and "shorelines on public property". Most of Burien's marine shoreline is privately owned, and there is private property between the shoreline and any potential public access site. The SMP needs to reflect the city's intent to properly evaluate and mitigate the impact of public access on the adjacent private property and on the surrounding community. The redline SMP proposed by BMHA addresses some of these concerns in section 20.30.035 2(a, b, c), which should be incorporated into Burien's SMP.
2. Item 20.30.035 2c in Burien's SMP draft states: If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as public access unless vacated as set forth in RCW 35.79.035". We are requesting that this entire item be removed for several reasons:
 - a. We have submitted written statements for the public record from two separate land use attorneys stating that this item should be deleted because it is overly broad and suggests an improper and potentially illegal approach, especially as pertains to SW 172nd St.
 - b. The right of way issue on SW 172nd has been in dispute for decades and is still not settled. Before the city does ANYTHING with SW 172nd the issue needs to be resolved, and that may have to occur in court.
 - c. In effect, this statement MANDATES that "unused right of way" will become public access. Nothing in the Shoreline Management Act or the SMP guidelines supports such a mandate. At the very least the city has not completed the necessary planning and review of impact to adjacent properties to support such a mandate. There is no reason to have this statement in there unless it is intended as a tool to achieve some agenda. The city should not be using the SMP as a weapon against any of its citizens, and this item is aimed directly at SW 172nd St.
 - d. There may be concern among council members about not wanting to "tie the hands" of future city councils by removing this item from the SMP. Removing this statement does not change anything for current or future city councils. It has no effect on the right of way issues that currently exist and we are not asking for a determination to be made about the right of way at this time. All we are asking is to remove this item to prevent the city from using the SMP as a method of achieving some agenda that they have not yet been willing to share publicly with the citizens. There can be no other reason to have this in there in the first place.

These items need to be addressed in order to avoid the potential disaster that the current wording related to public access could cause for the citizens on this street and for the city. Please don't let this important issue get lost in the shuffle of other issues as you debate the proposed SMP.

CFTR: 08/16/10

City of Burien

Community Assessment Survey

Presented by:
Marlene Holm and Jakob Lahmers
Market Decisions Corporation
www.mdcresearch.com

July 2010



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Objectives

- ❖ The primary objective of this study is to measure citizens' satisfaction with the City of Burien and the perceived quality of life in the City.

Specific objectives include:

- ❖ Evaluate perceptions of the City of Burien as a place to live.
- ❖ Determine residents' satisfaction with services provided by the City of Burien including:
 - Police
 - Fire
 - Parks and Recreation
 - Streets and Sidewalks
 - Public Information
- ❖ Gauge perceptions of safety in Burien.
- ❖ Understand residents' use of Burien public libraries.



Methodology

- ❖ Four hundred sixty-one (n=461) telephone surveys were conducted between July 16, 2010 and July 29, 2010.
 - Residents of the City of Burien were selected at random to be included in this study.
 - The final 50 respondents were screened to ensure they are residents of the newly annexed North Burien area.
 - All respondents were screened to be residents of the City of Burien.

- ❖ A sample of four hundred sixty-one (n=461) has a maximum sampling variability of $\pm 4.56\%$ at the 95% confidence level.
 - All differences reported as “significant” are found to be significantly different at the 95% confidence level (or greater) using a standard t-test.

- ❖ The data set was weighted by age and ethnicity to reflect census distribution within the City.
 - Quotas for ethnicity, gender and age were also utilized to approximate population proportions.

- ❖ The research was conducted by Market Decisions Corporation, an independent marketing research firm located in Portland, Oregon.



Key Findings

Quality of Life:

- ❖ Over three quarters of residents rate Burien and their neighborhood as a “good” or “excellent” place to live (each 78%). This is consistent with 2008 findings.
- ❖ Nearly three quarters (72%) believe the City of Burien is headed in the right direction, and 71% feel the City is adequately protecting the natural environment.
 - Although the results for both measures are statistically unchanged from 2008 there is a declining trend for “heading in the right direction” 78% in 2007 to 74% in 2008 and to 72% in 2010.
 - There is also a decline in agreement with “proactively encouraging economic growth” 76% in 2007, 73% in 2008 and 69% in 2010.
- ❖ “Lack of economic/commercial growth” (39%) and “reducing crime” (19%) are the most commonly mentioned challenges facing Burien.
 - The number of respondents mentioning “lack of economic/commercial growth” has increased significantly since 2008 (39% vs. 14%).
 - Fewer residents mention “reducing crime” as a challenge in 2010 than in 2008, although not significantly fewer (19% vs. 25%).
- ❖ Transportation and safety-related issues continue to be most frequently suggested neighborhood improvements:
 - More police patrols/presence (20%)
 - Build/improve walkways and paths (19%); and
 - Reducing crime (12%)
- ❖ The top reasons for choosing to live in Burien are related to location and affordable/ comfortable lifestyle, including “proximity to work” (18%), “affordable living” (17%) and “nice area/close to water/parks” (16%).



Key Findings (continued)

Quality of Life:

- ❖ Two-thirds (70%) of residents are satisfied with the value they receive from taxes (68% 2008).
- ❖ Three-quarters (76%) are satisfied with the job the City is doing for the Burien community (73% 2008).
 - Four in five (79%) respondents are satisfied with the quality of City services offered in Burien.

Employee Contact:

- ❖ One quarter (29%) of residents have had contact with a City employee in the last 12 months regarding City services. This is consistent with 2008 findings (28%).
- ❖ The “Police Department,” (24%) “Public Works” (21%) and “Building and Code Enforcement” (20%) are the City departments that account for the majority of contacts.
 - Unaided (Police not specifically mentioned in the question) recall of contact with the Police Department is consistent with findings from 2008 (24% vs. 29%).
 - Three fourths of residents rate the City employee’s courtesy (79%) and 68% rate employees as “knowledge of situation” as “good” or “excellent.”
 - One-fifth (19%; 26% 2008) feel the employee they contacted did a “poor” job of addressing their issue. Among those who feel their issue was addressed poorly, the most common reasons are “no action was taken” (34%) and “unfriendly/rude representatives” (27%).



Key Findings (continued)

Personal Safety:

- ❖ The majority of residents continue to feel safe in the City of Burien. Results are in line with 2008 findings.
 - Almost all (91%) feel safe walking alone in their neighborhood during the day (95% 2008).
 - Five in six (85%) feel safe in downtown Burien (83% 2008).
 - Three in five (61%) feel safe walking alone in their neighborhood after dark (62% 2008).
- ❖ One quarter (28%) have had contact with Burien Police in the last 12 months; this is a significant decrease from 37% in 2008.
 - Two thirds (66%) of respondents are satisfied with the level of service provided by the Burien Police Department (67% 2008).
 - Nine in ten (88%) found the Burien Police to be courteous (88% 2008).

Activities in Burien:

- ❖ Nearly nine in ten (85%) residents go shopping in Burien at least once a week, half (50%) go out to eat at least once a week, and one quarter (22%) participate in sports or recreation at least once a week. These findings are consistent with 2008 results.
 - Among residents currently working, one fifth (21%) work within the City of limits of Burien.
- ❖ Half (50%) report household members have used a Burien Park, rented a facility, or participated in a City-sponsored recreation program in the last 12 months (55% 2008).
- ❖ Among those using parks and recreation services, 72% rate the overall service provided by the Parks and Recreation Department as “good” or “excellent” (72% 2008).
- ❖ Recreation programs for young children, adults and seniors have seen satisfaction increases of at least five percentage points since 2008, among those who use the programs.



Key Findings (continued)

Library Use:

- ❖ The majority (85%) of residents use a City of Burien library.
 - Nearly one in five (15%) do not use the library, of which 18% claim the library lacks the information they are looking for as the main reason for non-use.
- ❖ Three in five (60%) prefer to access library resources and services at the library, while one third (32%) prefer access via online sources.

Traffic & Infrastructure:

- ❖ Only 18% of residents feel that traffic is getting worse and 50% expect it to remain at the current state for the next 12 months.
- ❖ Four in five (85%) rate road conditions as “fair” or “good,” and only 8% rate road conditions as “poor,” down from 31% in 2008.
 - Two in five (18%) feel traffic was worse in the past 12 months compared to the previous year (63% 2008).
 - One third (30%) expect traffic to be worse in the next 12 months, while only 15% expect traffic to improve.
- ❖ Six in ten (60%) feel there is a need, of which seven in ten (71%) are willing to pay additional taxes, for more sidewalks and bike paths in their neighborhood. These findings are in line with 2008 findings.



Key Findings (continued)

Public Information:

- ❖ Seven in ten (70%) residents feel they get sufficient communication from the City about City services and local issues (68% 2008).
- ❖ The two primary sources of information regarding what the City is doing remain the Burien City Newsletter (44%; 50% 2008) and the local newspaper (29%; 47% 2008).
 - Use of the City of Burien website has increased significantly since 2008 (27% vs. 18%).
- ❖ Three in five (61%) residents use the City of Burien website, and one fifth (21%) access the City website at least once a month. Use of the City website has increased significantly since 2008 (61% vs. 53%).
 - Of those using the website, 66% rate the site as a “good” or “excellent” resource for City programs and services (67% 2008).

Ethnic Relations:

- ❖ Over half (53%) feel the relationships between people of different races and cultures in the City of Burien are “good” or “excellent.” One in ten (9%) feel the relationships are “excellent.”
 - Perceptions of relationships between people of different races and cultures within the City are consistent with 2008 findings (51% “good or excellent;” 9% “excellent”).



Recommendations

- ❖ A perceived lack of economic and commercial growth is the most commonly mentioned challenge facing the City of Burien.
 - Educate residents about the City's efforts to create economic and commercial growth within the City.
 - In order to attract new businesses and residents, promote the key benefits of living in Burien, including quality of life, proximity to work, parks and recreation and other city services.
- ❖ Perceptions of traffic and parking have improved in the past year. Showcase steps taken by the City to improve traffic and parking as a way to demonstrate successful actions taken by the City to improve the quality of life.
- ❖ Continue to promote and improve the City of Burien website.
 - Usage of website has increased significantly since 2008, while the use of other resources (local newspapers and the City newsletter) has declined.
 - Consider hosting the City newsletter on the website; improve access for those not reading a paper copy.
 - Use events and activities to drive residents to the website on a regular basis. Only one fifth of residents visit the website at least once a month, and infrequent visitors may not be aware of new features on the site or improvements that have been made.
 - Most residents feel the website is "good" but not "excellent." While residents are satisfied, there is room for improvement, and regular promotion of improvements serves the purpose of showing off the City's efforts, but also keeps residents engaged who may not go to the site on a regular basis.
- ❖ Focus on recreation programs for teens. Satisfaction with programs for all age groups except teens has increased, and satisfaction with programs designed for teens remains lower than other age groups.



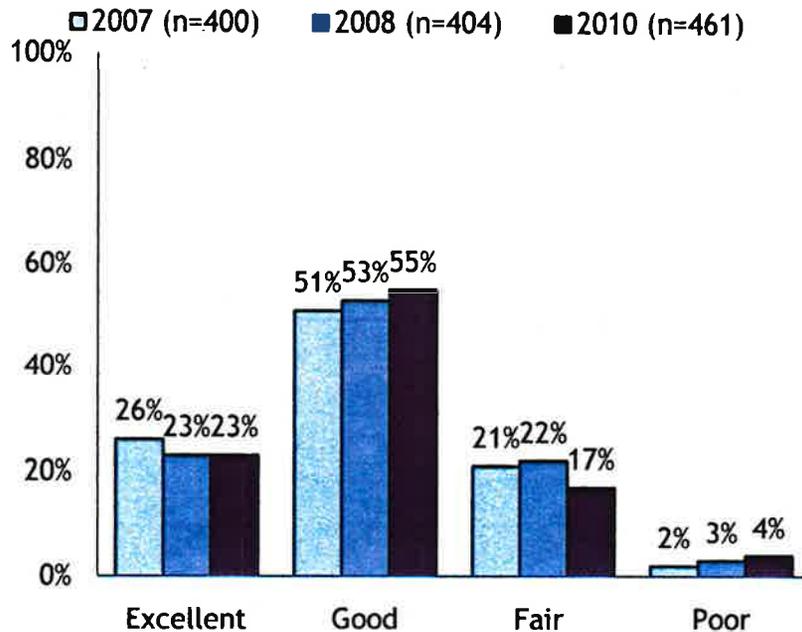
Quality of Life



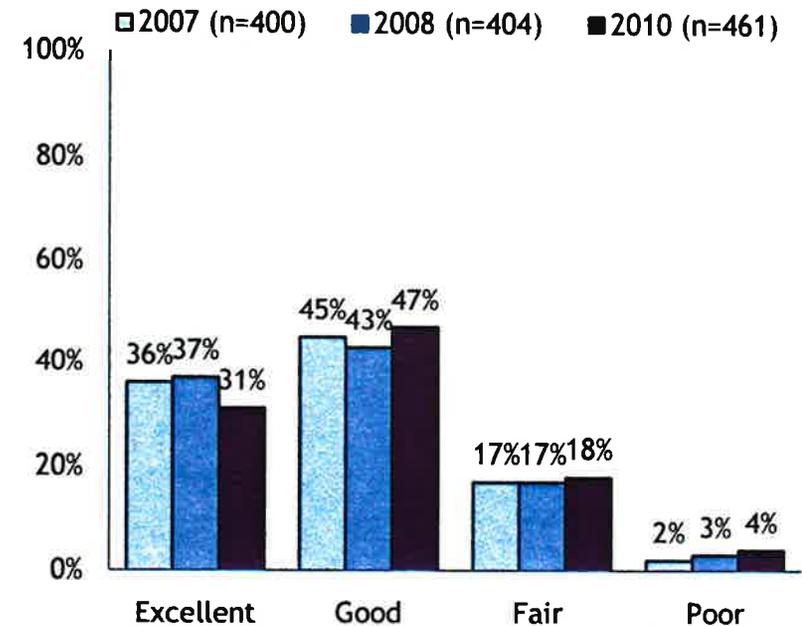
Burien as a Place to Live

- ❖ The percentage rating Burien and their neighborhood a “good” or “excellent” place to live is consistent with 2008 findings (78% & 78% vs. 78% & 80%, respectively).
 - Residents are significantly more likely to rate their neighborhood as an “excellent” place to live relative to Burien as a whole (31% vs. 23%).

City of Burien as a Place to Live



Your Neighborhood as a Place to Live



Q1. How would you rate Burien as a place to live? Would you say it is...

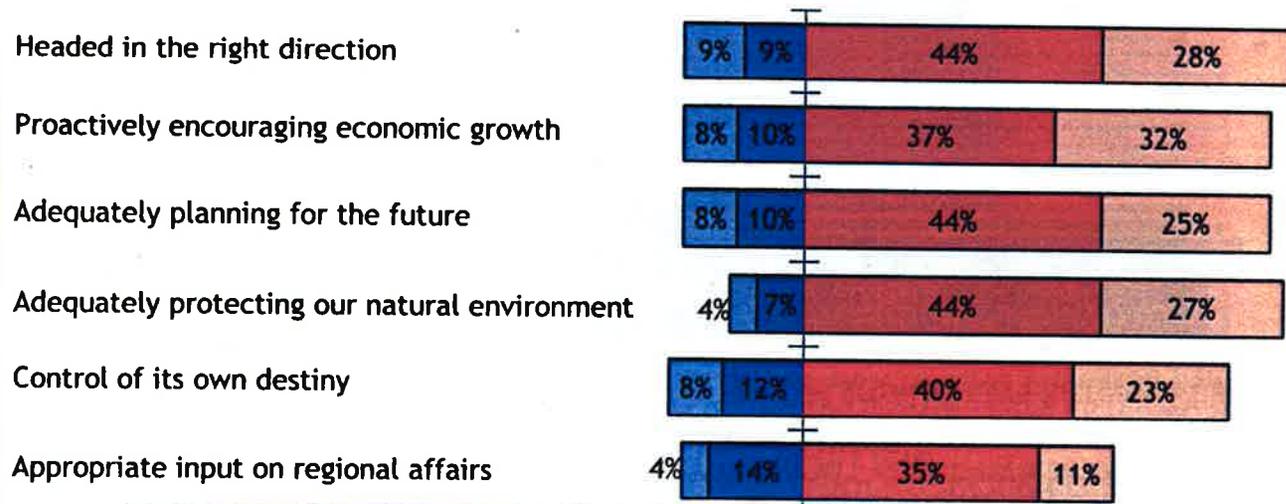
Q4. How would you rate your neighborhood as a place to live? Would you say it is...



Perceptions of Burien

- ❖ Respondents feel most strongly that Burien is “headed in the right direction” (72%) and “adequately protecting our natural environment” (71%).
 - Hispanic respondents tend to agree more with each statement about Burien relative to Caucasian and other ethnicities.
 - Less than half (46%) of respondents feel Burien has “appropriate input on regional affairs.”

■ Disagree completely ■ Somewhat disagree ■ Somewhat agree □ Agree completely



% Somewhat & Completely Agree		
'07	'08	'10
78%	74%	72%
76%	73%	69%
73%	72%	69%
63%	65%	71%
59%	60%	63%
53%	50%	46%

Disagree

n=461

Agree

Q2. How strongly do you agree or disagree with the following statements about the City of Burien?



Challenges Facing Burien

- ❖ “Lack of economic/commercial growth” and “reducing crime” remain the most frequently mentioned challenges facing the City of Burien.
 - Mentions of “lack of economic/commercial growth” have increased significantly since 2008 (39% vs. 14%).

Most Mentioned Challenges	2007 (n=400)	2008 (n=404)	2010 (n=461)
Lack of economic/commercial growth	19%	14%	39%
Reducing crime	19%	25%	19%
Too much development/building	4%	5%	11%
Lack of police presence/enforcement	8%	9%	10%
Improving education/schools	9%	11%	9%
Poor performance of city council/lead.	2%	2%	6%
More parks/activities for children	2%	6%	6%
Maintaining roads	8%	10%	6%
City funding/financial concerns	2%	3%	6%
Proximity to airport	4%	5%	6%
More parks/activities for children	2%	6%	6%
Taxes	6%	6%	6%

- “Lack of economical/commercial growth” is mentioned significantly more frequently by those who voted in the last election (45% voted vs. 24% didn’t vote).
- “Too much development/building” is mentioned significantly more frequently by those between the ages of 46-65 than other age groups (19% ages 46-65 vs. 6% other ages).
- “Maintaining roads” is mentioned significantly less than in 2008 (6% vs. 10%).

Q3. In your opinion, what are the three most important issues (challenges) facing the City of Burien?



Improving Neighborhoods

- ❖ The most frequently suggested improvements continue to be safety and transportation-related, including: “more police patrols/presence,” “build/improve walkways and paths/bike lanes,” “reduce crime” and “improve streets.”

Most Suggested Improvements	2007 (n=400)	2008 (n=404)	2010 (n=461)
More police patrols/presence	20%	21%	20%
Build/improve walkways and paths/bike lanes	18%	20%	19%
Reduce crime	13%	10%	12%
Improve streets	8%	11%	9%
Better city sanitation/maintenance	6%	4%	8%
Improve traffic congestion/flow	6%	6%	4%
More community services/events	3%	6%	4%
Reduce development/construction	4%	4%	4%
More/improve parks	4%	6%	3%
Storm water drainage/sewer systems	6%	4%	3%
More downtown development	1%	1%	3%
Improve education/higher quality schools	NA	NA	3%

- “More police patrols/presence” is mentioned significantly more often by those who are dissatisfied with the value they receive from their taxes than those who are satisfied (36% dissatisfied vs. 17% satisfied).
- “Build/improve sidewalks/walkways and bike lines” is mentioned significantly more by those with an annual household income more than \$75K (28% \$75K+ vs. 15% <\$75K) and those who use Burien libraries (20% use vs. 9% don’t use).

Q5. What would you like the city to do to improve your neighborhood?



Choosing Burien

- ❖ The reasons mentioned most frequently for choosing to live in Burien are related to location and affordable/comfortable lifestyle.

Most Mentioned Reasons for Choosing Burien	2007 (n=400)	2008 (n=404)	2010 (n=461)
Proximity to work	21%	23%	18%
Affordable living	19%	17%	17%
Nice area/close to water/parks	NA	5%	16%
Lived here whole life/since childhood	15%	15%	12%
Proximity to family/friends	16%	15%	10%
Convenient/central location	15%	7%	9%
Quiet/nice place to live/raise children	12%	15%	8%
Marriage/inherited house/property	NA	4%	8%
Proximity to Seattle	11%	15%	7%
Nice property/house/view	11%	9%	7%
Housing availability	NA	3%	7%
Annexed/had no choice	NA	NA	7%

- “Nice area/close to water/parks” mentions have increased significantly since 2008 (16% vs. 5%).
- “Quiet/nice place to live/raise children” has decreased significantly since 2008 (8% vs. 15%).
- “Proximity to Seattle” is mentioned significantly more by those with an annual household income of \$75K or more (14% \$75K+ vs. 3% <\$75K).

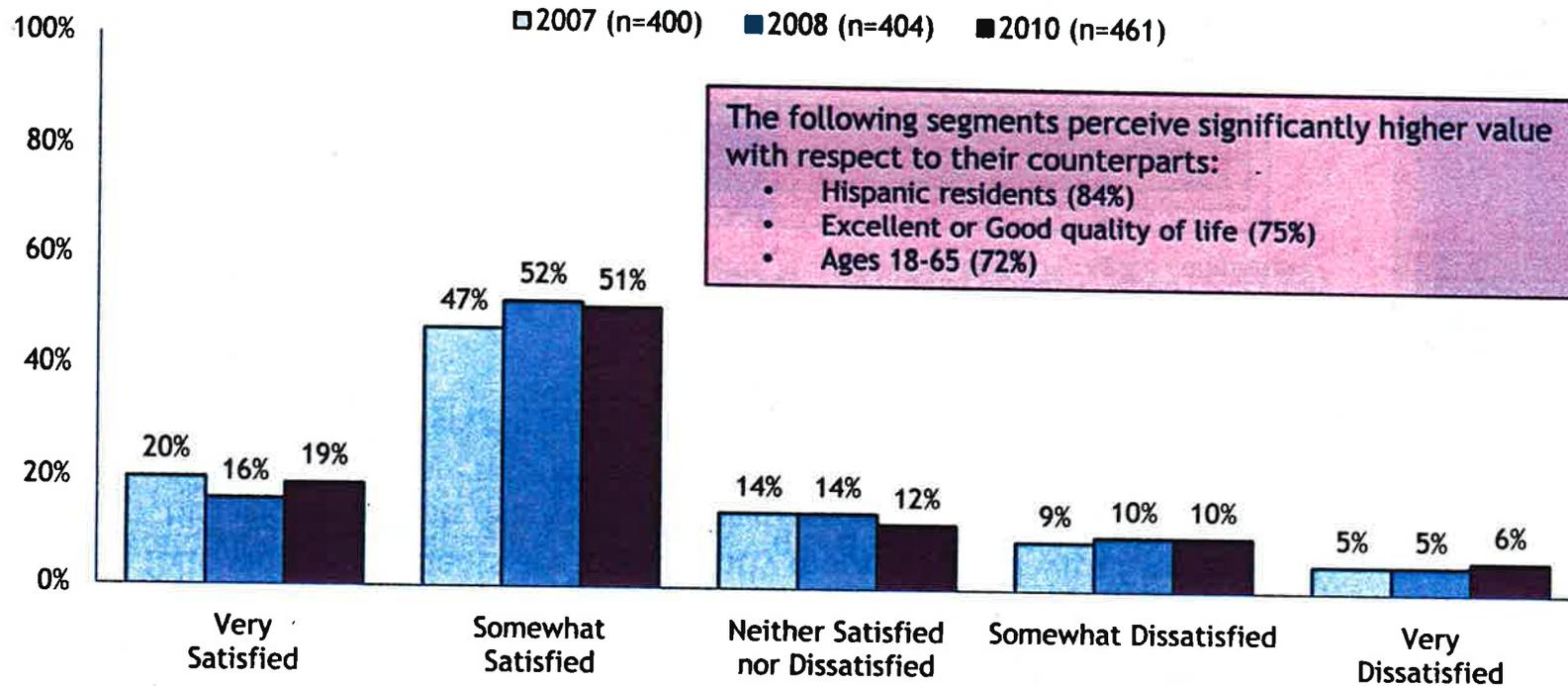
Q6. Why did you decide to live within the City of Burien?



Value for Taxes Paid

- ❖ More than two in three (70%) respondents are satisfied with the value received for taxes paid.
 - These results are consistent with findings from both 2007 and 2008.

Satisfaction with Value for Taxes Paid



Q7. *The City of Burien funds basic city services such as police protection, road maintenance and parks and recreation programs through property and sales taxes. How satisfied are you with the value received for your taxes paid? Would you say you are...with the value you receive for your taxes?*



City Services

- ❖ Three quarters (76%) are satisfied with the job the City is doing for the Burien community and agree that the City is delivering effective and efficient services (72%).
- ❖ The following respondents are significantly more satisfied with City services:
 - Hispanic respondents relative to Caucasian respondents.
 - Respondents who are satisfied with the value received from taxes relative to those who are dissatisfied.
 - Respondents who feel the quality of life in Burien is excellent or good relative to others.

■ Disagree completely ■ Somewhat disagree ■ Somewhat agree □ Agree completely

Overall, I am satisfied with the quality of city services



Overall, I am satisfied with the job the city is doing for the Burien community



The City of Burien delivers effective and efficient services



Disagree

n=461

Agree

% Somewhat & Completely Agree		
'07	'08	'10
77%	78%	79%
74%	73%	76%
74%	71%	72%

Q8. How much do you agree or disagree with the following statements?



Employee Contact



Contact with City

- ❖ Within the last 12 months, one quarter (29%) of respondents have contacted a City employee regarding City services (28% in 2008).
- ❖ The most frequent contact was with the City “Police Department” and “Public Works.”
 - There are no significant differences from 2008 to 2010.

Department Contacted	2007 (n=121)	2008 (n=113)	2010 (n=133)
Police Department	18%	29%	24%
Public Works	29%	19%	21%
Building and Code Enforcement	25%	23%	20%
Parks, Recreation, and Cultural Services	6%	9%	10%
City Council members	7%	5%	6%
City Manager’s Office	1%	5%	5%
Other	12%	9%	9%

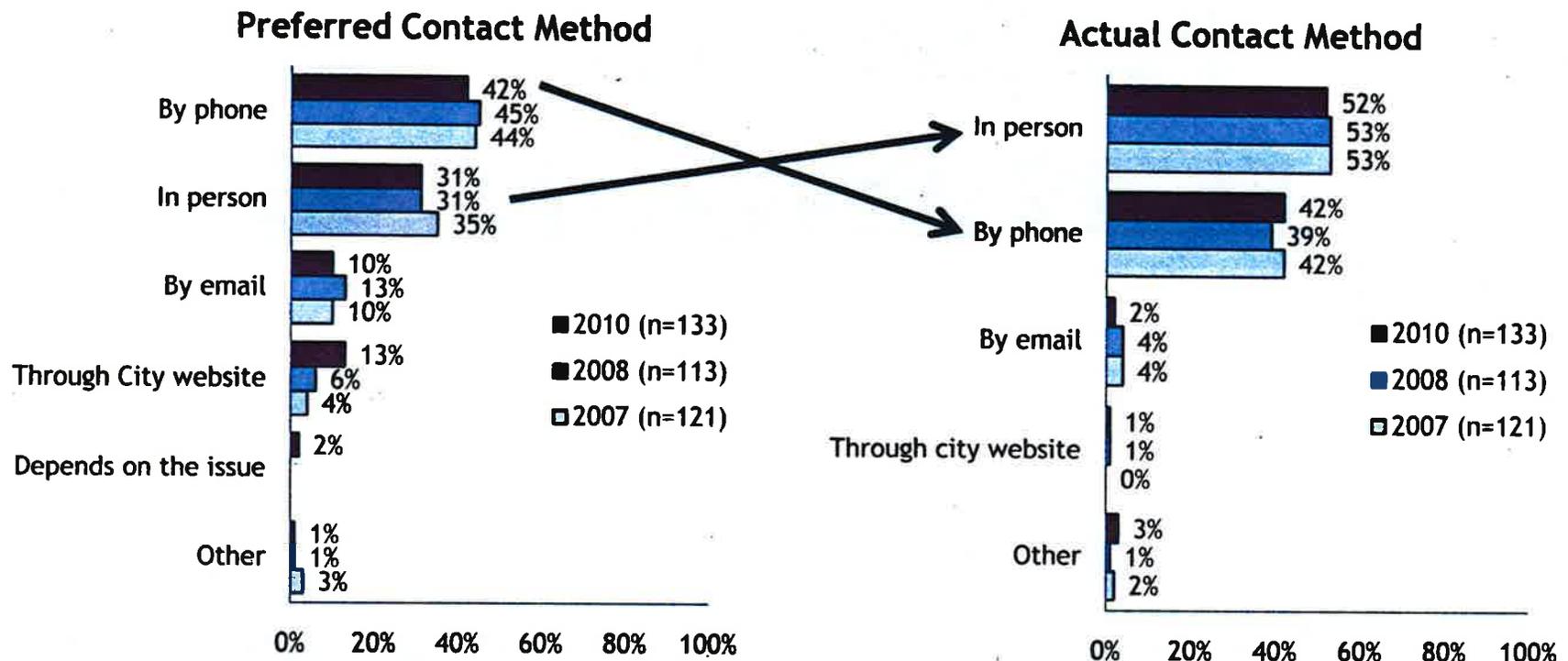
Q9. During the past 12 months, have you had contact with any City employee regarding City services?

Q10. Thinking of your most recent contact, which City department was it with?



Contact Methods

- ❖ Contact by telephone remains the preferred method (42%) followed by in person (31%).
- ❖ As seen in previous years actual behavior is that in person (52%) is the most commonly used method followed by phone (42%).

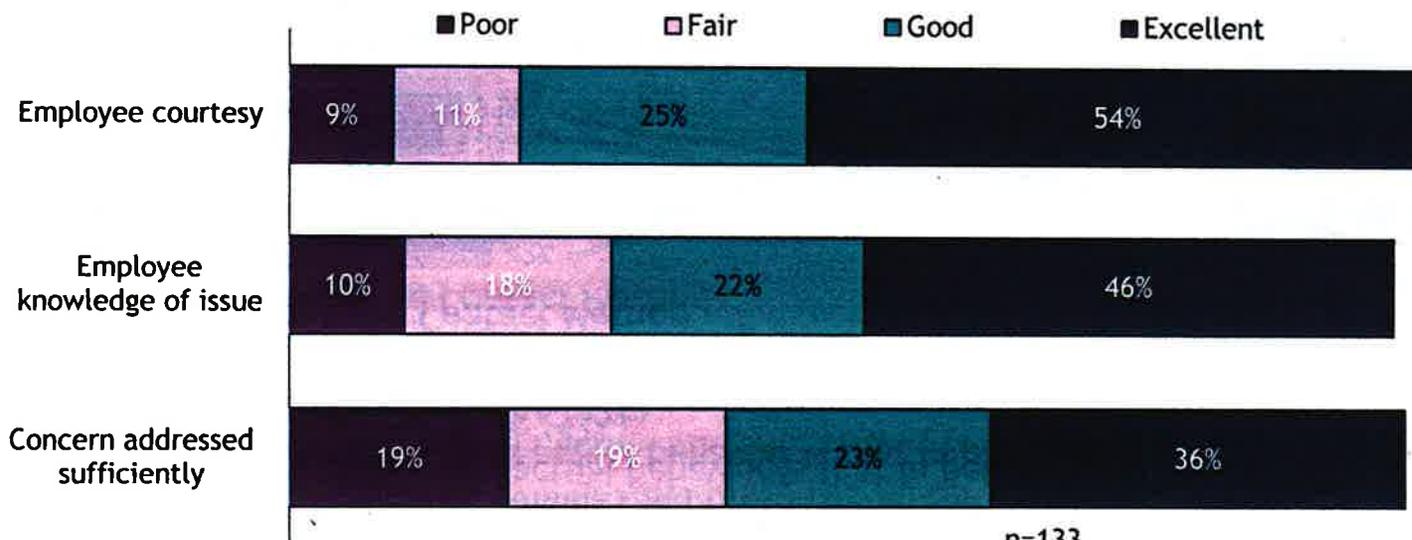


Q11. Was that contact in person, by phone, or some other way?
Q15. How would you prefer to contact the city?



Employee Service

- ❖ Employee courtesy remains area with the highest percentage of “good” or excellent” (79%).
 - It should be noted that the courtesy rating has been declining, although not significantly, since 2007.
- ❖ Two fifths (38%) of those who contacted the City, rated the manner in which their concern was addressed as “poor” or “fair.”
 - Reasons mentioned for a “poor” job include: “no action was taken/never resolved,” “unfriendly/rude representatives,” “dissatisfied with the results of action,” and “slow resolution.”



		% Good & Excellent		
		'07	'08	'10
Employee courtesy		84%	83%	79%
Employee knowledge of issue		70%	66%	68%
Concern addressed sufficiently		57%	59%	59%

- Q12. How would you rate the City employee's courtesy?
 Q13. How would you rate the City employee's knowledge of your issue?
 Q14. How well was your concern addressed?
 Q14A. Why do you say your concern was addressed poorly?

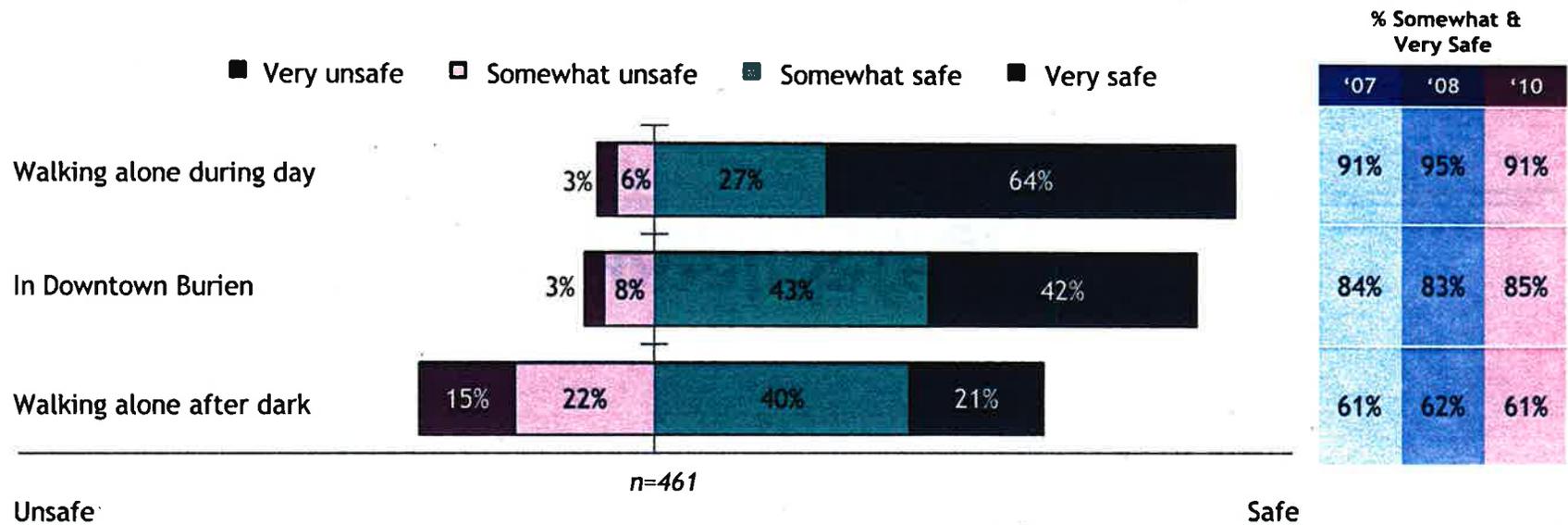


Personal Safety



Safety in Burien

- ❖ Burien residents continue to feel safe in Burien. Almost all (91%) respondents feel safe (“somewhat” or “very”) when walking alone in their neighborhood during the day.
 - Those who live west of Ambaum Boulevard or in North Burien are significantly more likely to feel “very safe” when walking alone in their neighborhood after dark than other residents (72% East vs. 56% West and 68% North vs. 49% Burien).
- ❖ There are no significant changes or differences for residents’ perception of feeling safe when in downtown Burien or walking alone after dark.



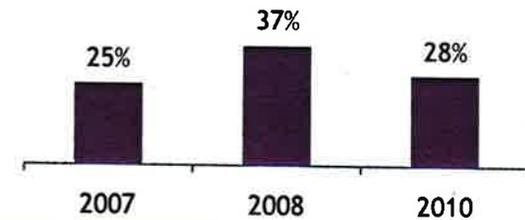
- Q16. How safe do you feel walking alone in your neighborhood during the day?
 Q17. How safe do you feel walking alone in your neighborhood after dark?
 Q18. How safe do you feel in Downtown Burien?



Contact with Police Department

- ❖ Contact with Burien Police has dropped back to 2007 levels after the spike in 2008.
- ❖ Reasons for being in contact with the police remains similar, though there is a significant increase in the number of contacts made to report a disturbance (4% vs. 11%).
- ❖ As in the past, people who were a crime victim reported the crime to the police (100% 2010, 93% 2008 and 95% 2007).

Contact with Burien Police in the past 12 months



Nature of Contact	2007 (n=101)	2008 (n=150)	2010 (n=130)
Crime victim	28%	22%	28%
Needed other assistance	19%	22%	21%
Was a witness to a crime	12%	13%	17%
Report a disturbance	4%	4%	11%
Report an accident	3%	4%	4%
Was suspected of a traffic violation	4%	7%	3%
Block watch meeting/party	NA	NA	2%
Unauthorized vehicle on my property	NA	NA	2%
Report a crime	9%	2%	2%
Other	16%	11%	8%

Q20. Have you had any contact with Burien Police in the past 12 months?

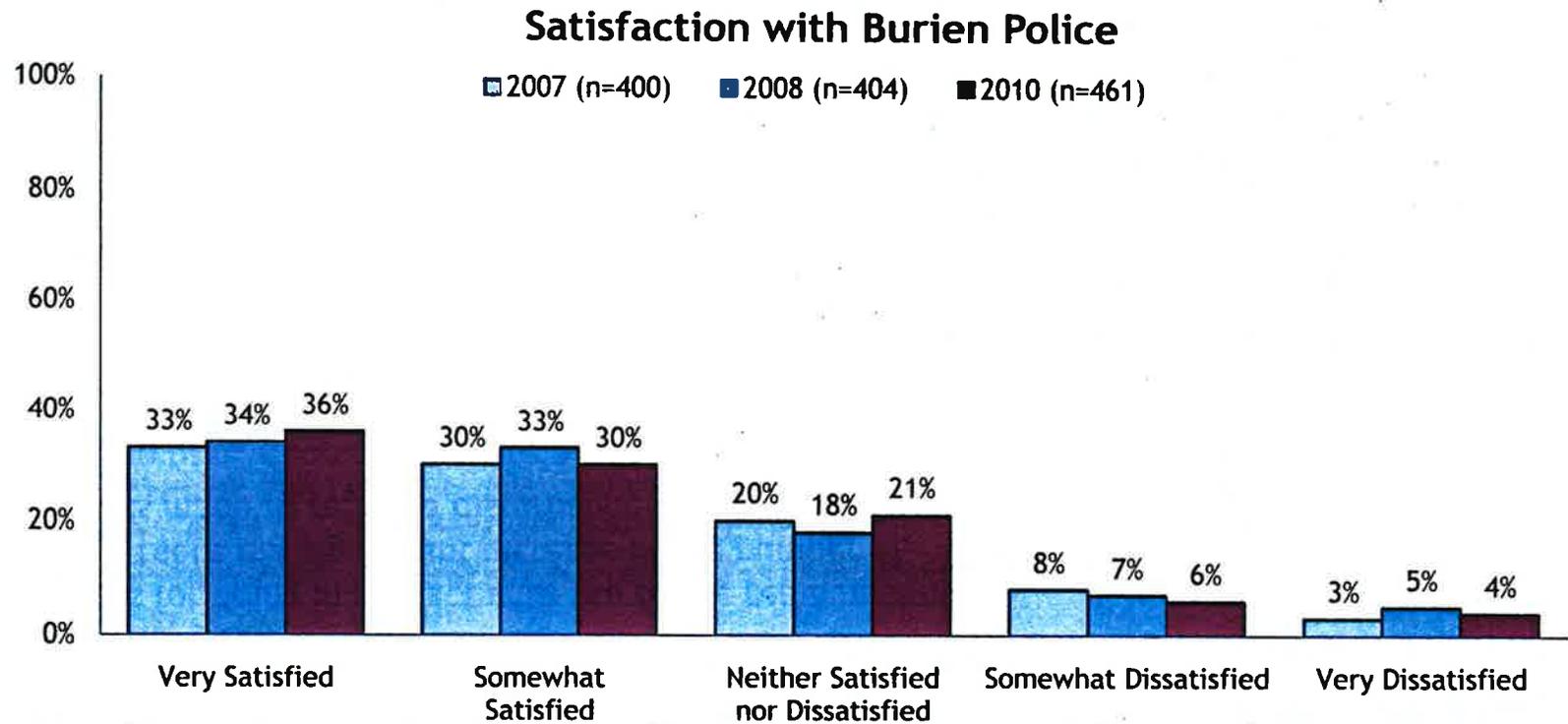
Q21. What was the nature of the contact?

Q22. Did you or any member of your household report the crime to the police?



Police Department

- ❖ Two thirds (66%) of residents are satisfied (“somewhat” or “very”) with the level of service provided by the Burien Police Department, which is inline with previous years.

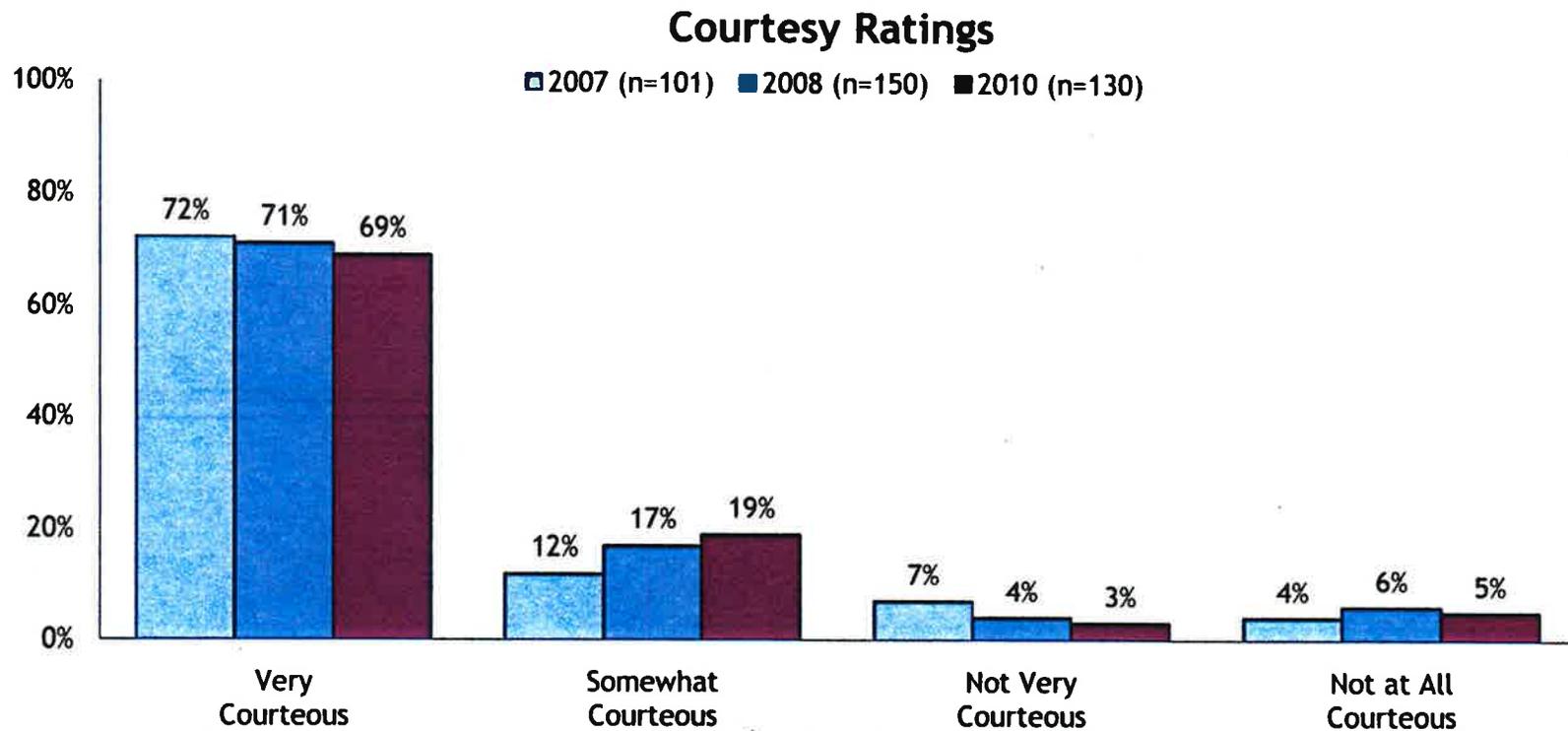


Q19. Overall, how satisfied are you with the level of service of the Burien Police Department?



Police Courtesy

- ❖ Three fourths (69%) rate the Burien Police as “very” courteous and an additional 19% rate them “somewhat” courteous.



Q23. During your most recent contact, how would you rate the courtesy of the officer or police employee with whom you had contact?



Activities in Burien



Activity Frequency

- ❖ Shopping remains the most frequent activity done within the City of Burien, with 85% of residents reporting they go shopping at least once a week.
- ❖ Dining out and participation in sports have both declined slightly in frequency, though not significantly.
- ❖ Of those currently working, one fifth (21%) work in Burien, which is comparable to 20% in 2008.

■ More than once a week ■ About once a week ■ Once or twice a month ■ Less than once a month ■ Not at all



Q24. During the past 6 months, how frequently have you done the following...

Q24C. During the past 6 months, how frequently have you or your children participated in sports or recreation within the City of Burien?

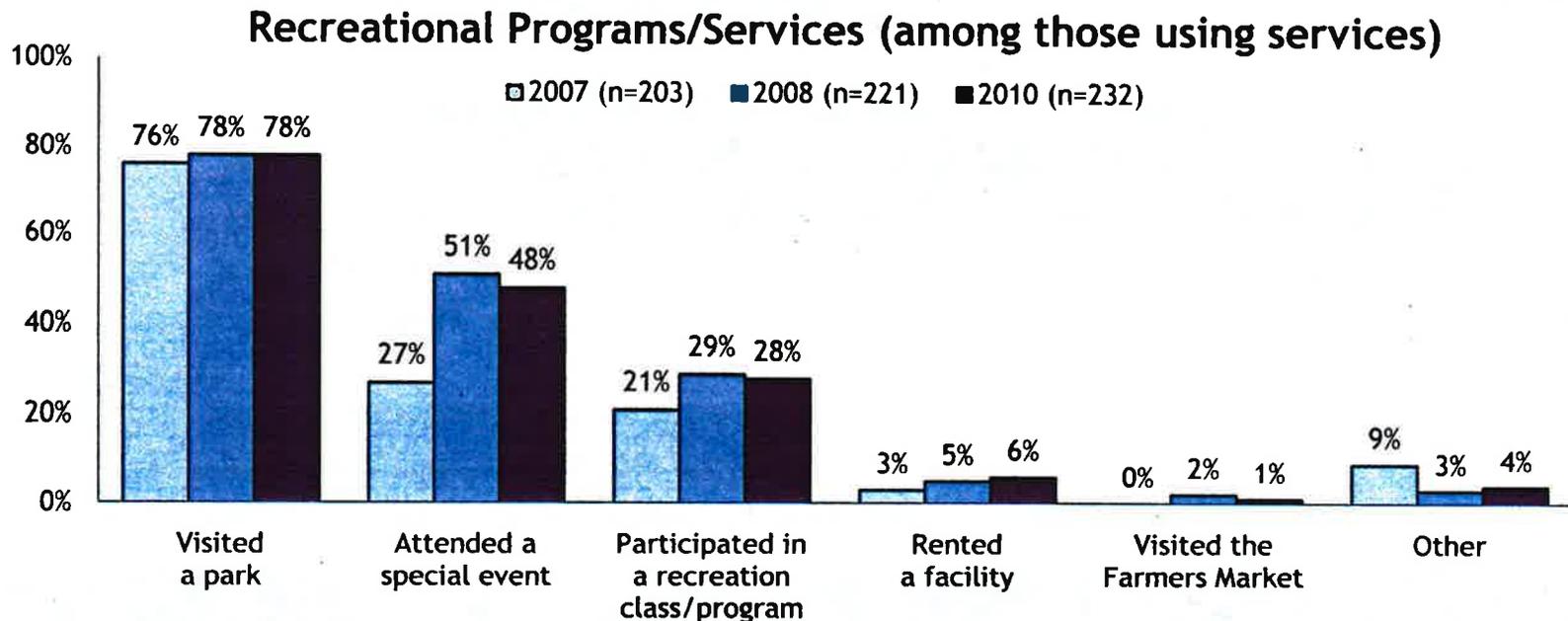
NOTE: Less than once a month added in 2010.

Q25. Do you work within the city limits of Burien?



Recreational Programs/Services

- ❖ Half (50%) report a member of their household has used a Burien Park, rented a facility, or participated in a City-sponsored recreation program in the last 12 months.
 - This is down slightly from 55% in 2008, though not a significant decline.
- ❖ Burien residents are significantly more likely to have attended a city-wide special event or participated in a recreation class/program than North Burien residents (51% vs. 36% and 31% vs. 16%, respectively).



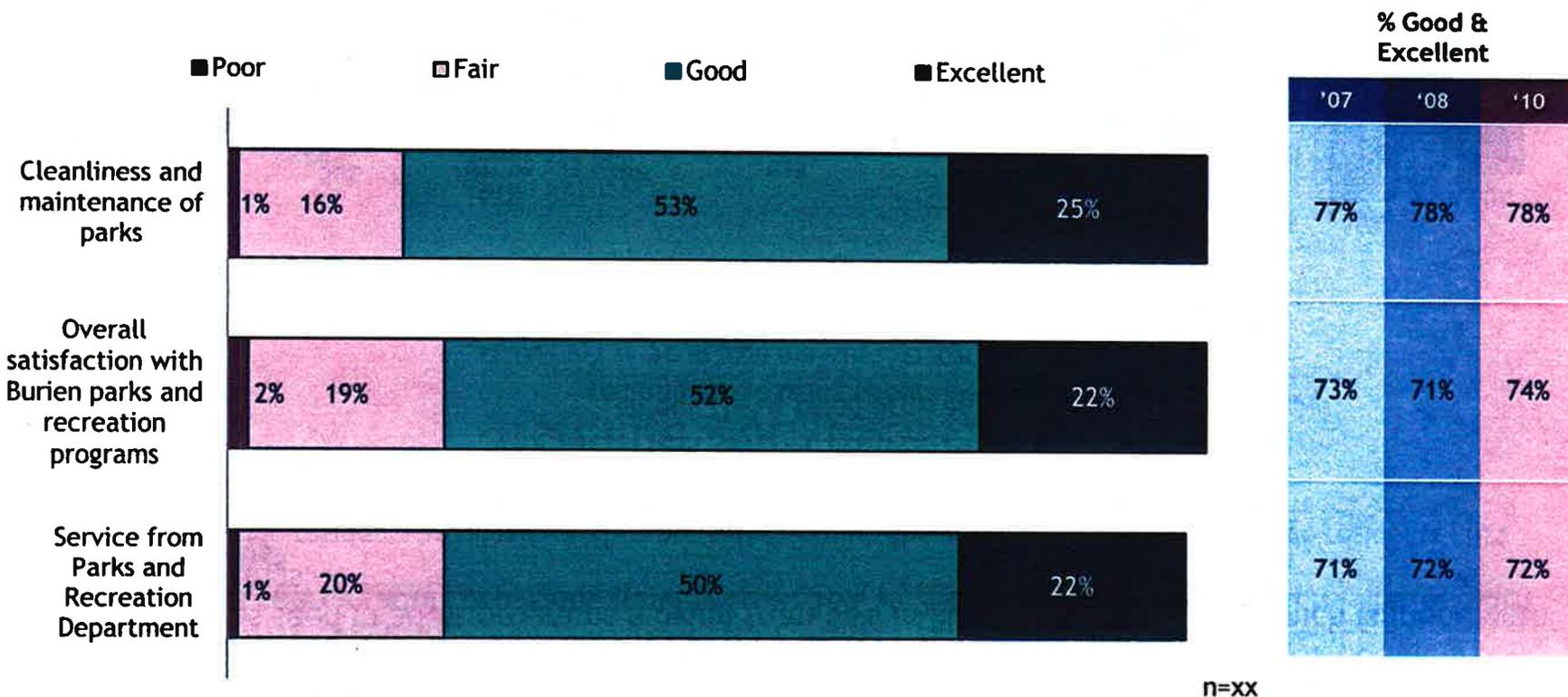
Q32. *Have you or a member of your household used a Burien park, rented a facility, or participated in a City-sponsored recreation program during the last 12 months?*

Q33. *Which recreation programs or services did you or a family member participate in?*



Parks and Recreation

- ❖ Three in four (74%) rate their satisfaction with Burien parks and recreation programs as “good” or “excellent” with four in five rating the parks cleanliness and maintenance as “good” or “excellent.”



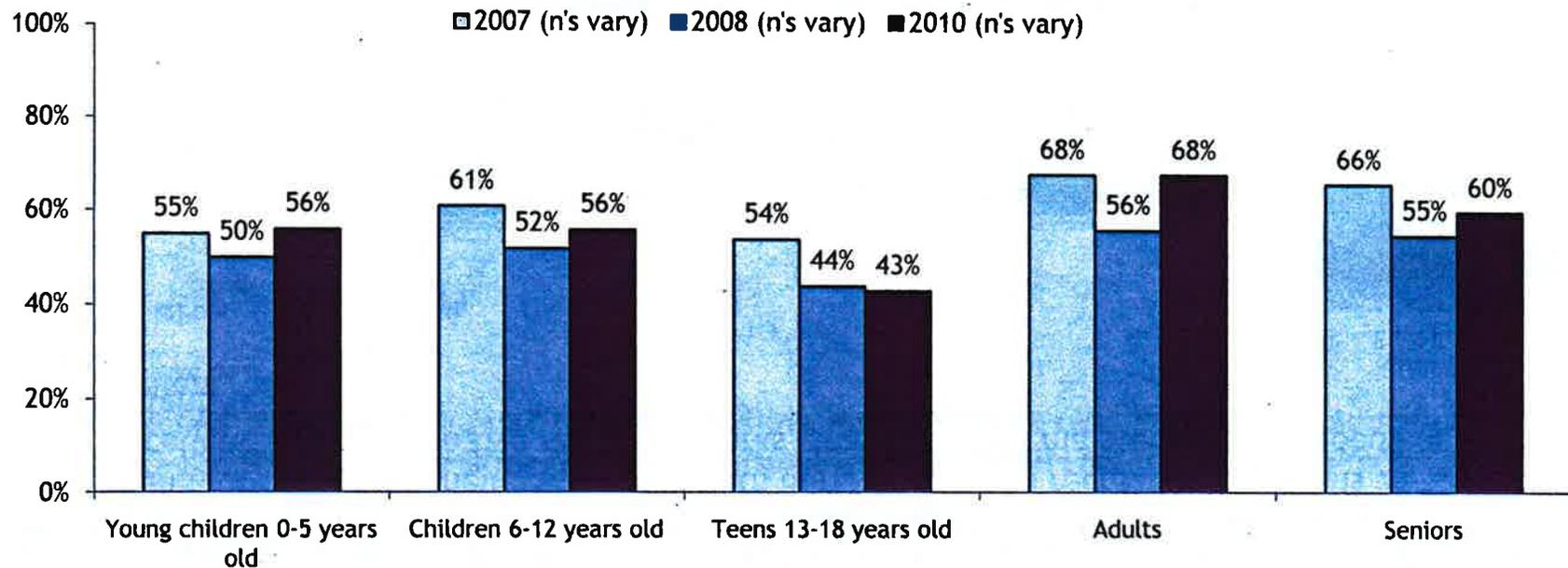
- Q34. How would you rate your overall satisfaction with Burien’s parks and recreation programs?
- Q36. How would you rate the City’s parks in terms of cleanliness and levels of maintenance?
- Q37. Overall, how would you rate the service provided by the Parks and Recreation Department?



Recreation Programs

- ❖ Four out of five programs show increased satisfaction. The most significant satisfaction increase is seen in adult programs moving from 56% in 2008 back up to 68%, which is inline with 2007 findings.
 - Westside residents are significantly more satisfied with the adult programs than Eastside residents (18% very satisfied vs. 9%, respectively).

% Satisfied with Programs by Age (among those using programs)



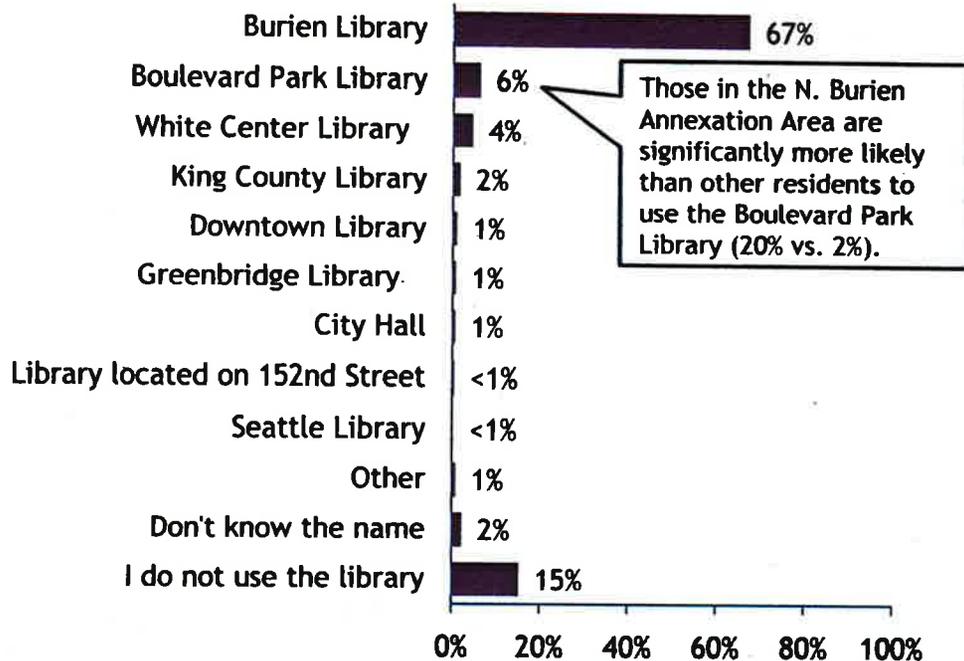
Q35. Based on what you know about these programs, how satisfied are you with programs provided for...?



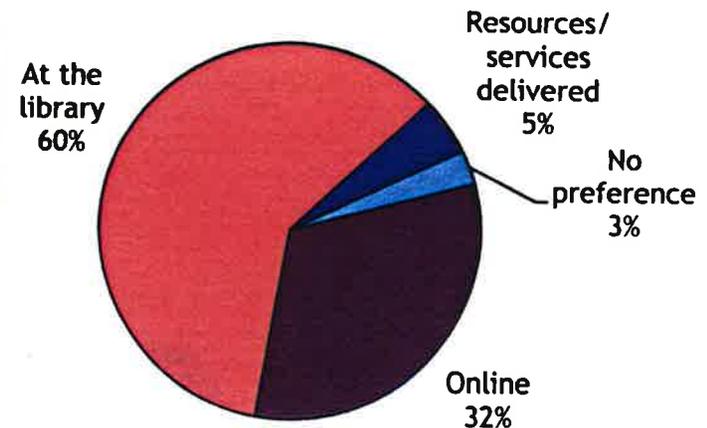
Public Library Use

- ❖ More than eight in ten (85%) Burien residents use the library. Two thirds (67%) use the Burien Library most frequently.
- ❖ Among those using the library, 60% prefer to access library resources and services by going to the library. One third prefer to access resources and services online.

Most Frequently Used Library
(n=461)



Preferred Method of Access to Library Resources
(n=391)



Q44. Which City of Burien library do you use most frequently?

Q45. Which of the following methods would you prefer to access library resources and services?

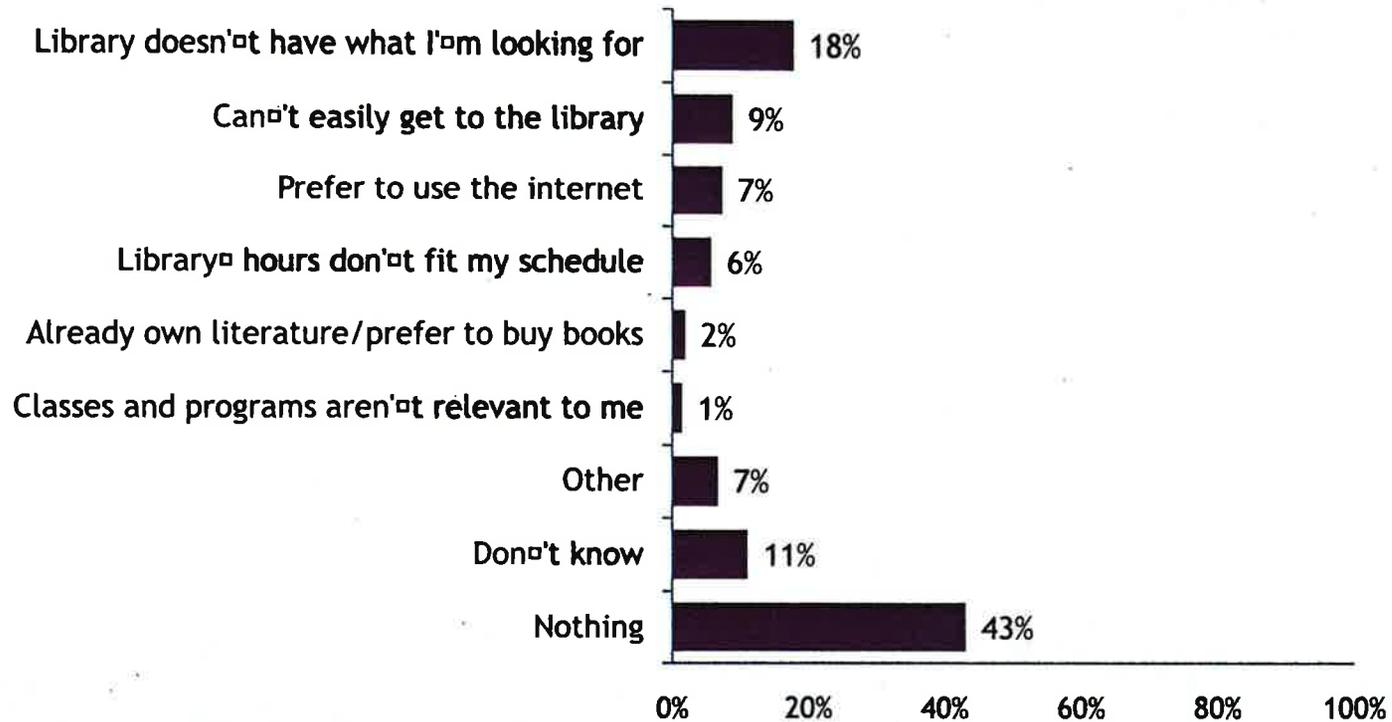


Factors Preventing Library Use

- ❖ Among those not using the library, more than half “don’t know” (11%) or report “nothing” (43%) prevents them from using the library more frequently.

Factors Preventing Library Use

(n=69)

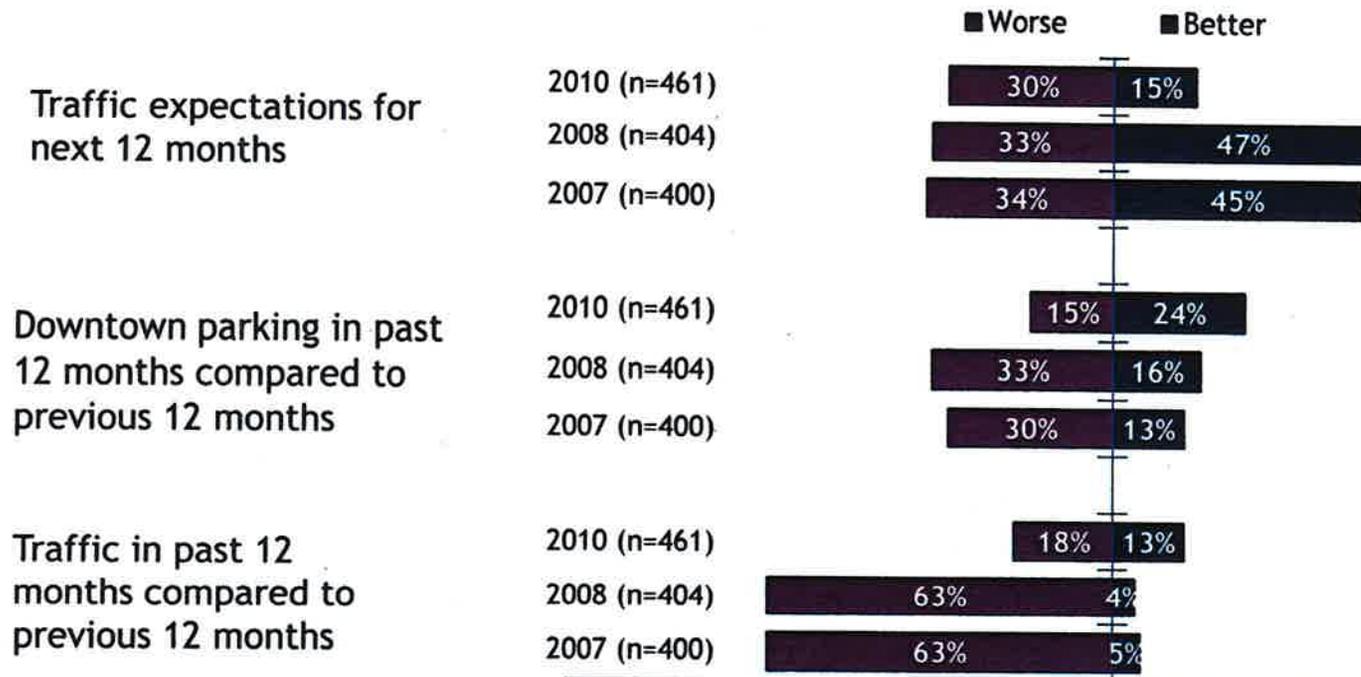


Q46. What factors prevent you from using the library more frequently?



Traffic and Parking

- ❖ Only 18% of residents feel that traffic is getting worse and 50% expect it to remain at the current state for the next 12 months.
 - That is a significant improvement over past years.

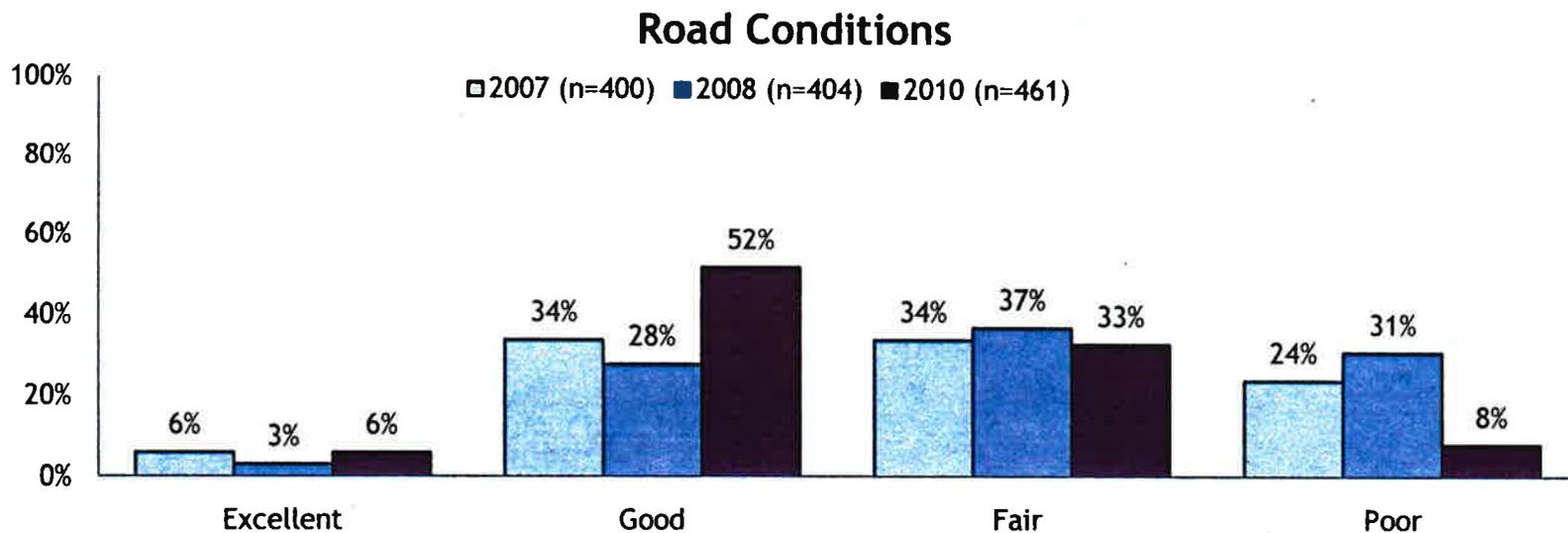


- Q26. Comparing the past 12 months with the previous 12 months, would you say traffic specifically within the City of Burien was...
- Q27. Do you expect traffic to be better, the same, or worse a year from now?
- Q29. Comparing the past 12 months with the previous 12 months, would you say parking in the downtown core was...



Roads, Sidewalks, and Bike Paths

- ❖ Significantly more residents find the road conditions “good” (52%) than in past years.
 - Only 8% rate the road conditions “poor.”
- ❖ Three in five (60%) feel there is a need for more sidewalks and bike paths in their neighborhood, which is consistent with 2008 and 2007 findings.
 - Among those who feel there is a need, 71% would be willing to pay additional taxes to fund the improvements, again in line with 2008 and 2007 findings.



Q28. Do you feel road conditions within Burien are...?

Q30. Do you feel there is a need for more sidewalks and bike paths in your neighborhood?

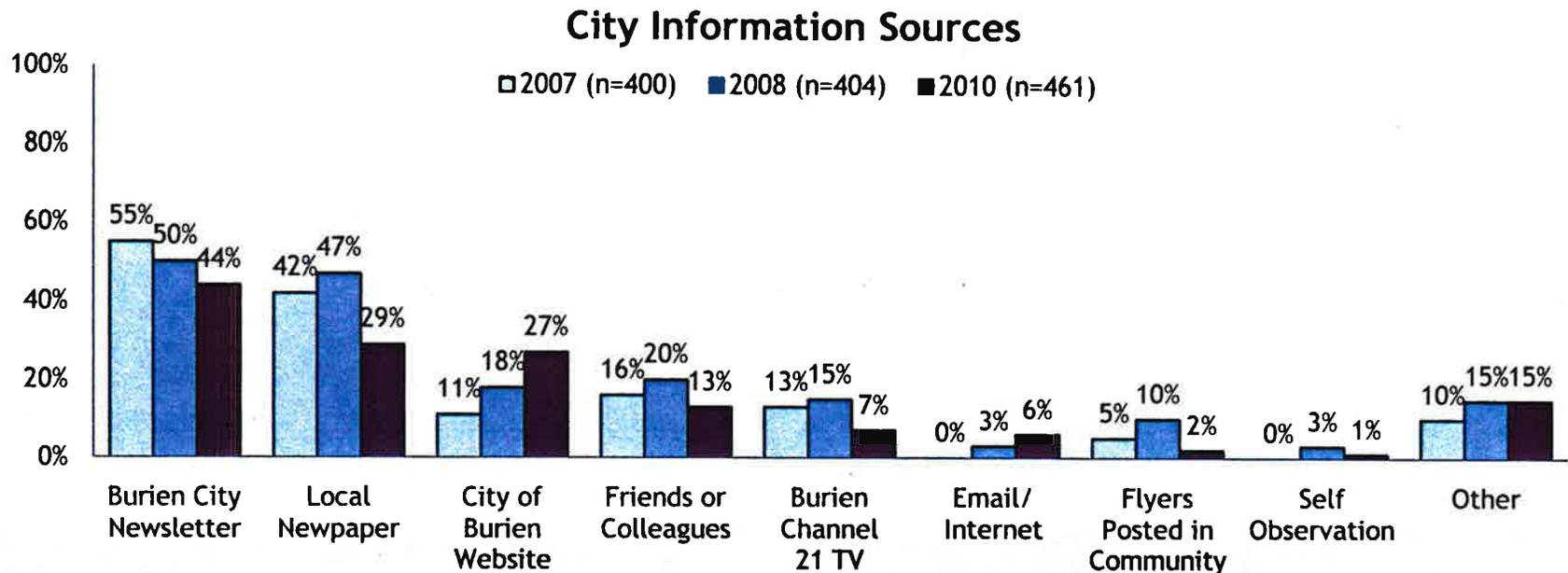
Q31. Would you be willing to pay additional taxes to fund sidewalk and bike path improvements?

Public Information



City Information Sources

- ❖ Seven in ten (70%) feel they get sufficient communication from the City about city services and local issues. This is consistent with 2008 (68%) and 2007 (72%) findings.
- ❖ Burien City Newsletter (44%) remains the most commonly used source for information about what the City of Burien is doing. However, the percentage mentioning their local newspaper is down significantly since 2008 (29% 2010 vs. 47% 2008) and the percentage mentioning the City of Burien Website has increased significantly (27% vs. 18%).



Q38. How do you get information about what the City of Burien is doing?

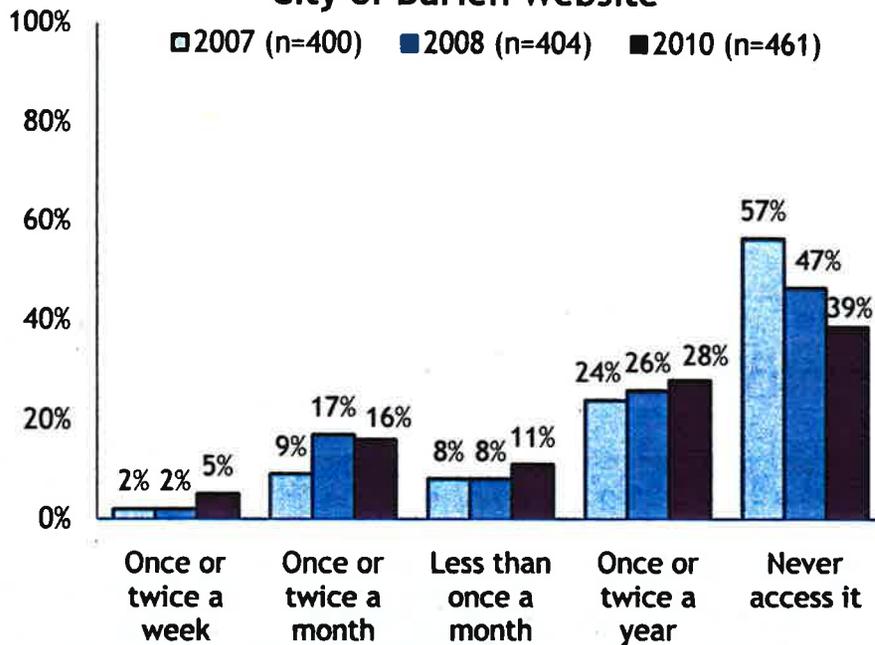
Q39. Do you get sufficient communication from the City about City services and local issues?



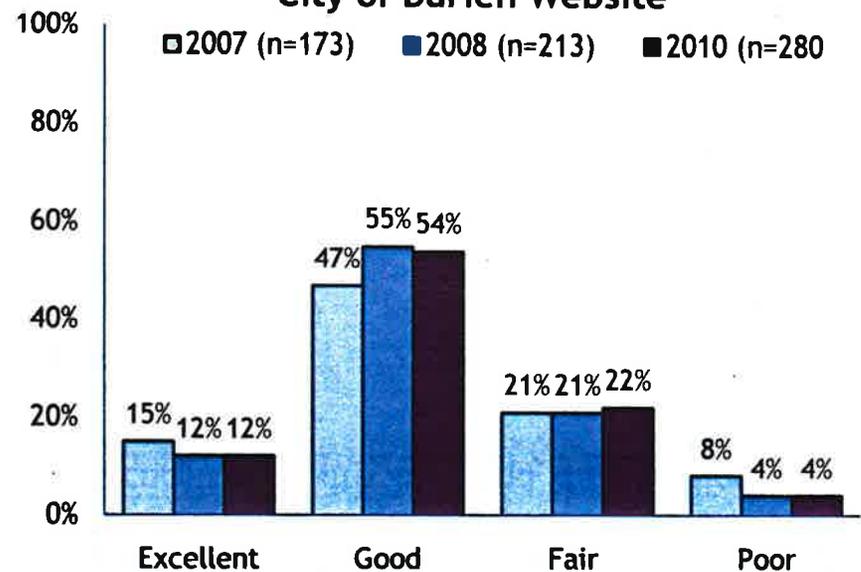
City of Burien Website

- ❖ Six in ten (61%) access the City of Burien website, a significant increase over 2008. Of those, 21% use it at least once a month.
 - Residents of the N. Burien Annexation Area are significantly less likely to have visited the site (40% vs. 66%).
- ❖ Two thirds (66%) of those who use the website rate it as a “good” (54%) or “excellent” (12%) resource for city programs and services. This is consistent with previous years’ findings.

Frequency Accessing City of Burien Website



Rating the City of Burien Website



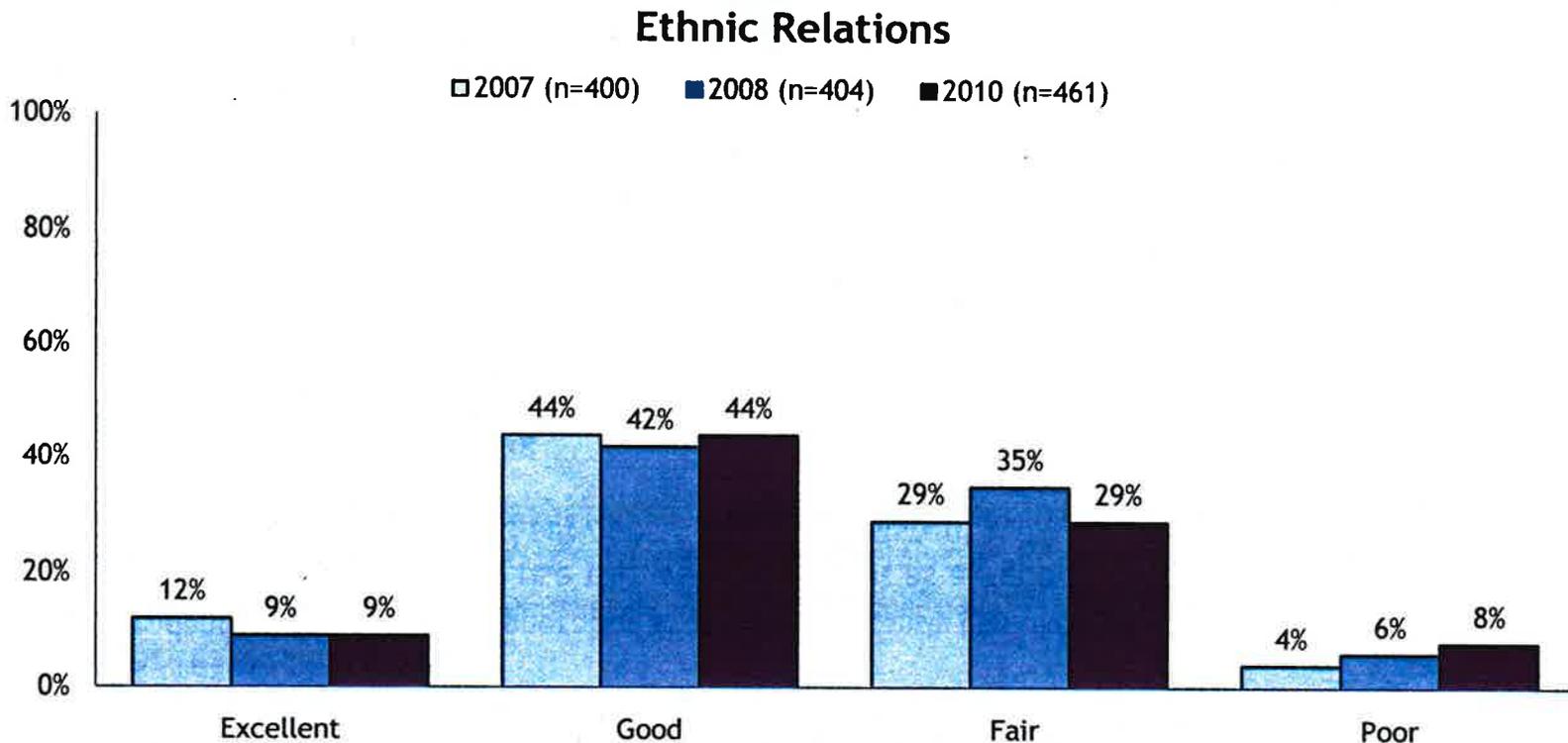
Q40. How often do you access the City of Burien’s Website?

Q41. How would you rate Burien’s web site as a resource for City programs and services?



Ethnic Relations

- ❖ Half (53%) feel the relationships between people of different races and cultures in the City of Burien are “good” (44%) or “excellent” (9%). This is consistent with 2007 and 2008 findings.



Q42. How would you rate the relationships between people of different races and cultures in the City of Burien?



Demographics

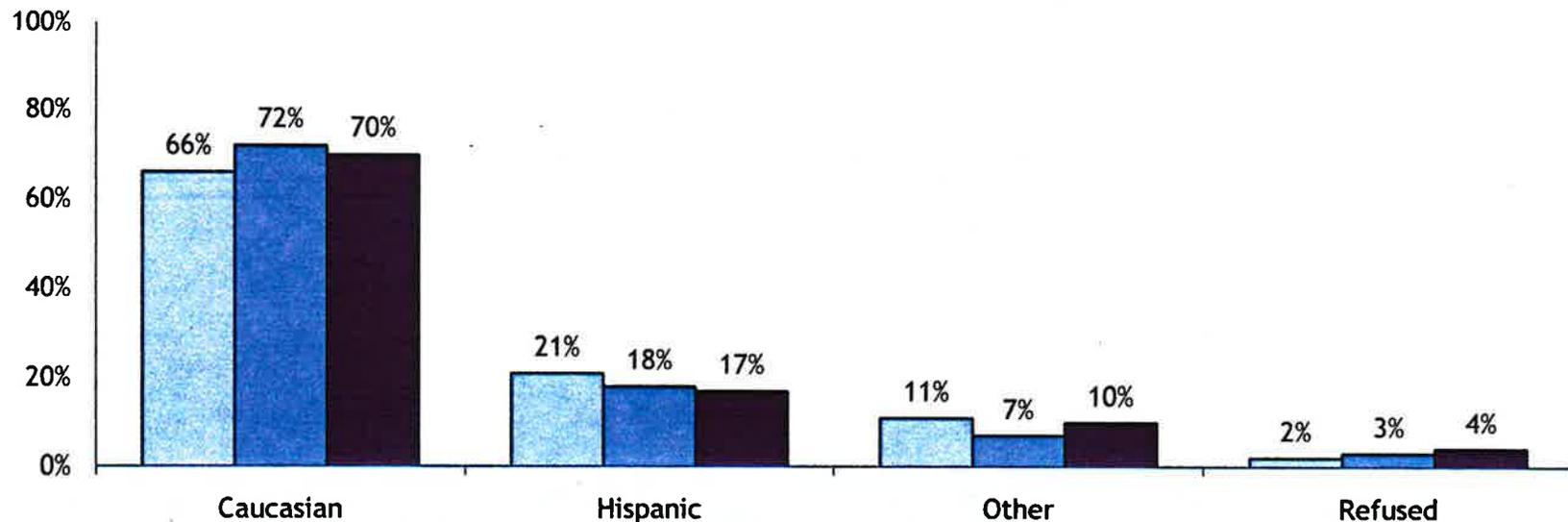


Respondent Profile

- ❖ The sample includes residents of from both east (52% or n=241) and west (48% or n=220) of Ambaum Boulevard.
- ❖ Quotas and weighting by ethnicity, gender and age were utilized to approximate population proportions.

Ethnicity

□ 2007 (n=400) ■ 2008 (n=404) ■ 2010 (n=461)



S3. Do you live east or west of Ambaum Boulevard?

S4. We are looking to talk to a representative sample of City of Burlen residents so will you please tell me your ethnic background?

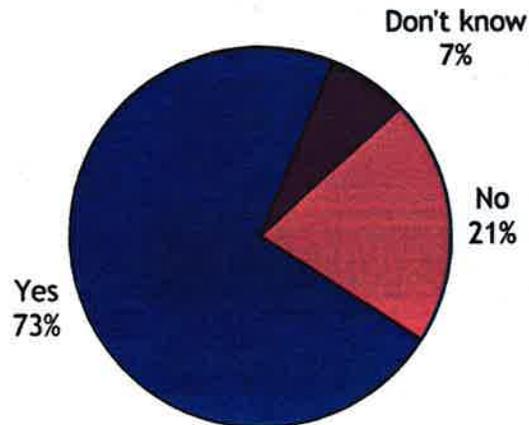
S5. Gender



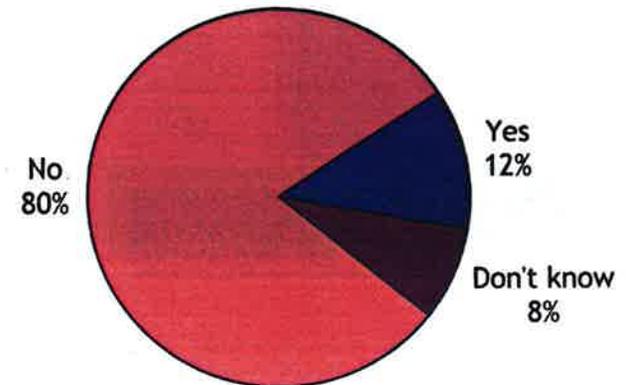
Respondent Profile (continued)

- ❖ Three quarters (73%) of those living in the N. Burien Annexation Area are aware that they live in the newly annexed area.

Do you live in the newly annexed area?
North Burien Annexation Area (n=99)



Do you live in the newly annexed area?
Original Burien City Limits (n=362)



S1A. Do you live in the newly annexed area?



Respondent Profile (continued)

- ❖ Respondents have lived in the City of Burien an average of 18 years.
- ❖ The median age of respondents is 48 years old.

Years in Burien	2007 (n=400)	2008 (n=404)	2010 (n=461)
Less than 12 months	3%	1%	4%
1-5 years	25%	21%	20%
6-9 years	16%	16%	13%
10-20 years	23%	27%	30%
21-30 years	11%	14%	12%
31-40 years	7%	7%	10%
41-50 years	10%	9%	6%
51 or more years	5%	5%	4%

Age	2007 (n=400)	2008 (n=404)	2010 (n=461)
18 to 25	10%	10%	8%
26 to 35	17%	17%	16%
36 to 45	21%	22%	20%
46 to 55	19%	19%	23%
56 to 65	12%	12%	17%
Over 65	17%	17%	15%
Refused	4%	2%	2%

S2. How many years have you lived in Burien?

S6. Which of the following ranges best describes your age?

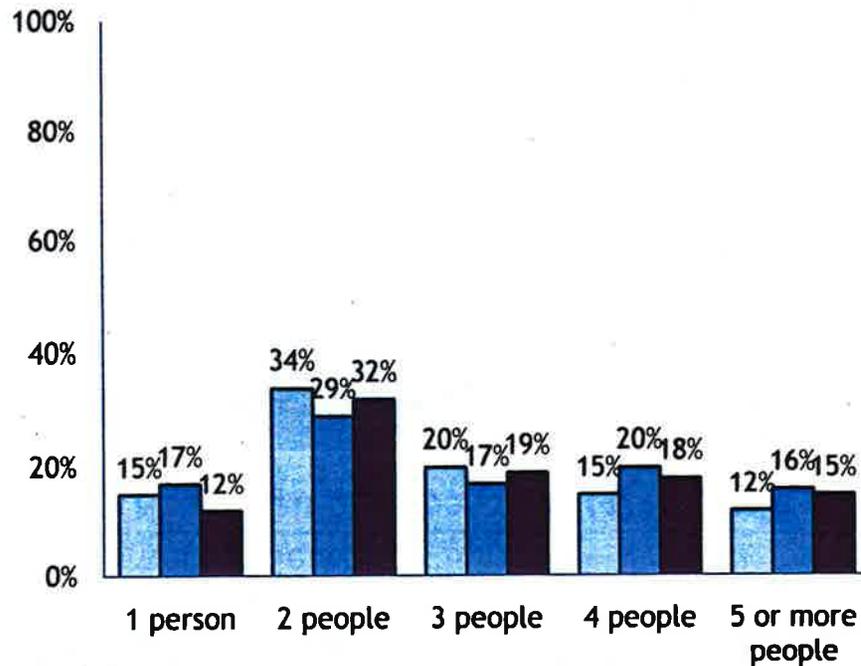


Respondent Profile (continued)

- ❖ The average respondent household contains 3 individuals.
- ❖ Eight in ten (80%) respondents live in a single family home. This percentage is significantly higher than observed among 2008 (72%) and 2007 (70%) study respondents.

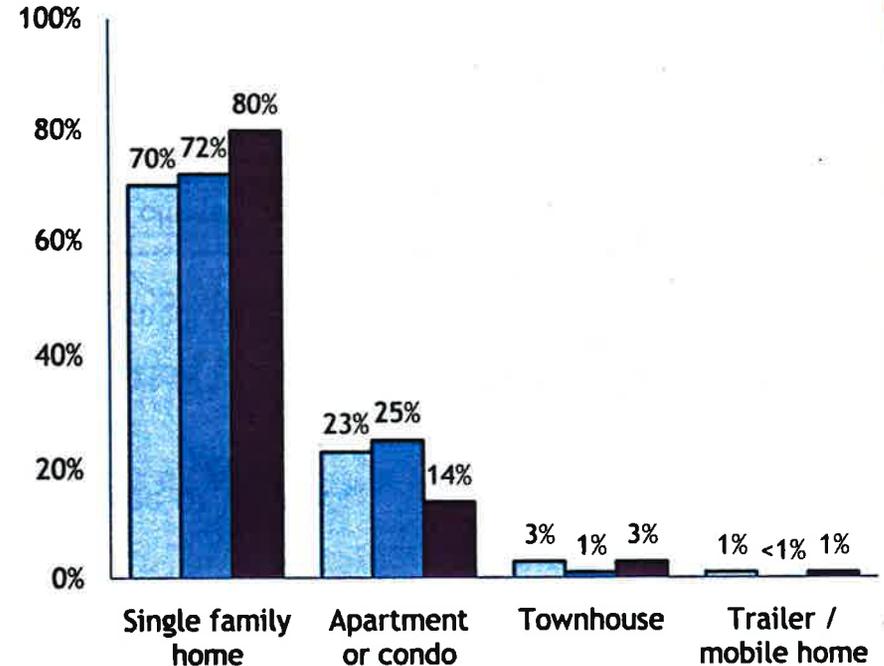
of People in Households

□ 2007 (n=400) ■ 2008 (n=404) ■ 2010 (n=461)



Type of Household

□ 2007 (n=400) ■ 2008 (n=404) ■ 2010 (n=461)



D1. Including yourself, how many people live in your household?
D2. What kind of home do you live in?



Respondent Profile (continued)

- ❖ Three in ten (30%) respondents currently don't work. Of those working, the majority (56%) work in Seattle or Burien.
- ❖ Nearly half of respondents (47%) have a college degree or above.

Work Location	2007 (n=280)	2008 (n=271)	2010 (n=323)
Seattle	29%	37%	32%
Burien	25%	25%	24%
SeaTac	6%	7%	4%
Tukwila	5%	4%	7%
Bellevue	5%	2%	3%
Renton	4%	3%	5%
Kent	4%	5%	4%
Tacoma	3%	<1%	3%
Other	11%	13%	13%

Education Level	2007 (n=400)	2008 (n=404)	2010 (n=461)
High School or Less, GED	32%	30%	25%
Some College, Trade	24%	26%	25%
College Degree (4 year)	25%	26%	28%
Graduate Degree(s)	8%	7%	10%
Post Graduate Degree(s)	4%	8%	9%

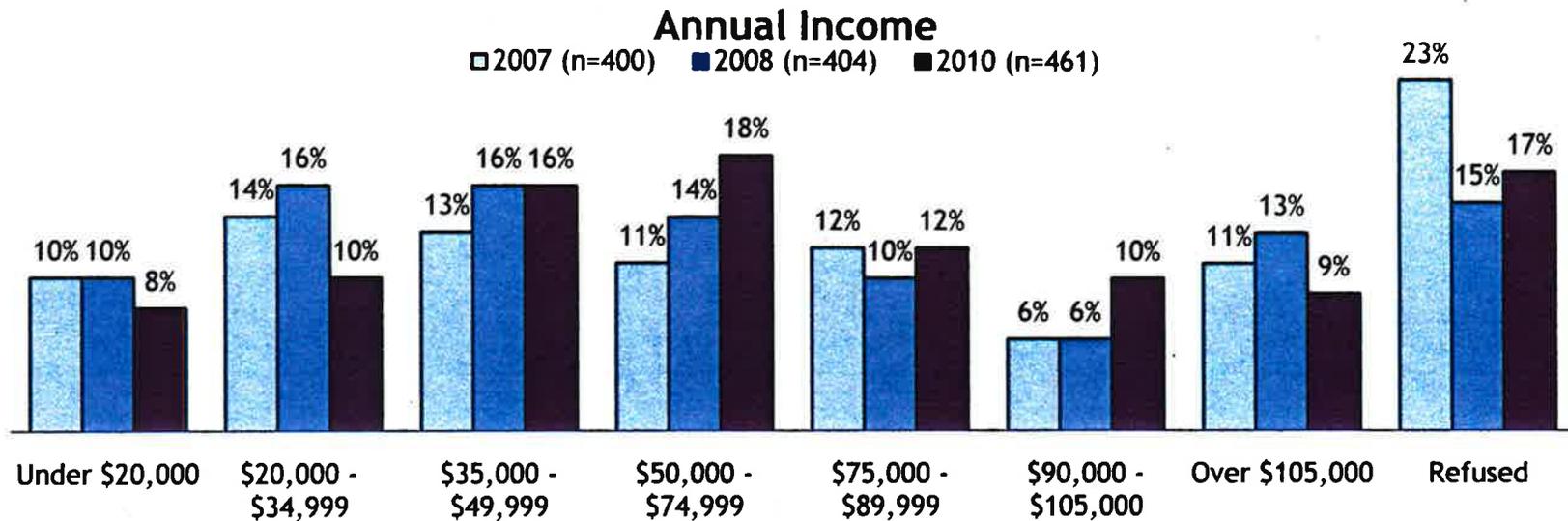
D4. What city do you work in?

D5. What is the highest level of education you have received?



Respondent Profile (continued)

- ❖ The median annual income of respondents is \$61K.
- ❖ Two thirds (67%) of respondents voted in a city election in the last two years.
- ❖ The following respondents are significantly less likely to vote in a city election:
 - Respondents who have lived in Burien for less than 10 years
 - Respondents who are satisfied with the job the City is doing
 - Males
 - Respondents 18-45 years old
 - Respondents with an annual income less than \$35K
 - Minorities
 - Respondents in the N. Burien Annexation Area
 - Respondents living east of Ambaum Blvd.



D6. Into which of the following categories does your annual household income fall?
D7. Have you voted in any city election in the last two years?

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion of Draft Shoreline Master Program		Meeting Date: August 16, 2010
Department: Community Development	Attachments: 1. Updated Summary of City Council and Staff Comments 2. Mayor McGilton's Comments 3. Councilmember Shaw's Comments	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Scott Greenberg, Comm. Devel. Director or David Johanson, Senior Planner		
Telephone: (206) 248-5510		
Adopted Initiative: <u>Yes</u> No	Initiative Description: Shoreline Master Program Update	
<p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for Council to review, discuss and provide direction to staff on the July 2010 City Council Draft of the Burien Shoreline Master Program (SMP).</p> <p>BACKGROUND (Include prior Council action & discussion): Council discussed the SMP review process on April 5 and May 3, 2010. Educational sessions and public forums were held on June 14 and 21, 2010. Council discussed the July 2010 City Council Draft of the SMP on July 19 and August 2, 2010. This draft is not included with this agenda bill; please bring the draft with you or contact staff if you need a new copy. It is also available online at http://www.burienwa.gov/index.aspx?NID=851.</p> <p>Council comments and requested text changes received by staff beginning at your July 19th meeting are summarized on the attached matrix. The highlighted rows are what we believe to be the most significant discussion topics. We have also included recommendations for most items. Responses to a few comments and questions are still being developed and will be provided to Council at your meeting.</p> <p>The remaining schedule is as follows (subject to change):</p> <ul style="list-style-type: none"> • August 30: Public hearing • September 13: Discussion and adoption • Date TBD: Department of Ecology public hearing and decision on SMP <p>OPTIONS (Including fiscal impacts):</p> <ol style="list-style-type: none"> 1. Direct staff to prepare final ordinance based on Planning Commission recommendation. 2. Direct staff to make changes to draft ordinance. 		
Administrative Recommendation: Discuss draft and provide direction to staff.		
Committee Recommendation: N/A		
Advisory Board Recommendation: Planning Commission--Adopt draft SMP dated 3/30/10.		
Suggested Motion: N/A		
Submitted by: Scott Greenberg	Mike Martin	
Administration _____	City Manager _____	
Today's Date: August 11, 2010	File Code: R:\CC\Agenda Bill 2010\081610cd-1 Shoreline Master Program.docx	

**SHORELINE MASTER PROGRAM
Summary of City Council Comments
City Council DRAFT 8/11/2010**

Source*	SHORELINE MASTER PROGRAM Summary of City Council Comments City Council DRAFT 8/11/2010					
	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
JM	1	General	None	Please include a brief description of the WAC, RCW or BMC when it is referenced in the document.	Suggested changes will be made.	
JM	2	General	None	Is there any policy in the Draft SMP that references Burien's Bike and Ped Plan?	There is no specific goal or policy that directly references the Bike and Pedestrian plan. The goals and polices of the SMP will be integrated with the existing comprehensive plan where the plan is referenced and incorporated. Also, Policy REC-10 (pg II-7) refers to bike paths and Policy CI-5 (pg II-7) encourages accommodating bike paths.	
RC	3	SMP Overview	4	A list or description of activities that the City has completed and continues to do showing its commitment to environmental stewardship and dedication to improve the health of the Puget Sound and its associated drainage basins.	Suggested change will be made.	
GS	4	SMP Overview	4	Mention lack of detrimental uses such as commercial or industrial on shorelines. Mention that only non-gov't (park) use is long established residential use which has highest priority under the SMA.	Information about which uses are on (and not on) Burien's shorelines can be added. The highest priority use of the shorelines is to "Recognize and protect the statewide interest over local interest"—it is not residential use (RCW 90.58.020).	
JM	5	SMP Overview	4	Paragraph 2 is too narrow. The underlying goal of the SMP is more than "...preserving public access and enjoyment of the state's shorelines." In fact it is to preserve the health and public safety of Puget Sound.	The new language is not from DOE. We would be happy to review any suggested language	
JM	6	SMP Overview	5	Document convention typically has a separate paragraph description for each chapter to inform the reader what is in each section. Separate out Chapters II and IV and add in Chapter VI description	Suggested changes will be made.	
JM	7	SMP Overview	5	The last paragraph is the most important one and should be moved to the second paragraph on page 4.	Suggested change will be made.	
JM	8	20.10.001 User's Guide	I-2	Figure 1: Provide RCW/BMC reference numbers	Suggested change will be made.	
JM	9	20.10.001 User's Guide	I-3	There is a typo in RCW 90.5 8.020. Eliminate the space in the number. Shows up twice on that page	Suggested changes will be made.	

**SHORELINE MASTER PROGRAM
Summary of City Council Comments
City Council DRAFT 8/11/2010**

Source*	SHORELINE MASTER PROGRAM Summary of City Council Comments City Council DRAFT 8/11/2010					
	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
JM	10	20.20.015 Public Access	II-3	PA-5: Reinsert previous language stating "Highest priority should be placed on reaches without existing public access."	This was language from the Shoreline Advisory Committee that was removed by the Planning Commission.	
JM	11	20.20.020 Recreation	II-6	REC-4, Special Use Park: 1st Example: The PA Figure notes another street end on the south end of 172nd. Should be added to the text.	This policy is taken directly from the existing comprehensive plan. The original text lists examples of special use parks, the text could be updated. That location may have been omitted because it was unimproved.	
JM	12	20.20.020 Recreation	II-7	REC 9: Correct the name of WDFW.	Suggested change will be made.	
GS	13	20.20.025 Circulation	II-7	CI-2: Eliminate policy. A cross-sound bridge would be an essential public facility and we would not have local decision-making authority.	No changes recommended. This policy represents the City's opinion on a cross-sound bridge and can inform future City actions on the issue if needed.	
JM	14	20.20.030 Land Use	II-9	USE 6: Is this language still correct after the other non-conforming word revisions?	No changes recommended. This policy originated from the existing comprehensive plan and zoning code. The proposed draft regulations are consistent with the policy and zoning code language.	
GS	15	20.20.030 Land Use	II-10	USE-11: Items 1.g and 2 are redundant.	Item 1.g should be eliminated and the section renumbered.	
JM	16	20.20.045 Flood	II-16	Where can the reader find the flood hazard map in the SMP?	There is not a specific flood hazard map in the SMP, but they are shown in the critical areas maps (inventory figures 8A-8E).	
JM	17	20.25.001 Shorelines of Statewide Significance 20.25.010 Aquatic Environment	III-1	Section 20.25.010 should apply to both marine and lake shorelines. Add in sentence to mention and clarify "Shorelines of Statewide Significance" in 20.25.001.	20.25.001 should be clarified-- Lake Burien is <u>not</u> a Shoreline of Statewide Significance, but is a Shoreline of the State. 20.25.010 should be clarified to state that both the marine and lake shorelines contain aquatic environments.	
JM	18	20.25.010 Aquatic Environment	III-1	The terms Aquatic, Urban Conservancy and Shoreline Residential are not in the list of definitions. Please clarify in the "Purpose" sections with geographic locations that represent each category.	No changes recommended. The map showing the locations of these designations is on Page III-5 and is referenced in Sec. 20.25.005.	

**SHORELINE MASTER PROGRAM
Summary of City Council Comments
City Council DRAFT 8/11/2010**

Source*	SHORELINE MASTER PROGRAM Summary of City Council Comments City Council DRAFT 8/11/2010					
	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
LK JM	19	20.25.015 [3.b] Urban Conservancy	III-3	LK: Should the new wording in the draft "...such as importation of invasive species to Lake Burien,..." be moved from 20.25.015-Urban Conservancy to 20.25.020 – Shoreline Residential JM: I suspect Lake Burien is NOT in Urban Conservancy.	The added/underlined text in the Urban Conservancy section (20.25.015.3.b) should be removed since the Lake is not located in the Urban Conservancy designation. The complete text (including underlines) from 20.25.015.3.b should be added to the Shoreline Residential management policies.	
JM	20	20.25.020.3.e Residential Environment	III-4	No net loss is not defined.	No changes recommended. "No net loss" is not specifically defined in the draft SMP nor in the State SMP guidelines. The DOE has an informational document on no net loss that we can use.	
LK	21	20.30.001, Figure 4 Permit Matrix	IV-1	Explain the meaning of shoreline residential, aquatic and conservancy in the permit matrix.	These are shoreline environment designations. We should add a reference to the descriptions of the designations in 20.25 and a reference to the map showing the locations of the designations on the shoreline (20.25.025 Fig. 3).	
JM	22	20.30.001 Figure 4 Permit Matrix	IV-1	Earlier in the document can a description of the processes (Shoreline Substantial Dev. Permit, Conditional Use and Variance) be included. Clarify the differences between SDP and CU. Note 4 is not easy to understand.	SDP and CU are fully explained in Chapter V. However, the footnotes can be changed to read: SDP-Shoreline Substantial development Permit (City Decision)—see Chapter V for procedures CU—Conditional Use Permit (Dept. of Ecology Decision)—see Chapter V for procedures Note 4 can be clarified to read: "Construction of the normal protective bulkhead common to single-family residences must comply with BMC 20.30.070 but is not required to obtain a substantial development permit."	
LK	23	20.30.007.1 Existing Development	IV-3	Can an appurtenance be maintained without it being removed? A. Ryan commented that the language was not clear enough to specifically allow maintenance of appurtenances without triggering removal. Requests that the SMP clearly state an appurtenance may be maintained without it requiring removal.	No changes recommended. 20.30.007 is clear that legally established appurtenances are conforming to the SMP . The SMP does not need to state that conforming structures may be maintained; we do not make this statement in any other land use regulation.	
JM	24	20.30.007.1 Existing Development	IV-3	The 2 paragraphs run together but they appear to be different topics. Can you clarify the language?	A paragraph break before the last sentence ("Replacement of any portion...") can be added.	

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Source*	SHORELINE MASTER PROGRAM Summary of City Council Comments City Council DRAFT 8/11/2010					
	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
JM	25	20.30.010.2.D Impact Mitigation	IV-4	The language "In determining appropriate mitigation measures appropriate..." seems to address the homeowner concerns regarding vegetation management in the 50-foot buffer. I would like to see a hierarchy of priority measures spelled out much like the decision trees you sent in the email.	Comment noted. Priority hierarchy and decision trees can be part of administrative handouts following adoption of the SMP.	
STF	26	20.30.025 [2.a.ii] Critical Areas/Wetlands	IV-7	20.30.025[2.a] BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the following exceptions: i. The reasonable use provisions contained in BMC 19.40.070 (4) do not apply. ii. The following types of wetlands are <u>not</u> regulated by the SMP: (a). Small wetlands less than 1,000 square feet and hydrologically isolated; (b). Man-made ponds smaller than one acre and excavated from uplands without a surface water connection to streams, lakes, or other wetlands	Department of Ecology requested change.	
LK	27	20.30.030 [1.f] Flood Hazard Reduction	IV-8	20.30.030 [1.f] – the policy regarding the weir at Lake Burien should be removed.	Suggested change will be made.	
JM	28	20.30.035 Public Access	IV-9	Remove "can" from the first sentence. Leave in the first strikeout phrase "...to view the water..."	We will remove "can" from the first sentence. The second change is not recommended. It would create a redundancy as "view the water" is already in the second sentence.	
LK	29	20.30.035 [1.a] Public Access	IV-9	Public access to <u>publicly owned</u> shoreline areas should be designed to provide for public safety and minimize potential impacts to <u>protect private property and public health and safety individual privacy.</u>	Staff does not recommend adding the terms "publicly owned" because the policy statement should apply to all accesses. We can support the remainder of the edits.	
JB	30	20.30.040 Shoreline Vegetation	IV-11	Landscaping and vegetation standards should be recommended rather than mandatory.	No changes recommended. Mandatory standards are needed to establish a minimum that must be met. There are multiple ways of achieving the minimum standards. There are online and published resources available to assist homeowners in making appropriate choices. We can prepare a list of these documents and resources for our website and as handouts at city hall.	
JM	31	20.30.040 Shoreline Vegetation	IV-11	Provide a list of priorities and buffer depths to give the applicant some amount of flexibility for where the greatest impact can be mitigated. In areas that already demonstrate substantial (more than 50%) no net loss, offer incentives.	This can be provided as part of our post-adoption handouts.	

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	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
GS	32	20.30.040 [2.a] Shoreline Vegetation	IV-11	There should be more clarification on what constitutes alteration of vegetation that requires a vegetation management plan.	No changes recommended. The proposed 7/14/10 draft definition of "alteration" (in 20.40.000) text is consistent with (and also less restrictive than) the existing Zoning Code definition of "alteration" (BMC 19.10.020).	
STF	33	20.30.030 [2.d.vi] Shoreline Vegetation	IV-12	Replacement or new lawn areas are prohibited in the vegetation conservation <u>shoreline riparian buffers</u> due to their limited functional benefits and need for chemical and fertilizer application; and	This provision should only apply in the shoreline riparian buffers rather than the 150 foot vegetation conservation buffer.	
JM	34	20.30.045.1.ii Water Quality	IV-14	This paragraph, with the citation of the RCW Shorelines of the State does not clearly state what point you are making.	At the end of 20.35.045 1.a.ii), recommend adding "regarding the level of protection for critical areas within shorelines of the state."	
JM	35	20.30.050 Dimensional Standards	IV-14	Include "Buffer" in the title. To conform with the format, shouldn't the words "1. Policy" be placed under the title for 20.30.050	No changes recommended. This section refers to more than buffers. There are no policies in this section; they are all regulations.	
GS	36	20.30.050 Dimensional Standards	IV-14 IV-15	How does this section relate to 20.30.007 Existing Development?	The effect is the same. Buffers and setbacks do not apply to existing legally established structures.	
JM	37	20.30.050 Dimensional Standards Figure 5 20.30.055 Buffers	IV-14 to IV- 16	Pages IV-14 through IV-16: I want to go officially on the record to state that the buffers proposed in the July 2010 City Council Draft SMP are reasonable and give individual property owners flexibility to make substantive revisions if they are not building waterward of their existing structures. I find that a 20-ft buffer, under consideration, as a general rule gives the homeowners in the SMP special consideration that other homeowners in the City cannot share in this benefit. From my understanding, the setbacks in the CAO are 30-ft or more. Please consider leaving the buffers as they are and considering variances in cases where they become necessary rather than making the regulation so meaningless that WDOE must reject the overall SMP Plan based on this premise. See Section 20.30.095 Residential Development Policy and Regulations (Pages IV-29 through IV-31)	Comment noted	
JM	38	20.30.050 Dimensional Standards	IV-15	Leave the text as is. This language clarifies what activity can and cannot be done within the 50-foot buffer. Number 2 limits buffer widths to new development and structures and additional expansion of existing structures. No existing structure is affected by the 50-foot buffer.	Comment noted.	

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	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
BB	39	20.30.050.1 Dimensional Standards	IV-15	Should the term "existing" be changed to "established" to ensure consistent language throughout the document.	The term "structures legally existing" should be changed to "legally established structures".	
JM	40	20.30.050 Dimensional Standards Figure 5	IV-15	Lot Size: Not all lots within the 200-ft SMP are 12,000 ft. Some are much smaller. I don't know how to reconcile the lot size with the zone requirement and the CAO overlay with the steep slopes. I would like to see language in the document rather than simply a footnote in the figure for both (2) and (3).	We can add a footnote to referencing Zoning Code section 19.17.170 that addresses undersized lots throughout the City (including shorelines).	
STF	41	20.30.050 Dimensional Standards Figure 5	IV-15	Reference in footnote 1 should be changed to "g" rather than "f".	Technical change needed as a result of formatting changes.	
STF	42	20.30.050 Dimensional Standards Figure 5	IV-15	Add footnote "3" to Marine Riparian Buffer and Lake Burien Riparian Buffer	Added footnote applies to both the riparian buffers and should be denoted in the table.	
LK, JB	43	20.30.050 Dimensional Standards Figure 5 20.30.055 Shoreline Buffers	IV-15 IV-16	Reduce marine shoreline riparian buffer to 20 feet.	No changes recommended. If Council makes this change additional studies and analysis will be needed to support the reduction before the final document can be sent to DOE. The studies and analysis will have to document that the proposal will meet the objectives of the SMA and guidelines.	
GS	44	20.30.050 Dimensional Standards Figure 5 20.30.055 Shoreline Buffers	IV-15 IV-16	Reduce marine shoreline riparian buffer to 0 feet behind a bulkhead, with the inclusion of low impact development features.	No changes recommended. See #43 above.	
JM	45	20.30.050 Dimensional Standards Figure 5 20.30.055	IV-15	Strongly agree with the 50-ft marine riparian buffer and the 30-ft Lake Burien buffer for new development or upon redevelopment of an existing property. What is the typical buffer that Ecology finds satisfactory in the Shoreline Residential designation for both the marine shoreline and Lake Burien properties?	Comment noted. There is no "typical buffer" acceptable to Ecology. Buffers are reviewed and accepted on a case-by-case basis for each jurisdiction and shoreline.	

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Source*	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
		Shoreline Buffers				
JM	46	20.30.050 Dimensional Standards Figure 5 20.30.055 Shoreline Buffers	IV-15	The impact of these buffer standards on existing homeowners seems to be minimal at best. In the BHMA report dated July 19, 2010, it declares there are only 11 undeveloped lots along the marine shoreline and most of them are unbuildable. I would think that the requirements that benefit less than 11 property owners should not rule the State's decision making process for minimizing the impact to Puget Sound.	Comment noted.	
JM	47	20.30.050 Dimensional Standards Figure 5 20.30.055 Shoreline Buffers	IV-15	For any changes under consideration for redevelopment of existing properties, it appears that the current document allows for flexibility and variances if it can be demonstrated that there is no reasonable alternative but to reasonably decrease the buffer width in specific circumstances. For those properties that currently demonstrate substantial net loss due to existing building conditions within the 50-ft buffer (asphalt/concrete patios, walks and driveways), any future modifications would appear to provide a true net benefit and should be reasonably permitted.	Comment noted	
JM	48	20.30.055 Shoreline Buffers	IV-16	For new additions/expansions: Can language be drafted to acknowledge cumulative adverse impacts in the 50-foot buffer and to encourage mitigation/incentives to improve function?	Staff is reviewing this.	
JM	49	20.30.070.1.a Bulkheads	IV-18	The last part of the sentence "...to avoid the need for future shoreline stabilization to the greatest extent feasible." , is contrary to both established science and to the recommendation that the Puget Sound Partnership (PSP) is going to be making to the Governor's Office in the near future. Language approved by the South Central Puget Sound Action Area, a subset of the PSP states: "Change SMA statutes and regulations to severely limit shoreline armoring and overwater coverage associated with residential development. For new armoring or repair of existing armoring, provide incentives and guidance for using bioengineered or more natural approaches that protects shoreline habitat functions." Both WDOE and WDFW are in accordance with removing as much shoreline armoring as possible.	Comment noted.	
STF	50	20.30.070.2 Bulkheads	IV-19	Re-number section to follow appropriate formatting sequencing.	Technical change needed as a result of formatting changes.	

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Source*	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
GS	51	20.30.070.2.a.b Bulkheads	IV-19	No incentives to encourage replacement of existing bulkhead with a less destructive one.	Comment noted.	
GS	52	20.30.070.2.b	IV-20	What situation is this section written to address? Would mitigation be allowed to achieve no net loss? Should be encouraging the type of structures we want rather than having restrictive language.	Staff is reviewing.	
JM	53	20.30.070.2.b.b.i Bulkheads	IV-20	Same comment as above. Remove the phrase "...in imminent danger..." and the three-year timeframe. Both do not provide enough assurance that reasonable requirements will be in place. How can a geotechnical engineer predict either imminent danger or the amount of erosion that will occur in 3 years? If this scenario could be predicted, there would be no need for property insurance. Please rewrite (i) to be more descriptive.	This was requested by DOE. Staff is reviewing possible alternatives.	
JM	54	20.30.075.2.f Over-Water Structures	IV-23	My understanding is that WDOE is moving forward to limit the number of overwater structures. Keep the language as it is.	Comment noted.	
LK	55	20.30.075 [2.g] Overwater Structures	IV-23	Only one overwater structure is allowed for each single family detached residential lot. <u>On Lake Burien, each single family lot may have one dock or pier, and one float.</u>	No changes recommended. At both the Shoreline Advisory Committee and the Planning Commission staff heard from some lake residents that there was concern that the Lake could have too many floats. They felt that too many floats potentially added to navigation challenges and visually cluttered the lake.	No change. 8/2/10
GS	56	20.30.080.2.f Habitat Restoration	IV-24	What does this mean in context of this section on restoration and enhancement?	Staff is reviewing this question.	
LK	57	20.30.085 [2.h] Public Access	IV-27	Should public access occur on Lake Burien, only hand-carried watercraft shall <u>not</u> be allowed to be launched from the public access areas.	If this was left as amended theoretically all other water craft would be allowed. If the intent is to not allow water craft from a public access point, it may be best to remove the entire regulation or specifically state that no watercraft access is allowed at public access points. Example: " <u>Should public access occur on Lake Burien, no watercraft access is allowed.</u> "	
GS	58	20.30.095.2.a Residential	IV-29	Does this restrict one person from obstructing another person's view with "residential development"?	Staff is reviewing this question.	

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	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
GS	59	20.30.095.2.c Residential	IV-29	If criteria i-v are met (common-line setback/buffer), is a CUP required?	Staff is reviewing this question.	
GS	60	20.30.105.2.j Utilities	IV-35	Why did "practical" change to "feasible"?	Staff is reviewing this question.	
GS	61	20.35.010.2 Permit Procedures	V-2	As written, an exemption requires a variance and a DOE decision (due to reference to paragraph 8 of BMC 20.35.025). Can we eliminate the exempt category?	<p>The Exempt category is required by the SMA. A proposal could be exempt from a Shoreline Substantial Development Permit but have elements that would trigger a Conditional Use Permit or Variance process. This section could be revised as follows:</p> <p>Exempt Development. Development within the City of Burien's shoreline jurisdiction that is exempt from the requirement to obtain a <i>Shoreline Substantial Development Permit</i> shall comply with paragraph 8 below and with BMC 20.35.025. <u>An exempt development that requires a Conditional Use Permit or Variance shall also comply with applicable provisions related to those processes.</u></p>	
JM	62	Chapter VI Definitions	None	Define Aquatic, Urban Conservancy, and Shoreline Residential	No changes recommended. These are designations, like a zone, and are defined/shown in Chapter III.	
JM	63	Chapter VI Definitions	None	Define Substantial Development and Conditional Use Is the definition for WDOE Conditional Use different than the one in the draft?	<p>"Shoreline Substantial Development" is defined in BMC 20.40.145.</p> <p>Yes, the Burien SMP definition is different than the WAC definition for Conditional Use:</p> <p>Burien SMP (20.40.130): "a use or modification classified by the City of Burien Shoreline Master Program as a conditional use or modification for certain shoreline environments or is an unlisted use/modification. "</p> <p>WAC 173-27-030(4): "a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program" (WAC 173-27-030(4))</p>	
JM	64	Chapter VI Definitions	None	Type I Decisions	No changes recommended. A Type 1 decision is a process not a definable item.	

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	#	TOPIC	PG	SUMMARY of COMMENT	STAFF RESPONSE	CC Direction
JM	65	Chapter VI Definitions		Geologically Hazard Areas	No changes recommended. The term is defined in the Zoning Code (BMC 19.10.190).	
LK	66	Appendices		Include data and reports from Lake Burien and the Burien Marine Homeowners Association (BMHA).	The additional information is a part of the public record and will be provided to DOE as a part of the formal review process in a public comment volume.	

*-BB (Councilmember Brian Bennett), JB (Councilmember Jack Block, Jr.), RC (Deputy Mayor Rose Clark), LK (Councilmember Lucy Krakowiak), JM (Mayor Joan McGilton), GS (Councilmember Gordon Shaw), STF (City Staff)

Scott Greenberg

From: David Johanson
Sent: Monday, August 02, 2010 10:24 AM
To: Scott Greenberg
Subject: FW: Joan's Comments to Council Draft 2010 SMP

So you have a copy as well.

-----Original Message-----

From: Joan McGilton
Sent: Sunday, August 01, 2010 5:57 PM
To: David Johanson
Cc: Mike Martin
Subject: Joan's Comments to Council Draft 2010 SMP

David: My comments. Joan

SMP Overview

Page 4: Is the new added language from WDOE? if it is the City's language, I think paragraph 3 is too narrow. The underlying goal of the SMP is more than "... preserving public access and enjoyment of the state's shorelines." In fact it is to preserve the health and public safety of Puget Sound.

SMP Overview Page 5: Document convention typically has a separate paragraph description for each chapter to inform the reader what is in each section. Separate out Chapters II and IV and add in Chapter VI description

The last paragraph is the most important one and should be moved to the second paragraph on page 4.

Users Guide, Chapter I:

Page 1-2: Figure 1: Provide RCW/BMC reference numbers

Page 1-3: There is a typo in RCW 90.5 8.020. Eliminate the space in the number. shows up twice on that page

General Goals and Policies, Chapter II

Page II-3: Pol PA.5: reinsert previous PC language stating the "... Highest priority should be..."

Page II-6, 1st Example: The PA Figure notes another street end on the south end of 172nd. Should be added to the text.

Page II-7 Pol.REC 9: Correct the name of WDFW.

Is there any policy in the Draft SMP that references Burien's Bike and Ped Plan?

Page II-9, Pol.USE 6: Is this language still correct after the other non-conforming word revisions?

Page II-16 20.20.045: Where can the reader find the flood hazard map in the SMP?

Shoreline Environment Designations, Chapter III

Pages III-1, 20.25.010: (Is page III-2 out of order?) Clearly define this section is to apply to both the marine shoreline and Lake Burien. It could be interpreted to only to mean marine. Add in sentence to mention and clarify " Shorelines of Statewide significance."

The terms Aquatic, Urban Conservancy and Shoreline Residential are not in the list of definitions. Please clarify in the "Purpose" sections with geographic locations that represent each category.

Page III-3 Management Policies: I suspect Lake Burien is NOT in Urban Conservancy. Am I wrong?

Page III-4 in Management Policies, last bullet: No net loss is also not defined.

Shoreline Uses and Modifications, Chapter IV:

Page IV-1 Figure 4 Footnotes: Find a place nearby to clarify the differences between SDP and CU. Note 4 is not easy to understand.

Page IV-3, Existing Development, para 1: The 2 paragraphs run together but they appear to be different topics. Can you clarify the language?

Page IV-4, Regulations, para 4: (This is a comment): The language " In determining appropriate mitigation measures appropriate...", seems to address the homeowner concerns regarding vegetation management in the 50-foot buffer. I would like to see a hierarchy of priority measures spelled out much like the decision trees you sent in the email.

Page IV-9, Public Access, 1st paragraph: Take out the word "can" from the first sentence. Leave in the first strikeout phrase "...to view the water...". This language is fact-based and should not be seen by readers as granting or NOT granting access.

Page IV-11, Shoreline Vegetation Conservation: 1. Policies and 2. Regulations: I find these sections too vague to be helpful to either the applicant, to the permit grantor and/or to WDOE. A list of priorities and buffer depths would give the applicant some amount of flexibility for where the greatest impact can be mitigated. In areas that already demonstrate substantial (more than 50%) no net loss, incentives can be generated that will offer some relief upon redevelopment requests.

DAVID: More to follow. Joan

Scott Greenberg

From: Joan McGilton
Sent: Monday, August 02, 2010 3:17 PM
To: David Johanson; Scott Greenberg
Cc: Mike Martin
Subject: Further Comments on the Draft SMP

David: My comments for the rest of Chapter IV of the SMP and Chapter VI:

Chapter IV, Shoreline Uses and Modifications:

Page IV-14, Water Quality, 1. Policies (ii): I find that this paragraph, with the citation of the RCW Shorelines of the State does not clearly state what point you are making. I have the RCW reference in front of me and I still don't get what is meaningful in this paragraph.

Page IV-14, Dimensional Standards: Please include the word Buffer in the title. To conform with the format, shouldn't the word 1. Policy be placed under the title for 20.30.050

Page IV-15, Figure 5, Dimensional Standards: I strongly agree with the 50-ft marine riparian buffer and the 30-ft Lake Burien buffer. My understanding is that this buffer width only is put in place with new development or upon redevelopment of an existing property. I also understand that WDOE has preferred the 150-ft buffer in some instances. I would like to have confirmation of the typical buffer that Ecology finds satisfactory in the Shoreline Residential designation for both the marine shoreline and Lake Burien properties.

Now that the Draft has removed all reference to non-conforming use, the impact of these buffer standards on existing homeowners seems to be minimal at best. In the BHMA report dated July 19, 2010, it declares there are only 11 undeveloped lots along the marine shoreline and most of them are unbuildable. I would think that the requirements that benefit less than 11 property owners should not rule the State's decision making process for minimizing the impact to Puget Sound.

For any changes under consideration for redevelopment of existing properties, it appears that the current document allows for flexibility and variances if it can be demonstrated that there is no reasonable alternative but to reasonably decrease the buffer width in specific circumstances. For those properties that currently demonstrate substantial net loss due to existing building conditions within the 50-ft buffer (asphalt/concrete patios, walks and driveways), any future modifications would appear to provide a true net benefit and should be reasonably permitted.

Pages IV-14 through IV-16: I want to go officially on the record to state that the buffers proposed in the July 2010 City Council Draft SMP are reasonable and give individual property owners flexibility to make substantive revisions if they are not building waterward of their existing structures. I find that a 20-ft buffer, under consideration, as a general rule gives the homeowners in the SMP special consideration that other homeowners in the City cannot share in this benefit. From my understanding, the setbacks in the CAO are 30-ft or more. Please consider leaving the buffers as they are and considering variances in cases where they become necessary rather than making the regulation so meaningless that WDOE must reject the overall SMP Plan based on this premise. See Section 20.30.095 Residential Development Policy and Regulations (Pages IV-29 through IV-31)

Page IV-15, Figure 5 Dimensional Standards, Lot Size: Not all lots within the 200-ft SMP are 12,000 ft. Some are much smaller. I don't know how to reconcile the lot size with the zone requirement and the CAO overlay with the steep slopes. I would like to see language in the document rather than simply a footnote in the figure for both (2) and (3).

Page IV-18, Bulkheads, 1. Policies (a): The last part of the sentence "...to avoid the need for future shoreline stabilization to the greatest extent feasible." , is contrary to both established science and to the recommendation that the Puget Sound Partnership (PSP) is going to be making to the Governor's Office in the near future. Language approved by the South Central Puget Sound Action Area, a subset of the PSP states: "Change SMA statutes and regulations to severely limit shoreline armoring and overwater coverage associated with residential development. For new armoring or repair of existing armoring, provide incentives and guidance for using bioengineered or more natural approaches that protects shoreline habitat functions." Both WDOE and WDFW are in accordance with removing as much shoreline armoring as possible.

Page IV-19, Bulkheads, 2. Regulations (b)(i): Same comment as above. this language should be modified. Remove the phrase "...in imminent danger..." and the three-year timeframe. Both do not provide enough assurance that reasonable requirements will be in place. How can a geotechnical engineer predict either imminent danger or the amount of erosion that will occur in 3 years? If this scenario could be predicted, there would be no need for property insurance. Please rewrite (i) to be more descriptive.

Page IV-23, 2. Regulations (f): My understanding is that WDOE is moving forward to limit the number of overwater structures. Keep the language as it is.

Chapter V, Shoreline Permit Procedures:

DAVID: I haven't read this section yet, but I predict my comments will be minimal.

Chapter VI, Shoreline Definitions

Page VI -1 through VI-7: Add the following definitions:

Aquatic, Urban Conservancy, Shoreline Residential
Substantial Development and Conditional Use Is the definition for WDOE Conditional Use different than the one you have in the definitions now?
Type I Decisions
Geologically Hazard Areas

Thanks, Joan

Scott Greenberg

From: Joan McGilton
Sent: Wednesday, August 04, 2010 5:15 PM
To: David Johanson; Scott Greenberg
Cc: Mike Martin

David and Scott: I suspect that we will not go through each of the "Summary of Comments" at the next Council meeting. Since I want to provide my input to my fellow council members, I am forwarding my written responses to you. I'm not certain what you can do with them but we can talk on Friday. I still have Items 14 and 15 to complete this week.

Thanks, Joan

SHORELINE MASTER PROGRAM Summary of City Hall Comments

City Council Draft 7/14/2010

The following are my ongoing comments regarding the Matrix Items review by City Council on August 2, 2010:

Item 1. Ok, no comment

Item 2. I agree, remove Lake Burien from Urban Conservancy. It does not belong

Item 3. I agree to put language in 20.25.005 Urban Environmental Designation Map but couldn't these terms also be put under definitions in Chapter 6?

Item 4. I agree with staff. The language regarding appurtenance is clear as written.

Item 5. I agree with the additional language as requested by Ecology

Item 6. I do not disagree with removing the language around the Lake Burien weir but I would like to know who put it there, is it strictly for overflow control during high water events and if the weir should fail, would the city be responsible for residential property damages?

Item 7. I agree with the concept of the language but we are defining a 30-foot buffer on Lake Burien and a 50-foot buffer along the Shoreline Residential corridor as the document now stands. I would prefer to develop and implement a vegetation management plan that puts vegetation choices listed in a series of priorities with lawn being the least desirable choice. This model already exists. The brochure is titled "Green Shorelines" and was prepared by the City of Seattle under a KCD grant.

Item 8. I disagree with the wording for public access as proposed in the Staff Response. RCW 35.79.035 "Limits on vacations of streets abutting bodies of water – Procedure" is very clear on what and what not can be permitted. I would think more that just the RCW number could improve the reasons for including the following language regulations in the Draft SMP

Page IV-9, Public Access, First sentence: Take out the "can". Public access, by definition, includes both aspects. I agree with the strikeouts and adds.

Page IV-9, Policies (a) leave this sentence as is.

Page II-3, Chapter II. General Goals and Policies POL. PA 4: We talked about removing the words "...and personal privacy..." in the first sentence. I agree. "Individual privacy" also shows up in POL. PA 8 (f) on the same page.

Item 9. I agree with the Staff Response that minimum vegetation standards must be met. But the language could be clearer and more helpful

Page IV-11, Policies (b): This paragraph needs to be clarified. There are more options than slope bioengineering to protect the nearshore. That is more than one option. Others are beach setback, soft armoring, logs, immediate (0 to 10 or 15-foot) vegetated buffers

Page IV-11 Policies (c): The first sentence should read "Vegetation within the designated buffers should be enhanced over time to...". The last sentence should be removed. It reads " Emphasis on vegetation maintenance and enhancement should be focused in degraded areas and areas that are most beneficial to shoreline ecological function" This is true but a more positive approach that gives incentives to those who are planning redevelopment would be more palatable to the reader.

Page IV-11, Regulations (a and b): The word Substantial should be placed at the beginning of the first sentence. I agree with previous commenters. The regulation must be relevant and meaningful. This will take some staff work to structure these terms but this has been done for other city codes that require examples.

Page IV-11(c): Put at the front of the paragraph" If the City determines mitigation is necessary,..."

Page IV-12, Regulation 2 (c ii): This might be a place to discuss a priority based vegetation management plan (to be developed by the City in the next year) that would provide a reasoned range of alternatives to meet the standards required by 20.30.040. The other option is to develop language and add it to the Policies section.

Page IV-12 Regulations (d): Please add vegetation conservation buffer to the definitions chapter. I think this entire section needs some positive restructuring

(i-vii). It would be helpful to note that this section applies only to new development as well as redevelopment and not to existing conditions. Again, I strongly believe that a vegetation plan, with clear priorities to maintain no net loss, will not be as confrontational to those seeking permits.

Item 10. My response to item 10 is the same as my comments to Item 9.

Item 11. Ok, no comment

Item 12. Ok, no comment

Item 13. Ok, no comment

Item 14. Buffers. (Not done)

Item 15. Buffers. (Not done)

Item 16. Ok, no comment

Item 17. Ok, as agreed by Council on Monday

Item 18. I agree with the 2nd staff recommendation to incorporate the example language that prohibits all watercraft from being launched at the public access on Lake Burien, if future public access is ever possible.

Item 19. Ok, no comment

Item 20. Ok. I agree with staff response

Item 21. Ok, no comment

Item 22. Ok, no comment

Scott Greenberg

From: Joan McGilton
Sent: Friday, August 06, 2010 8:22 AM
To: David Johanson; Scott Greenberg

David and Scott: This is the last of my comments. i will see you at 9 AM today.

Item 14. Dimensional Standards (Buffers).

Page IV-15 Numbers 1. And 2: Leave the text as is. This language clarifies what activity can and cannot be done within the 50-foot buffer. Number 2 limits buffer widths to new development and structures and additional expansion of existing structures. No existing structure is affected by the 50-foot buffer.

Page IV-16, Regulations: (For new and additions/expansion only) Can language be drafted to acknowledge cumulative adverse impacts in the 50-foot buffer and to encourage mitigation/incentives to improve function?

Item 15. Buffers. See comment above.

Still some sticky points for me with the draft

Gordon Shaw

I would like to see something in the overview statement that addresses the current status of our shorelines compared with other marine jurisdictions. Something that accounts for what Burien has done and has planned to do to improve our stewardship of the actual condition of the shoreline, as Rose has suggested. Something that describes the lack of detrimental uses such as commercial & industrial uses even the lack of permitted residential uses such as floats and piers. Something that identifies the only non-governmental (park) use of our shoreline as being a long established single family home use which has the highest priority of any sanctioned use under the SMA.

20.30.050 (IV-14/15) How does this provision relate to 20.30.007 Existing development.

20.30.070 (IV-19) (2) regulations (b) replacement For something that seems to be an acknowledged right under the SMA these conditions to allow replacement seem unnecessary. In addition there is no carrot here to encourage someone to replace his bulkhead with a less destructive one. Example if he wanted to put in an angled concrete bulkhead instead of a vertical concrete bulkhead the process is still the same there is no encouragement here to give us the improved shoreline we are looking for.

20.30.070 (IV-20) Second paragraph I need an explanation of what situation this section is meant to address and if mitigation would be considered to achieve no net loss. Again it seems to me that we get more acceptance and cooperation if we structured the language to encourage the kind of structures we want rather than this restrictive avoidance language. We are forcing people to go out and hire experts and lawyers to achieve an inferior result than we could achieve by allowing some options that are less damaging than vertical concrete without all of the justification

20.30.080 (IV-24) (2) Regulations (f) existing artificial structures. Please explain what this means in the context of this section which is about restoration and enhancement.

20.30.095 (IV-29) (2) Regulations (a) Does this section restrict a property owner from obstructing his neighbors view with "residential development". Does this go beyond the intent of the SMA which covers views from public property. (c) (i-v) My reading of this is that there is no conditional use permit if you meet any of the criteria in i-v.

20.30.105 (IV34) Utilities (2) regulations (j) Why the change from practical to feasible. If it's about \$ they both have a subjective relationship to money in my mind.

20.35.010 (IV-34) v-2 shoreline permit types This section moves from non-exempt development to exempt development which a reasonable person would say is a less procedure oriented direction yet the exempt development is subject to a variance procedure WITH A DOE DECISION! Requiring more procedure and undoubtedly more time. If it were me the last thing I would want would be to be declared an exempt activity. Can we just eliminate the exempt category?

20.20 025 (II-7) Circulation element Pol. CI 2 I thought this comment about prohibiting Cross Sound bridges had been eliminated. Having something like this in the plan just makes us look silly. A Cross Sound Bridge would be an essential public facility and local decision making authority would be gone. So it's meaningless. Ask those that fought against the third runway.

20.20.030 (II-10) USE 11 (1-g) & 2 are redundant