



PLANNING COMMISSION AGENDA

March 9, 2010, 7:00 p.m.

Multipurpose Room/Council Chamber
Burien City Hall, 400 SW 152nd Street
Burien, Washington 98166

**This meeting can be watched live on Burien Cable Channel 21 or
streaming live and archived video on www.burienmedia.org**

I. ROLL CALL

II. AGENDA CONFIRMATION

III. PUBLIC COMMENT Public comments allowed on items not scheduled for public hearing. Oral comments will not be allowed on the Shoreline Master Program.

**IV. APPROVAL OF
MINUTES** February 23, 2010

V. OLD BUSINESS Discussion and Possible Recommendation: Shoreline Master Program Update

- a. Follow-up on Planning Commission requests for information
- b. Public access
- c. Bulkheads, docks, piers and floats
- d. Shoreline designations
- e. Shoreline vegetation
- f. Residential development

VI. NEW BUSINESS a. None

VII. PLANNING COMMISSION COMMUNICATIONS

VIII. DIRECTOR'S REPORT

IX. ADJOURNMENT

Future Agendas (Tentative) March 23-Discussion and Possible Recommendation: Shoreline Master Program Update

April 13-To be determined

Jim Clingan (Vice Chair)
Rebecca McInteer

Planning Commissioners

Joe Fitzgibbon (Chair)
Rachel Pizarro

Stacie Grage
Janet Shull

City of Burien

BURIEN PLANNING COMMISSION MEETING

February 23, 2010

7:00 p.m.

City Council Chambers

MINUTES

Planning Commission Members Present:

Joe Fitzgibbon, Janet Shull, Jim Clingan, Stacie Grage, Rebecca McInteer

Absent:

Rachel Pizarro

Others Present:

David Johanson, senior planner; Scott Greenburg, planning director; Nicole Faghin and Karen Stewart, Reed Middleton, Inc.

Roll Call

Chair Fitzgibbon called the meeting to order at 7:02 p.m. Upon the call of the roll all commissioners were present.

Agenda Confirmation

Motion to approve the agenda as printed was made by Commissioner Shull. Second was by Commissioner McInteer and the motion carried unanimously.

Public Comment

Mr. John Upthegrove, 1808 SW 156th Street, reported that the legislation aimed at extending the deadline for the Shoreline Master Program died in committee. He provided the commission with written information regarding the selection and makeup of the Shoreline Advisory Committee and asked that document be included as an addendum to the draft plan. The process undertaken is more or less the same as taxation without representation as far as shoreline property owners are concerned. The documentation from the consultants talk about studies done on Lake Burien and drawing materials from local newsletters, but the Lake Burien residents have never had a newsletter, and no study has ever been done on Lake Burien. He asked if an Environmental Impact Statement would be done before the plan is sent to the City Council.

Ms. Linda Plein Boscarine, 1600 SW 156th Street, said the Shoreline Management Act has as its highest priority protection of water quality and the natural environment. Calling attention item 63 of the matrix, she noted that the City's response says the Lake Burien Shore Club online inventories and descriptions of fish, birds and wildlife using the lake was researched and evaluated, and that a representative of the club was a regularly

attending member of the Shoreline Advisory Committee. That is not an accurate statement because only a single Lake Burien resident was appointed to serve on the committee, and the other members often criticized and voted down his input. The committee included three Free Lake Burien members and four known environmental activists who did not even live in Burien. She asked why non-Burien residents were even allowed to be on the committee. She also asked if a completed Environmental Impact Statement will be required before allowing public access to Lake Burien or additional public access to the shoreline or Three Tree Point area.

Mr. William Clogston, 15227 28th Avenue SW on Seahurst Beach, said opening the beach to outsiders will generate concerns about people crawling on bulkheads and presenting a liability issue. He asked if the City will cover all such liabilities. The container ships that travel to and from Tacoma at times are going too fast and create wakes that cause erosion of the beach. He asked if instructions will be posted about the digging of clams and what to do with the holes that are dug.

Mr. Len Boscarine, 1600 SW 156th Street, referred to policy PA-5 of the Shoreline Advisory Committee draft, which states that the highest priority should be placed on reaches without existing public access. City Hall shares space with the library, but it is necessary to have staff monitoring the elevator at times to keep people from urinating in it and having sex in it; with all of that happening in a public building, it is not hard to imagine what would happen if public access were to be granted to relatively isolated Lake Burien. The lake is fully surrounded by families who should not have to be exposed to such behaviors.

Ms. Kathi Skarbo, 1621 SW 152nd Street, called attention to item 31-A of the matrix. She said staff has claimed the wording of 20.30.035[2.d] was changed to make it clearer, but when the language was changed so was the meaning and intent of what the Shoreline Advisory Committee had recommended. The language does not reflect the WAC relative to sites with more than four parcels. She said she currently owns two adjoining lots on Lake Burien and will be selling one of them in the near future, and that lot is large enough to accommodate four parcels. In a couple of years there could be a builder owning the property that does not care about public access and intends only to build to the maximum. A loss of ecologic function would follow allowing public access to the lake.

Ms. Chestine Edgar, 1811 SW 152nd Street, referred to items 16, 17, 17-A and 75 and noted that currently the City is using a wetland inventory rating system that is not in line with the best available science. She said in 2003 the City developed a critical areas ordinance by working with the consulting firm Adolfson and a wetland specialist named Teresa Vanderburg. Ms. Vanderburg recommended that the City adopt the Washington State Wetland Rating System for Western Washington, but the City created its own rating scale instead. While one of the provisions of the Shoreline Master Program allows for the use of an old ratings system for the shoreline inventory, that does not mean the old system can continue to be used if it is not in line with the best available science. The rating scale endorsed by the Department of Ecology should be adopted and used. The

response of the City, according to the matrix, is that the City intends to keep its old rating system. The commission should recommend adopting the approved rating system. According to the Department of Ecology, if the City intends to keep its old system it will need to submit scientific justification. The old scale has issues of serious scientific concern; it has no descriptors for Category 4 and no explanation for why Lake Burien was put into that category. The Shoreline Master Program is not optional. Under the law, mandated programs must be given first priority in the budget, but to requests to include issues in the matrix, to flesh out some administrative details, to include a monitoring system for no net loss, to have a procedure in place for public safety and the protection of private property, the response of the City has been that it has no money. That response will not hold up in court.

Ms. Ann Stout, 16425 Maplewild Avenue SW, asked the commission if they had conducted any field trips to Maplewild and 172nd areas to look at the plausibility of the proposed plan. On the north shore of Maplewild, there is no parking and the properties are extremely steep, making public access infeasible.

Mr. Bob Edgar, 12674 Shorewood Drive SW, suggested the commission should see the concerned public as extra sets of eyes, ears and minds that can help to prepare a rational and usable Shoreline Master Program. It takes more than one reading of the document to understand how the various elements relate to each other or do not relate to each other. The WAC states that the Shoreline Master Program should provide standards for the dedication and improvement of public access and developments for water enjoyment, water-related, and non water-dependent uses, and for the subdivision of land into more than four parcels. That would seem to imply that a shoreline property must be subdivided into at least five parcels before public access can be required. The draft plan presented to the advisory committee included the statement that public access shall be required for all shoreline development and uses, except for water-dependent uses and individual single family residences not part of a development plan for more than four parcels. From that language, it would appear that a shoreline property must be subdivided into at least five parcels before access is required. At the sixth meeting of the Shoreline Advisory Committee, one of the members asked that the threshold language be reworded, changing four lots to five lots, but the consensus of the committee was to keep the language as it was. The November draft sent to the Planning Commission included language requiring public access for all new shoreline development and uses, except for water-dependent uses, individual family residences, and subdivisions of less than four parcels, which seems to imply that a shoreline property must be subdivided into at least four parcels before public access is required. That lowers the trigger from five to four and has caused a lot of concern. Those are the kinds of issues the public can help the commission sort out.

Mr. Robert Howell, 15240 20th Avenue SW, drew attention to the public comment regarding item 75-A, which called for the City to use the best available science in determining policies, priority species and habitats. The Burien plan uses data from the King County Comprehensive Plan of November 1994, data that was subsequently revised in the Comprehensive Plan of 2008. The updated information should be used. The draft

response was that the language was taken verbatim from existing Comprehensive Plan policy EV4.3, page 2-31. That response seems to indicate that the City has no intent or desire to use current data even when it is pointed out. The commission should insist on producing an up-to-date Shoreline Master Program.

Ms. Carol Jacobson, 3324 SW 172nd Street, pointed out that two of her comments were misquoted in the matrix. She referred to item 21-K and said it should read “Public views from the shoreline upland areas should be preserved while recognizing that preservation of views should not be necessarily construed to mean the removal of vegetation or existing structures.” With regard to item 31-B, she said her comment should read “Public access on public lands....” Item 31-C.d comment indicates that the proposed language is very clear and should be used, but is not clear about whether the reference is to the original language, which sets the threshold at four parcels, or the suggested language, which sets the threshold at five parcels.

Mr. Greg Anderson, 15451 11th Avenue SW, said the commission is supposed to be representing the people of Burien, not the Department of Ecology. The state has mandated 173.26, not the Department of Ecology. The Shoreline Master Program will have to be approved by the City Council and submitted to the Department of Ecology by December 1, but some cities are far behind their deadlines and the Department of Ecology seems to have no issue with that. One county in Eastern Washington has simply handed the issue over to the Department of Ecology to figure out. It would appear that there is no big timeline by which the matter must be pushed through. With regard to the size of buffers, the Department of Ecology has not requested a 65-foot buffer, nor is there any requirement for Lake Burien to have public access. If public access were deemed to be ecologically hazardous for Lake Burien, it could even be prohibited. There is no reason to draft a plan that is overly restrictive. The plan is supposed to focus on no net loss and it should be the least restrictive possible to protect shoreline property owners.

Ms. Sue Love, 15812 9th Avenue SW, voiced her opposition to the idea of opening Lake Burien to public access. She said she does not live on the lake but has relatives and friends living on the lake. All of the properties fronting the lake are private, and the lake in fact serves as their front yard. Property owners should have their rights preserved. Public access could trash the lake and the fish and bird habitat. At the very least, an environmental impact study should be done before the plan is completed.

Mr. Ron Franz, 2821 SW 172nd Street, said he could fault the City for the notice he received regarding the proceedings, but the City could argue that residents should be paying more attention. He said that issue should be put aside. He asked the Commission to allow for more time to get the plan right before sending it on to the City Council. He said that virtually all of the saltwater property owners he has talked to have said they have not had enough time to study the plan. The plan has flaws that are contrary to the Shoreline Management Act and the state implementing regulations, and another six months should be sufficient to sort out those details.

Ms. Kathleen Korpela, 2685 SW 172nd Street, expressed her ambivalence about item 21-H. She said she did not understand what it would mean for the City to manage and develop publicly owned shoreline street ends. While everyone should be able to enjoy the shoreline, there are public parks that allow for such opportunities. An elderly neighbor recently was confronted by people who were on her property digging for goeducks. She said she has also had people pass through her yard in an attempt to get up to SW 172nd Street. Safety is a very real concern.

Approval of Minutes

- A. January 26, 2010
- B. February 9, 2010

Commissioner Clingan called attention to the testimony of Ms. Chestine Edgar in the February 9, 2010 minutes, specifically the sentence “Behind closed doors, however, a Commissioner and a Councilmember met with the City Manager and requested him to contact the Ruth Dykeman Center to talk about the City purchasing the property.” He said the word “Commissioner” should be deleted from that sentence.

Motion to approve the January 26, 2010, minutes as submitted, and the February 9, 2010, minutes as amended, was made by Commissioner McInteer. Second was by Commissioner Grage and the motion carried unanimously.

Old Business

- A. Discussion and Possible Recommendation: Shoreline Master Program Update

Senior Planner David Johanson said one of the first steps taken in 2008 when the process to update the Shoreline Master Program was kicked off was to form the Shoreline Advisory Committee. The group hosted an open house and conducted a number of meetings. Notice of the open house was sent to all property owners within the shoreline jurisdiction as determined by the county assessor’s records. The committee took the comments offered by the public and worked with them in developing goals and policies, and ultimately the regulations, that make up the main body of the proposed Shoreline Master Program. The committee originally planned on holding six meetings but ended up holding nine. In November 2009 another notice of a public meeting was mailed to all property owners within the shoreline jurisdiction. At that meeting information was provided on the process.

In December 2009 the issue was brought before the commission. A representative from the Department of Ecology was present to talk about the plan and the issues. On January 12 the Commission conducted an official public hearing and has held a number of meetings since to discuss the proposal.

The schedule calls for the Commission to wrap up its work by the end of March. The Commission will then forward the matter to the City Council which will schedule its own public hearing on the Commission's draft. The anticipation is that the Department of Ecology review and public hearing will occur in June.

Commissioner Clingan asked if the matrix dated February 18, 2010, and provided to the Commissioners contained all of the public comments received through the most recent Commission meeting. Mr. Johanson said it did but allowed that additional comments may have been received since the matrix was published.

Mr. Johanson said the overview section is intended to serve as a summary of the Shoreline Management Act. He noted that staff had received comments from the public about the adequacy of the overview and had reached the conclusion that the language of RCW 90.58.020 should be included because it clearly outlines state policy regarding shoreline management.

Answering a question asked by Commissioner McInteer, Mr. Johanson said in the opinion of staff the language of 90.58.020 clearly summarizes the policy direction handed down from the state. Adding the language is not necessary to prove consistency, but will be valuable in providing additional background information.

Chair Fitzgibbon agreed with the suggestion, adding that including the RCW language would discredit the notion that the city is creating its own policy.

There was consensus in favor of the staff proposal.

Turning next to the issue of nonconformance, Mr. Johanson referenced item 50 and said the proposal of staff was to add the requested language "The need for replacement resulting from a neglect of maintenance and repair is not considered a common method of repair."

Commissioner Clingan asked how the proposed language would change the paragraph. Mr. Johanson said it would close a loophole.

Planning director Scott Greenburg said the language would address situations in which a property owner could allow an outbuilding or something relatively small to deliberately deteriorate and then argue that they should be allowed to rebuild it.

There was consensus in favor of adding the language as proposed.

With regard to item 52, Mr. Johanson clarified that the issue is focused on repairing or replacing single family homes if they are damaged or destroyed beyond 50 percent of their assessed value. He said the proposed language mirrors the language used in BMC 19.55, nonconformance. The intent is to clarify that existing single family homes can be replaced if they are damaged or destroyed.

Chair Fitzgibbon called attention to proposed revision 4-a and asked if there are any existing structures that are not landward of the ordinary high water mark. Mr. Johanson said docks and piers are structures that are located on the water side of the ordinary high water mark, but there are no single family residences constructed over the water.

Chair Fitzgibbon noted the comments received from the public regarding item 52-A and the concern that if the proposed language is used residents could have difficulty obtaining financing for homes located inside the 65-foot setback. He asked if similar language is used by other jurisdictions and if it has had any impact on obtaining financing. Mr. Johanson said additional research would be needed before definitively answering the question. He pointed out that the proposed language is close to language used in the zoning code.

Commissioner Clingan said at a recent commission meeting reference was made to the fact that the threshold could go as high as 75 percent. He asked if an argument could be made for going in that direction. Mr. Johanson said the 75 percent figure came from the state and refers to cities that do not have their own nonconforming standards. Commissioner Clingan suggested that a little more research should be done before reaching a conclusion.

Chair Fitzgibbon concurred. He asked staff to lay out the scenarios under which the provision would come into play. Mr. Johanson first the structure must lie landward of the ordinary high water mark. Second, where structures are damaged to 50 percent or more of the assessed value, reconstruction will trigger a requirement to meet the vegetation conservation standards of the Shoreline Master Program in the area between the nonconforming structure and the ordinary high water mark must. Third, reconstruction cannot cause adverse impacts to shoreline ecological functions or processes. Fourth, the reconstruction cannot occur further waterward than the existing primary residential structure, further into the minimum side yard setback, or further into the riparian buffer than the existing structure, unless a variance is obtained. Finally, application to reconstruct a damaged or destroyed structure must be filed within 18 months of the date of the damage.

Mr. Johanson clarified that structures that suffer damage totaling less than 50 percent of their assessed value are simply allowed to be rebuilt. Under the proposal, the only additional requirement for instances where damage exceeds the 50 percent threshold is the vegetation standard.

Chair Fitzgibbon asked under what scenario the proposed revision 4.c under item 52 would come into play. Mr. Johanson said the paragraph could be interpreted to mean that neither the reconstruction process nor the resulting structure can be allowed to cause adverse impacts to ecological functions, which could include habitat and hydrology.

Commissioner McInteer said she has heard from the public testimony that there is a high awareness of ecological functions and what they mean, and that they do want to protect the shorelines. No one has stood up to say that they do not want some sort of vegetative

buffer to reinforce the ecological functions which in fact make their beach properties more valuable. Certainly property owners want the right to rebuild their homes if something untoward should happen; they want to protect their emotional and financial investments. The elements of proposed revision language under item 52 are acceptable on their face.

Commissioner Shull pointed out that every Burien citizen wants to see the City do the Shoreline Master Program right. They all have a vested interest in making sure the environment is protected. Most enjoy going to places like Seahurst Park and Angle Lake; they notice when things are not done right and they want to see the city take steps to make things better. She said the changes being proposed will move the City in the right direction.

There was consensus in favor of having staff double check the percentage figure and gather additional information around home financing and whether or not there has been a negative impact in jurisdictions that adopted similar language.

Mr. Johanson called attention to item 52-B and noted that the section talks about expansions to single family homes. He explained that as proposed, structures within the 50-foot buffer and the additional 15-foot building setback can be expanded by up to 500 square feet, provided the expansion is not toward the water. The original text included the term “roof coverage” but that was thought to be too vague. That term has been replaced with “building coverage” which for all intents and purposes refers to the building footprint. “Building coverage” is the same term used in the zoning code. The section allows for less process for small expansions away from the water but in the buffer or the setback. Expansions of more than 500 square feet are also allowed, but more process is required.

There was consensus in favor of the proposed language revision.

Consultant Karen Stewart called attention to the shoreline permit matrix, noting that the table is not included in the current shoreline master program. She explained that the table is required by the state for all jurisdictions updating their shoreline master programs. The table is user-friendly for anyone wanting to know about a particular use or shoreline modification. The table includes a full listing of possible uses and modifications. A marina is an example of a shoreline use, but the dredging required to make the marina viable is an example of a shoreline modification.

Ms. Stewart noted that some comments from the public have been received since the table was first published. Some of the comments seek the reinstatement of items removed from the original table, including commercial uses. If commercial uses are not included in the table, someone applying for a shoreline permit to develop a commercial use would also need to obtain a shoreline conditional use permit. Staff would also look at the existing zoning for the area in question to determine if commercial uses are allowed there under the zoning code. The fact is there are no commercial uses allowed along any Burien shoreline, which is why commercial uses were removed from the table. In

revising the table, the commission may want to make it more extensive, or it may want to make just a few changes, such as adding back in commercial and office uses and prohibiting them outright to be consistent with the zoning code. The only existing non-recreational community facility located in a shoreline jurisdiction is the Ruth Dykeman Center. If the use is not listed in the table as prohibited, subject to the shoreline substantial development permit, or subject to a shoreline conditional use permit, state law says the use must be viewed in terms of a conditional use permit.

Ms. Stewart called attention to the second category from the bottom of the table and noted that “transportation facilities” should be revised to read “transportation facilities and parking” in order to be consistent with the rest of the document.

Answering a question asked by Chair Fitzgibbon, Ms. Stewart clarified that regardless of whether or not commercial and office uses are listed in the table, they would not be allowed because Burien zoning does not permit those uses in its shoreline areas.

Chair Fitzgibbon suggested the uses should be shown in the table because the zoning could be changed.

Commissioner McInteer asked if commercial and office are terms that are defined in the zoning code. Mr. Johanson said office is defined in the zoning code but the specific term “commercial” is not defined in either the zoning code or the comprehensive plan. He agreed it would be better to use the terms that are used in the zoning code.

Mr. Greenburg said if directed by the commission to have non-residential uses listed as prohibited, staff would do the research and come back with the appropriate language. There was consensus in favor of prohibiting non-residential uses in the Shoreline Master Program.

Ms. Stewart referred to item 4 in the matrix and said the proposal is to not allow community facilities such as schools, churches and hospitals in the shoreline district.

Chair Fitzgibbon asked if taking that approach would have an impact on the already existing Ruth Dykeman facility. Ms. Stewart said if the Ruth Dykeman facility were to close for some reason and then at a later time seek to start up again in its current location, having language that prohibits community facilities would in fact preclude the Ruth Dykeman use.

Commissioner Shull asked if the prohibitive language would also include the Highline School District learning center at Seahurst Park. Mr. Johanson allowed that a majority of Ruth Dykeman’s buildings are within 200 feet of the ordinary high water mark. He said the Ruth Dykeman facility is currently defined by the zoning code as a community residential facility, and one potential resolution would be to add community residential facilities to the table as allowed through conditional use.

Ms. Stewart pointed out that uses not specifically called out in the table are automatically subject to a shoreline conditional use. She said the table is particularly useful as a way jurisdictions can specifically highlight uses they do not want to have occur in shoreline areas.

Chair Fitzgibbon said he would prefer to see a category developed that would allow the Ruth Dykeman facility, the Environmental Learning Center, and other similar possible uses. He said his inclination would be to allow the uses under a substantial development permit in shoreline residential, under a conditional use permit in urban conservancy, and not allow the uses at all in the aquatic district. That would put the use on a par with multifamily residential.

Commissioner Shull said she could support the suggestion of the chair, though she said she could support requiring a conditional use permit in shoreline residential as well. She allowed, however, that community residential is tantamount to multifamily residential, which under the proposal would require a substantial development permit.

Commissioner Grage favored requiring a conditional use permit for the uses in both shoreline residential and urban conservancy.

Mr. Johanson said the term “school” as it applies to both the Ruth Dykeman facility and the Environmental Learning Center may not be the right term.

It was agreed that additional research and discussion would be needed before reaching a final conclusion.

Ms. Stewart noted that items 5 and 6 on the matrix had already been addressed.

With regard to item 7, Ms. Stewart said cell towers are listed as prohibited in urban conservancy and subject to a shoreline conditional use permit for shoreline residential areas. She asked if a development standard is needed specifically for cell towers in the Shoreline Master Program or if they are already addressed elsewhere in the municipal code. Mr. Johanson allowed that there are standards in place in the code for cell towers.

Chair Fitzgibbon said he would prefer to have the use included in the table to clarify that they are prohibited in urban conservancy.

Commissioner Shull said she needed comment from staff with regard to whether or not the cell tower section of the code covers all applications, whether in the shoreline districts or not. Mr. Greenburg said the question is whether or not cell towers should be allowed at all in the shoreline environment under some permit process. He said staff would research the current code provisions to see if they provide adequate protections for the shoreline environment, and the regulations as they relate to cell towers in residential zones and Special Planning Area 2, which is the Ruth Dykeman site. He said staff would offer some options at the next Commission meeting.

Ms. Stewart noted that item 8 in the matrix related to boating facilities in general. She said there are several different categories listed in the permit matrix, including buoys, ramps, covered moorage, docks, piers and floats.

The commissioners agreed that no additional changes to the section were needed.

Ms. Stewart said item 9 relates to the fact that the table does not cover all of the different land uses. She suggested commercial, agricultural and forestry as uses that could be specifically listed in the table as prohibited. She allowed that forestry in terms of clearing for the purpose of construction is listed in the table as prohibited.

Chair Fitzgibbon asked how a marina would be treated, and Ms. Stewart replied that because the use is not specifically listed it would be subject to a shoreline conditional use permit. Chair Fitzgibbon suggested that agriculture, forestry and marinas are uses that probably would not successfully make it through the conditional use permitting process, and as such should not be included in the table.

The commissioners concurred with Chair Fitzgibbon.

Consultant Nicole Faghin took a moment to clarify that the Growth Management Act and the Shoreline Management Act use different terminologies. The term “best available science” flows from the Growth Management Act and applies to critical areas ordinances, but does not flow from the Shoreline Management Act. The Shoreline Management Act calls for the use of the most current, accurate and complete scientific and technical information. The term “best available science” does not apply to the Shoreline Master Program.

Ms. Faghin also clarified that under state law critical areas ordinances adopted by local jurisdictions serve as the baseline. The Shoreline Master Program can use information from the critical areas ordinance and can be as restrictive or more restrictive. Burien has an adopted critical areas ordinance and therefore can rely on it. The critical areas ordinance came into being in the 90s; up until that time, the shoreline had no environmental documentation and no coverage. The idea behind the Shoreline Master Program update is to make sure the gap is covered.

Chair Fitzgibbon asked if through the Shoreline Master Program update process, the City could act to redesignate a specific area as a different category of wetland than it is currently designated through the critical areas ordinance. He noted that there are certain designated wetlands that are also covered by the Shoreline Master Program, specifically Lake Burien, which the critical areas ordinance says is a Level 4 wetland. Ms. Faghin said changing the critical areas ordinance would open up an entirely different and separate process from the Shoreline Master Program.

Ms. Faghin said the issue of impact mitigation includes the issues of no net loss and inventory. The whole Shoreline Master Program update process is predicated around the notion of no net loss of shoreline ecological functions. The first step is to identify the

baseline. Assuming that building will not be halted and that there will be continued impacts, the focus must be on making sure there is no deterioration from where things currently stand, and if possible what can be done to make things better than they are currently. That is the basic idea behind the concept of no net loss.

The inventory is the mechanism by which the baseline is determined. The state guidelines are intended to serve as the roadmap for developing the inventory. The inventory developed for Burien was created using the state guidelines and was submitted to the Department of Ecology. The Department of Ecology has provided comments on the inventory, and the document has been revised accordingly. The inventory provides the supporting information for creating the designations, and becomes the basis for the goals, policies, regulations, serves as the baseline against which cumulative impacts are measured, and ultimately will be used to develop restoration plans.

Ms. Faghin said items 10 and 11 on the matrix deal with impact mitigation. She said the language of 20.30.010.2.a that reads “All shoreline development and uses shall occur in a manner that results in no net loss of ecological functions to the greatest extent feasible...” would seem to imply that some net loss is acceptable. She recommended removing the phrase “to the greatest extent feasible.” There was consensus in favor of removing the phrase.

Ms. Faghin also suggested revising policy (a) of 20.30.010.2 to add at the end “Mitigation for impacts of new development projects should use enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.” She said the intent is to keep the mitigation focus on the environment that is in need of restoration.

Commissioner Shull asked what approach would be taken in the event that no degraded areas can be found nearby or even in the community. She suggested that a qualifier should be added that would permit restoration to be done in less than degraded areas as a second priority.

Mr. Greenburg voiced concern that the recommended language reads more like a regulation than a policy. He said if the commission approves the concept, staff would go back and talk more about whether it is policy or should be part of the regulations that describe how mitigation should be done. There was general agreement in favor of the concept and in favor of having staff return with a proposal.

Mr. Greenburg took a moment to thank the members of the public who chose to attend the commission meeting and be involved in the process. He said all future Commission meetings on the Shoreline Master Program topic would be held in the Council chamber and televised on Channel 21 and streamed live over burienmedia.org.

New Business – None

Planning Commission Communications

Chair Fitzgibbon thanked the audience for their comments. He said comments from the public will be used to improve the overall document.

Commissioner Clingan reported that he participated in a shoreline-related meeting on February 20 at Mick Kelly's.

Director's Report

Mr. Greenburg announced that the city has started accepting permit applications for the annexation area. He noted that permits will not be issued for projects in that area until after April 1.

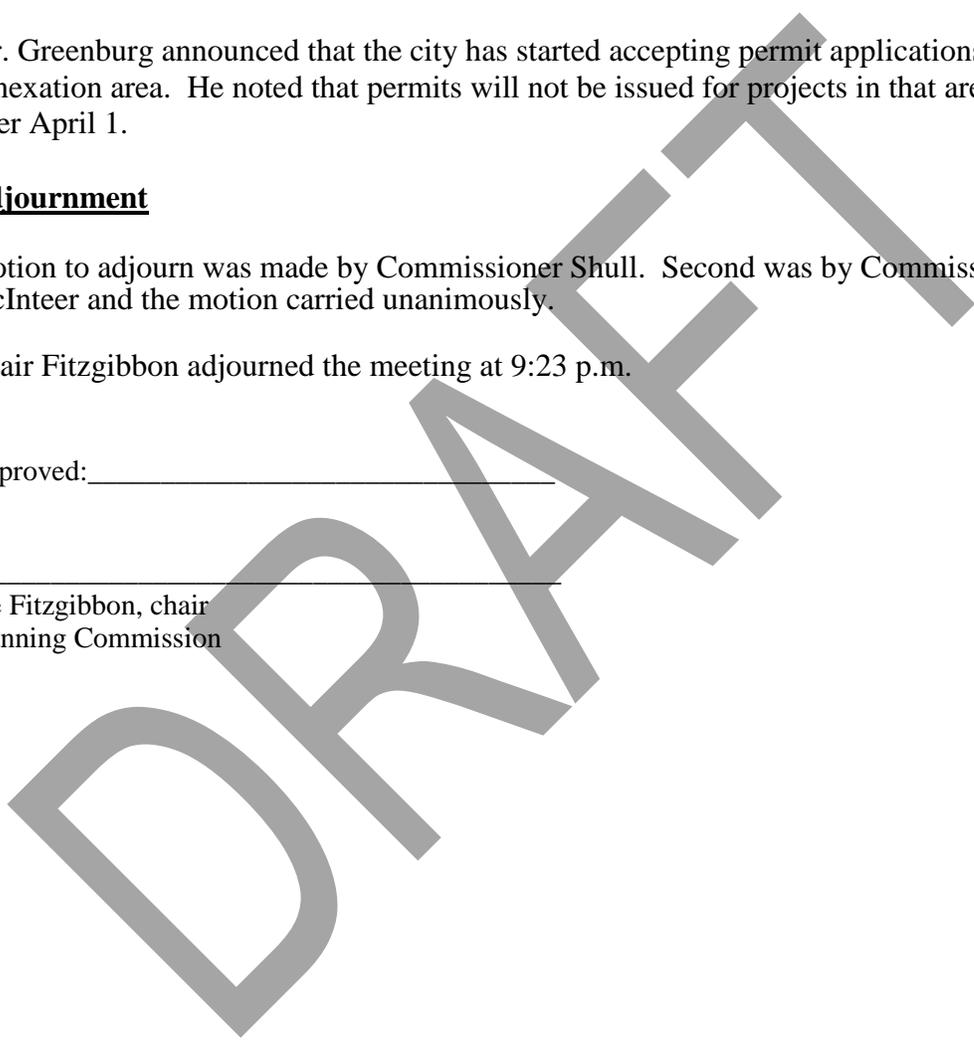
Adjournment

Motion to adjourn was made by Commissioner Shull. Second was by Commissioner McInteer and the motion carried unanimously.

Chair Fitzgibbon adjourned the meeting at 9:23 p.m.

Approved: _____

Joe Fitzgibbon, chair
Planning Commission



**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

DATE: March 3, 2010
TO: Planning Commission
FROM: David Johanson, AICP, Senior Planner
SUBJECT: Discussion regarding Shoreline Master Program Updates.

PURPOSE/REQUIRED ACTION

The purpose of this agenda item is to facilitate Planning Commission discussions of the proposed updates to Burien's Shoreline Master Program.

The SMP update team has continued work on the public comment summary by adding direction received from the commission and supplementing the responses with additional information. Please note the new column on the left which denotes those items that have been amended with an "X". In addition a column on the right has been added that summarizes the direction of the Planning Commission. Please be reminded this is a DRAFT document and we will continue to research, prepare and modify it as necessary.

BACKGROUND

At the Planning Commission meeting on Jan. 12, 2010, the commission conducted a public hearing to receive input on the Shoreline Advisory Committee draft. For your reference staff has attached copies of all written comments that were received since the commission's February 23rd meeting. Following the public hearing, the Planning Commission had a number of requests for more information, further analysis and presentations on specific topics of interest. At your January 26th and February 9th meetings a majority of the time was devoted to receiving additional public comments.

PLANNING COMMISSION ACTION

No action is required; however, we encourage the commissioners to be prepared to have a thorough discussion and provide direction on specific language in preparation for a recommendation to the City Council. The following is a suggested outline of discussion topics. Please note these are also included on your agenda.

- a. Follow-up on Planning Commission requests for information
- b. Public access
- c. Bulkheads, docks, piers and floats
- d. Shoreline designations
- e. Shoreline vegetation
- f. Residential development

NEXT STEPS

The Planning Commission is scheduled to discuss the updates at its next two meetings and depending on the progress of the commission a date of possible action will be scheduled. Originally the date for possible action was February 23rd; however final action will most likely occur in late March.

If you have any questions before the meeting, please contact me at 206-248-5522 or by e-mail at DavidJ@burienwa.gov.

Attachments:

Written Public Comments
Shoreline Master Program Public Comment Summary, working Draft 3/5/2010

As always, please also refer to the Shoreline Master Program notebook that was provided at your December 15, 2009 meeting.

March 1, 2010

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

Subject: Citizen's Petition for a Timeline Extension for the Planning Commission's Submittal of the Shoreline Master Program (SMP) to the Burien City Council.

Dear Mayor McGilton,

Please find attached a Petition signed by Citizens of Burien requesting an extension of at least 6 months for submittal by the Planning Commission of the draft Shoreline Master Program (SMP) to the Burien City Council.

The petitioners firmly believe this additional time is needed to allow concerned citizens and the Planning Commission to fully understand the SMP and its impact on our City. In addition, we believe the best process for developing the SMP is through dialog with the Planning Commission rather than working details in public comment periods with the Burien City Council and the Department of Ecology.

The Petition details the reasons for granting an extension and the benefits which will be derived by the City of Burien.

Thank you for consideration of our request.

Sincerely,



Carol Jacobson for
Concerned Citizens of Burien
3324 SW 172nd Street
Burien, WA 98166
qeskrit@aol.com

Attachment: Petition dated February 26, 2010, to the City of Burien for a Timeline Extension for Submittal of the Shoreline Master Program (SMP) to the City Council

Cc: Mr. Michael Martin, City Manager;
City of Burien Planning Commission ✓

PETITION TO THE CITY OF BURIEN

February 26, 2010

CITIZEN'S REQUEST FOR TIMELINE EXTENSION FOR THE PLANNING COMMISSION'S SUBMITTAL OF THE SHORELINE MASTER PROGRAM (SMP) TO THE BURIEN CITY COUNCIL

The City of Burien is in the process of updating rules and policies related to shorelines in Burien. The Planning Commission currently is formulating a recommendation to the City Council on the draft Shoreline Master Program (SMP). Submittal by the Commission is planned in the next few weeks.

We, citizens of the City of Burien, request that The Burien City Council grant an extension of at least 6 months from the date of this request for submittal by the Planning Commission of the draft Shoreline Master Program to the Council for the following reasons:

1. Insufficient Time for Consideration by Commission

The Planning Commission received the draft Shoreline Master Program in December 2009. Additional time is needed for the Commission to fully understand the Program and its impact on the Citizens of Burien.

2. Insufficient Participation Process

There has not been adequate opportunity for involvement of citizens most directly affected by the Shoreline Master Program in development of the draft document released in November 2009. The Shoreline Advisory Committee only had two shoreline residents as members. There has been only one public hearing on the SMP, held January 12, 2010. There are no further public hearings scheduled by the Planning Commission prior to sending the draft to City Council. However, a large number of concerned Citizens of Burien have voluntarily attended regular Commission Meetings and commented on the draft document during the Public Comment Period. This huge turnout indicates the concern of the communities most directly affected by the SMP and the need for more time to allow adequate input into the plan prior to submission to the City Council. This requested extension will permit the Commission to schedule additional public hearings and all Citizens of Burien to have time to fully understand and respond to the updated Program.

3. Insufficient Communication Process

Shoreline property owners in Burien are the citizens most directly affected by the proposed updated SMP. A policy of direct mailing should have been established to notify all affected property owners of all meetings being held on this subject. This was not done, as evidenced by the huge number of citizens who are just now becoming aware of this process. Those citizens who have attended informational meetings on the SMP and signed the registers were assured they would be notified of future meetings. Specific examples are meetings in July 2009 and November 2009. Of these, only those who signed-in at the July meeting were notified by mail for the one public hearing on January 12. Those on the November list were not. In addition, there has been no opportunity for discussion between citizens and the Planning Commission about the draft document. The ability to speak for three minutes at a Planning Commission or City Council meeting while getting no feedback of any kind does not constitute discussion. The Public Comment Summary Planning Commission working draft is a good tool for organizing the many issues raised during public comment portions of meetings, but is not an effective or efficient communication tool. This requested extension would allow time for more meaningful communication between the Planning Commission and concerned citizens.

THE REQUESTED EXTENSION OF THIS PROCESS WILL BENEFIT EVERYONE INVOLVED AND RESULT IN A BETTER SHORELINE MASTER PROGRAM WHILE STILL MEETING THE 12/2010 DEADLINE

SEE ATTACHED FOR SIGNATURES:

	Printed Name	Signature	Address	Zip
1	Donna Bausano	Anna Bausano	5320-87th 172nd St	98166
2	Mary Scharf	Mary Scharf	3150 SW 172nd St	98166
3	Victoria Adams	Victoria Adams	17108 Maplewild Ave SW	98166
4	William Scharf	WMA Scharf	3150 SW 172nd St	98166
5	Todd Manola	Tod M	3554 SW 172nd St	98166
6	Jana Manola	Jana Manola	" "	"
7	GREGORY C. DILL	G C Dill	3568 S.W. 172nd	98166
8	Janet G Grello	J Grello	5584 SW 172nd	98166
9	ROBERT WUBBS	R Wubbs	3540 SW 172nd	98166
10	Joy VERANTH	Joy Veranth	3540 SW 172nd St	98166
11	JANA KLEITSCH	Jana Kleitsch	3536 S.W. 172nd St	98166
12	Jana Kleitsch	Jana Kleitsch	3532 SW 172nd St	98166
13	Ursula High	U High	3517 SW 172nd St	98166
14	CARA SAXWOLD	Cara Saxwold	3502 SW 172nd St	98166
15	Brent Saxwold	Brent S	3502 SW 172nd St	98166
16	Julia Whitney	Julia Whitney	2852 SW 172nd St	98166
17	MAURICE J HOFFMAN	Maurice Hoffman	3134 SW 172nd St	98166
18	Elizabeth Robert Dierke	Elizabeth Dierke	3134 SW 172nd St	98166
19	Mark OTTOLINO	Mark Ottolino	3130 SW 172nd St	98166
20	MARK S OTTOLINO	Mark S Ottolino	3130 SW 172nd St	98166

	Printed Name	Signature	Address	Zip
1	Milo A. Peterson	Milo A. Peterson	16747 Maplewild Ave SW	98166
2	AUDREY A. PETERSON	Audrey A. Peterson	16747 Maplewild Ave SW	98166
3	FISCULA PARDON	Fiscula Pardon	16767 Maplewild Ave SW	98166
4	Priscilla Middleton	Priscilla Middleton	16767 Maplewild Ave SW	98166
5	Rassulila	Rassulila	165 SW 15th St	98166
6	Faith Middleton	Faith Middleton	16767 Maplewild Ave SW	98166
7	DAVID PARKER	David Parker	16767 Maplewild Ave SW	98166
8	Barbara Saxwood	Barbara Saxwood	16917 Maplewood SW	98166
9	Jane Saxe	Jack Saxe	16917 Maplewild SW	98166
10	CLAUDE WETZER	Claude Wetzer	16925 Maplewild Ave SW	98166
11	LOENA MARSHALL	Loena Marshall	16925 Maplewild Ave SW	98166
12	FRED FINN	Fred Finn	16933 Maplewild Ave SW	98166
13	Michael Noakes	Michael D. Noakes	16409 Maplewild Ave SW	98166
14	Catherine Foss	Catherine Foss	16409 Maplewild Ave SW	98166
15	Ketsuo Mori	Ketsuo Mori	16413 Maplewild Ave SW	98166
16	SILAS BRATTON	Silas Bratton	16507 Maplewild Ave SW	98166
17	Nancy Kasebury	Nancy Kasebury	16319 Maplewild Ave SW	98166
18	Karl Kasebury	Karl Kasebury	16319 Maplewild Ave SW	98166
19	GRAB WELAND	Grab Weland	16419 Maplewild Ave SW	98166
20	NICOLE WELAND	Nicole G. Weland	1419 Maplewild Ave SW	98166

	Printed Name	Signature	Address	Zip
1	JOAN M JOHNSON	Joan M Johnson	16207 Maplewild SW	98166
2	Tom Menon	Tom Menon	16207 Maplewild SW	98166
3	Evamarie Johnson	Evamarie Johnson	15622 19th Ave SW	98166
4	Teress Annwright	Teress Annwright	16309 Maplewild Ave SW	98166
5	Tom Cartwright	Tom Cartwright	16309 Maplewild Ave SW	98166
6	Karen Boyden	Karen Boyden	16335 Maplewild Ave SW	98166
7	Scott M. Creek	Scott M. Creek	16411 Maplewild Ave SW	98166
8	Ann Stant	Ann Stant	16425 Maplewild Ave SW	98166
9	Jim Wiehoff	Jim Wiehoff	16519 Maplewild Ave SW	98166
10	ANDY RYAN	Andy Ryan	16525 Maplewild Ave SW	98166
11	Rich Fresly	Rich Fresly	16621 Maplewild Ave SW	98166
12	Charlottes Siteney	Charlottes Siteney	16621 Maplewild Ave SW	98166
13	JERRY MARTIN	Jerry Martin	16625 Maplewild Ave SW	98166
14	Max Sprague	Max Sprague	16711 Maplewild SW	98166
15	Lueta Sprague	Lueta Sprague	16711 - Maplewild Ave SW	98166
16	RANDY COPLIN	Randy Coplin	16713 Maplewild Ave SW	98166
17	Barb Coplin	Barb Coplin	16713 Maplewild Ave SW	98166
18	Gordon Buchan	Gordon Buchan	16733 Maplewild Ave SW	98166
19	Debra Buchan	Debra Buchan	16733 Maplewild Ave SW	98166
20	ARTHUR GREEF	Arthur Greef	16763 Maplewild Ave SW	98166

Petition to the City of Burien
 Citizens Request for Timeline Extension of SMP

	Printed Name	Signature	Address	Zip
1	Murray Lee Dow, II	<i>Murray Lee Dow, II</i>	9 Three Tree Point Lane, Burien 98166	98166
2	Julie Bianchini Dow	<i>Julie Bianchini Dow</i>	9 Three Tree Point Lane, Burien 98166	98166
3	Don Bailey	<i>Don Bailey</i>	3728 S.W. 3 RD TREE PT. LN.	98166
4	Donna Bailey	<i>Donna Bailey</i>	3728 SW Three Tree Pt Ln	98166
5	R. W. Simmons	<i>R. W. Simmons</i>	3745 S.W. 171 ST	98166
6	JERRY ROBINSON	<i>J. Robinson</i>	3774 SW 171 st	98166
7	ELSBETH ROBINSON	<i>Elsbeth Robinson</i>	3774 SW 171 st	98166
8	KEN W. SMITH	<i>Ken W. Smith</i>	3773 S.W. 171 ST	98166
9	Cheryl K. Smith	<i>Cheryl K. Smith</i>	3773 S.W. 171 ST	98166
10	H. Clark Mounsey	<i>H. Clark Mounsey</i>	3721 S.W. 171 ST	98166
11	ELIZABETH MOUNSEY	<i>Elizabeth Mounsey</i>	3721 S.W. 171 ST	98166
12	MARGARET STEELE	<i>Margaret Steele</i>	16955 MARLEWOOD S.W	98166
13	Kathy Anderson	<i>Kathy L. Anderson</i>	17120 Maplewild Ave SW	98166
14	TODD ANDERSON	<i>Todd E. Anderson</i>	17120 MARLEWOOD AVESW	98166
15	Dona Bailey	<i>Donna S. Bailey</i>	2683 S.W. 172nd	98166
16	J Kent Bailey	<i>J Kent Bailey</i>	2683 S.W. 172nd	98166
17	RONDA DILL	<i>Ronda K. Dill</i>	3568 S.W. 172 ND	98166
18	Laura L. Bailey	<i>Laura L. Bailey</i>	3726 SW Three Tree Pt. Ln.	98166
19	BILL BAILEY	<i>Bill Bailey</i>	3726 SW THREE TREE PT LANE	98166
20	Jane Jirous-Camino	<i>Jane Jirous-Camino</i>	5 Sw. Three Tree Pt. Ln, Burien	98166

[Handwritten mark]

3sistersprep@comcast.net

	Printed Name	Signature	Address	Zip
1	BRIAN BOVOLNY Jones		16203 Maplewild Ave SW	98166
2	ANDREW R. BILES B.H.H.		16067 Marbank Ave SW	98166
3	ANDREW R. BILES		16035 Maplewild Ave SW	98166
4	JANE RUMAS		16009 Maplewild SW	98166
5	HELEN HOVE		16019 MAPLEWILD SW	98166
6	CARL HOVE	C.W. Hove	16019 MAPLEWILD S.W.	98166
7	NANCY TOSTA	Nancy Tosta	15931 Maplewild SW	98166
8	Bob Ewing		15933 Maplewild Dr	98166
9	Deb Havens	Deb Havens	15929 Maplewild Ave SW	98166
10	Thomas A. Havens		15929 Maplewild Ave SW	98166
11	ARON BEFFLER		15907 MAPLEWILD Ave SW	98166
12	BRIAN MOODY		15907 MAPLEWILD Ave SW	98166
13	Joe Church		15907 Maplewild Ave SW	98166
14	Christa Church		15903 Maplewild Ave SW	98166
15	Lynn Puckett	Lynn Puckett	15819 Maplewild Ave SW	98166
16	ARON PUCKETT		15819 Maplewild Ave SW	98166
17	RON SEALE		15809 Maplewild SW	98166
18	Jennifer James		15809 Maplewild SW	98166
19	Carole Oran		15824 Maplewild SW	98166
20	Michele Neumann	Michele Neumann	15917 Maplewild Av SW	98166

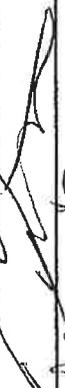
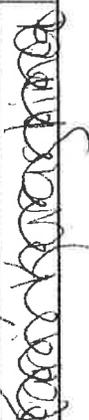
Petition to the City of Burien for a Timeline Extension for Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	Merilyn F. Silver	Merilyn F. Silver	2837 SW 172 nd St	98166
2	Coxy Mason	Coxy Mason	2824 SW 172 nd St	98166
3	John Schenck	John Schenck	2825 SW 172 nd St	98166
4	Ron Franz	Ron Franz	2821 SW 172 nd St	98166
5	Stanley Fossers	Stanley Fossers	2813 SW 172 nd St	98166
6	Gregory G. Delich	Gregory G. Delich	2801 SW 172 nd Pl	98166
7	Sharon G. Delich	Sharon G. Delich	2801 SW 172 nd Pl	98166
8	Nancy Leonard	Nancy Leonard	2687 SW 172 nd	98166
9	John Leonard	John Leonard	2687 SW 172 nd	98166
10	KATHLEEN A. KORFEN	KATHLEEN A. KORFEN	2685 SW 172 nd St	98166
11	R KENT WEINBERGER	R KENT WEINBERGER	2657 SW 172 nd ST	98166
12	DANE WEINBERGER	DANE WEINBERGER	2657 SW 172 nd ST	98166
13	PIETER HOOLBOOM	PIETER HOOLBOOM	2468 SW 172 nd ST	98166
14	TERRY CAIN	TERRY CAIN	2450 SW 172 nd ST	98166
15	ELLIE CAIN	ELLIE CAIN	2450 SW 172 nd ST	98166
16	John Moore	JOHN MOORE	2438 SW 172 nd ST	98166
17	Virginia Hastings	Virginia Hastings	2432 SW 172 nd ST	98166
18	WILLIAM C. HASTINGS JR	William C. Hastings Jr	2432-S.W. 172 nd ST	98166
19	DALE J. SCOTT	Dale J. Scott	2429 SW 172 nd ST	98166
20	Dwight Ann Brunk	Dwight Ann Brunk	2429 SW 172 nd ST	98166

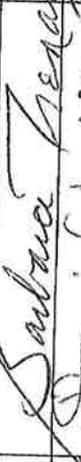
	Printed Name	Signature	Address	Zip
1	Scott Mackenzie	<i>Scott Mackenzie</i>	15609 11th Ave SW	98166
2	Dana Mackenzie	<i>Dana Mackenzie</i>	15609-11th Ave SW	98166
3	Rosemary Hulsmann	<i>Rosemary Hulsmann</i>	15441-11 S.W.	98166
4	ANNA M. KLINE	<i>Anna M. Kline</i>	10012 SE 24th Pl	98030
5	JERRY RUSTON	<i>Jerry Ruston</i>	15430 11th Ave S.W.	98166
6	Katny Ruston	<i>Katny Ruston</i>	15430 11th Ave SW	98166
7	David Brown	<i>David Brown</i>	15423 11th Ave S.W.	98166
8	Chris Anderson	<i>Chris Anderson</i>	16026 11th Ave SW	98166
9	Paula Anderson	<i>Paula Anderson</i>	15451-11th Ave. S.W.	98166
10	Cynthia Murrell	<i>Cynthia Murrell</i>	15435 11th Ave SW	98166
11	Joe Clark	<i>Joe Clark</i>	15435 11th AVE SW	98166
12	Greg Anderson	<i>Greg Anderson</i>	15451-11th Ave SW	98166
13	BURRITA HENRY	<i>Burrita Henry</i>	157407 NW AVID SW	98166
14	ROBERT PEREY	<i>Robert A Perey</i>	15407-11 AVE SW	98166
15	KEVIN HOOS	<i>Kevin Hoos</i>	15401 14th Ave. S.W.	98166
16	Cyndy Hoos	<i>Cyndy Hoos</i>	15401 14th ave SW	98166
17	BETTY ROLEY	<i>Betty Rooley</i>	15606-11th S.W.	98166
18	Carole Edwards	<i>Carole Edwards</i>	16055-10th S.W.	98166
19	BRIAN C. EDWARDS	<i>Brian C. Edwards</i>	16055 10th SW	98166
20	FRANK COPIKEN	<i>Frank Copiken</i>	16056 10th SW	98166

	Printed Name	Signature	Address	Zip
1	Leslie K. Sims	<i>Leslie K Sims</i>	1616 SW 156th St Burien	98166
2	Donna J. Weber	<i>Donna J Weber</i>	15662 18th Ave S.W.	98166
3	Steen Sims	<i>Steen C Sims</i>	1616 SW 150th St Burien	98166
4	L. Audrey Edgerton	<i>L. Audrey Edgerton</i>	1600 SW 156th St #A Burien	98166
5	Charles W. Edgerton	<i>Charles W. Edgerton</i>	1600 SW 156th St #A Burien	98166
6	MARCEA MOEN	<i>Marceia Moen</i>	16003 16th Ave SW	98166
7	DAVID IAN ROSS	<i>David Ian Ross</i>	1606 SW 157th Pl	98166
8	DAVID ANDERSON	<i>David Anderson</i>	1440 SW 158 St	98166
9	Mrs. Mary Anderson	<i>Mary Anderson</i>	1440 SW 158 St	98166
10	DANNA SILVERTS	<i>Danna Silverts</i>	15709 14th Pl SW	98166
11	ROBERT SILVERTS	<i>Robert Silverts</i>	15709 14th Pl SW	98166
12	B. Hope Schultz	<i>B. Hope Schultz</i>	15700-14th Pl SW	98166
13	Henry Schultz	<i>Henry Schultz</i>	15712 14th Pl SW	98166
14	Cynthia Reid	<i>Cynthia Reid</i>	15701 13 SW	98166
15	Terry Lee	<i>Terry Lee</i>	15702-13th SW	98166
16	ROBERT R. WARREN	<i>Robert R. Warren</i>	-	-
17	STEPHEN R. ARNSTADT	<i>Stephen R. Arnstadt</i>	15724 13th SW	98166
18	Garry M. Crane	<i>Garry M Crane</i>	15706 13th Ave SW	98166
19	Miyako LOBERG	<i>Miyako M. Loberg</i>	1216 SW 157th St	98166
20	Eric Loberg	<i>Eric Loberg</i>	1216 SW 157th St	98166

Petition to the City of Burien for a Timeline Extension for Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	JEFF DOWNES		2435 SW 172 Durlen Way	98166
2	MARIGAN DOWNES		2435 SW 172 Burien Way	98166
3	LEE BRAUN		2399 SW 172nd St. Burien WA	98166
4	VIRGINIA BRAUN		2399 SW 172nd St Burien	98166
5	ETHAN JANSON		2831 SW 172nd St. Burien, WA	98166
6	BEVERLY DUSDALE		2834 SW 172nd St Burien, WA	98166
7	NORBERT DUSDALE		2834 SW 172nd St Burien	98166
8	DENISE JANSON		2831 SW 172nd St Burien	98166
9	MIKE FOSBERG		2813 SW 172nd St Burien	98166
10	ANITA REIDERSH		2836 SW 172nd St Burien	98166
11	PHIL FLEMING		2848 S.W. 172nd	98166
12	JOHN FLEMING		2848 S.W. 172nd	98166
13	HELEN FOSBERG		2841 SW 172nd	98166
14	TED FOSBERG		2841 SW 172nd ST	98166
15	AMY FRANK		2631 S.W. 172nd St	98166
16	ANITA GRAHAM		2618 SW 172nd St.	98166
17	SUE REDHEAD		17133 23rd Pl. S.W.	98166
18	MARK SMITH		2472 SW 172 St	98166
19	GEORGE STOLL		2456 SW 172 St SW	98166
20				

	Printed Name	Signature	Address	Zip
1	CAROL JACOBSON	Carol Jacobson	3324 SW 172 nd St	98166
2	Sean Withmer	SWith	3328 SW 172 nd St	98166
3	Julie Allen	Julie	3328 SW 172 nd St	98166
4	John Bausano	John Bausano	3154 SW 172 nd St	98166
5	Larry Berendzen	Larry Berendzen	3160 SW 172 nd St	98166
6	MARCI BERENDZEN	Marci Berendzen	3160 SW 172 nd St	98166
7	TERRY HAIGH	Terry Haigh	3512 SW 172 nd St	98166
8	Ron Harmon	Ron Harmon	3316 SW 172 nd St	98166
9	Kathy Harmon	Kathy Harmon	3316 SW 172 nd St	98166
10	Anny Keitsch	Anny Keitsch	3532 SW 172 nd St	98166
11	MARGARET BOYLE	Margaret Boyle	3108 SW 172 nd St	98166
12	Char Lewis	Charlotte Lewis	3312 SW 172 nd St	98166
13	Risto Heikkinen	Risto Heikkinen	3312 SW 172 nd St	98166
14	PATRICK A. BOYLE	Patrick A. Boyle	3108 SW 172 nd St	98166
15	Lain Bausano	Lain Bausano	3154 SW 172 nd St	98166
16	Allison Tennant	Allison Tennant	3142 SW 172 nd St	98166
17	HUGH TENNANT	Hugh Tennant	3142 SW 172 nd St	98166
18	Michael A Hart	Michael A Hart	2660 SW 172 nd St	98166
19	SHEILA HARTMAN	Sheila Hartman	2455 SW 172 nd St	98166
20				

	Printed Name	Signature	Address	Zip
1	Terry Crank		15917 Maplewild Ave SW	98166
2	JOHN ADAMS		15920 MAPLEWILD SW	98166
3	Keith Mackay		15930 Maplewild Ave SW	98166
4	Pamela Nomura		16039 Maplewild Ave SW	98166
5	RICHARD NOMURA		16039 Maplewild Ave	98166
6	Steve Lemons		16215 Maplewild Ave.	98166
7	Barbara Trenary		16215 Maplewild Ave	98166
8	David Woltz		15925 Maplewild	98166
9	DIAN WOLTZ		15925 Maplewild	98166
10	MELVIN TAYLOR		2115 SW 174 ST	98166
11	Shesii Taylor		2115 SW 174 ST	98166
12	Lorraine Estok		16909 MAPLEWILD SW	98166
13	Margaret A. Smith		3776 S.W. 171 ST	98166
14	Doreen Peterson		3750 171 ST S.W.	98166
15	Carolyn Rosentfield		3332 SW 172 ST	98166
16	Paul Thurston		3304 S.W. 172 nd	98166
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	Printed Name	Signature	Address	Zip
1	Kathi Skarbo	Kathi Skarbo	1621 SW 152nd St	98166
2	SUSAN LUTHY	Susan Luthy	1807 SW 152nd St	98166
3	TANYA ENGESET	Tanya Engset	1449 SW 152	98166
4	Leona Wooding	Leona Wooding	1435 SW 152nd St	98166
5	Lynda Eck	Lynda Eck	PO Box 389 Skarbo St, 18002 1255 SW 152nd St	98166
6	Len Hulsman	Len Hulsman	1425 SW 152nd St	98166
7	Carl Hauke	Carl Hauke	1405 SW 152nd St	98166
8	LeeAnna Betlach Hauke	LeeAnna My Betlach Hauke	1405 SW 152nd St	98166
9	Kai Skarbo	Kai Skarbo	219 S 156th #312	98148
10	Lynn MASOPS	Lynn Masops	A35 SW 152nd St	98166
11	Jim Courpy	Jim Courpy	1235 SW 152nd St	98166
12	Rodger Farr	Rodger Farr	1215 SW 152nd St	98166
13	RICHARD FARNES	Richard Farnes	1207 SW 152nd St	98166
14	JOHN H. MICHAELS	John H. Michaels	14902 215th Ave SW	98166
15	Barbara L Dierst	Barbara L Dierst	16713 21st SW	98166
16	Rt. Dierst Jr	Rt. Dierst Jr	16713 - 21st SW	98166
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19				
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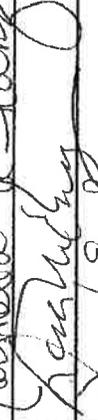
3/11/10

	Printed Name	Signature	Address	Zip
1	Robert Howell	Robert Howell	15240 20th Ave SW	98166
2	Paul S. McClann	Paul S. McClann	15252 20th Ave SW	98166
3	Lisa McClann	Lisa McClann	15252 20th Ave SW	98166
4	Eldon A. Mount	Eldon A. Mount	15260 20th Ave SW	98166
5	Susan Wheeler	SUSAN WIECHMANN	15406 20 AVE S.W	98166
6	JOHN UPTHEGROVE	John Uptegrove	1808 SW 156th	98166
7	Cyndi Uptegrove	Cyndi Uptegrove	1808 SW 156th	98166
8	Robert King	Robert King	1626 SW 156th St.	98166
9	Darlene King	Darlene King	1626 SW 156th St	98166
10	CHESTINE-EDGAR	C. Edgar	1811 SW 152nd St	98166
11	Robert Edgar	Robert Edgar	12674 Shorewood Dr SW	98146
12	Dorothy Leckert	Dorothy Leckert	1825 S.W. 152	98166
13	HERBERT LOCKETT	Herbert Lockett	1825 SW 152nd	98166
14	WINONA DEYMAN	Winona Deyman	1817 SW 152nd	98166
15	Robbie Howell	Robbie Howell	15240 20th SW	98166
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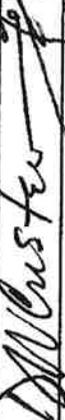
	Printed Name	Signature	Address	Zip
1	Rick Nichols	Rick Nicholson	208 SW 157th St	98166
2	Cynthia Nicholson	CR Nicholson	1228 SW 157th St	98166
3	Stanley Lievero	Stanley Lievero	1224 A.W. 157th St	98166
4	JOHN LIEVERO	John Lievero	1222 SA 157th St	98166
5	MIKE LOFGREN	AM Lofgren	15605 12th SW	98166
6	MARK BENTLEY	Mark H. Bentley	15714 15th Pl SW	98166
7	Karen Bentley	Karen Bentley	15714 15th Place SW	98166
8	Jean M Kofuk	Jean M Kofuk	1526 SW 160th St	98166
9	Bruce Rumbaugh	Bruce Rumbaugh	1526 SW 160th	98166
10	GORDON P. BAKER	Gordon P. Baker	1618 SW 156th St SW	98166
11	Ramela M Ball	Ramela M Ball	1602 SW 150 St	98166
12	JOHN S. BALL	John S Ball	1602 SW 156 St	98166
13	LEONARD G. BOSCAWELL	Leonard G. Boscawell	1600 SW 156th St	98166
14	Linda M. Plein	Linda M. Plein	1600 SW 156th St	98166
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	Printed Name	Signature	Address	Zip
1	SUSAN EILERS	<i>Susan Eilers</i>	2323 1/2 SW 172nd	98166
2	Patricia Richard	<i>Patricia Richard</i>	2415 SW 172	98166
3	JOHN RICHARD	<i>John Richard</i>	2415 SW 172	98166
4	Bobb Johnson	<i>Bobb Johnson</i>	2313 SW 172nd	98166
5	Cliff Johnson	<i>Cliff Johnson</i>	2313 SW 172nd	98166
6	Tam C Kuehnel	<i>Tam C Kuehnel</i>	2400 SW 172nd ST	98166
7	Barbara J. Prentice	<i>BARBARA J PRENTICE</i>	2329 S.W. 172nd ST.	98166
8	RAYMOND W PRENTICE	<i>Raymond W Prentice</i>	" "	"
9	Jessica PARIS	<i>Jessica Paris</i>	2323 SW 172nd ST	98166
10	Susan Pares	<i>Susan Pares</i>	2323 SW 172nd ST	"
11	Sharon Okeefe	<i>Sharon Okeefe</i>	15801 25TH SW	98166
12	John Okeefe	<i>John Okeefe</i>	15801 25TH SW	98166
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Petition to the City of Burien for a Timeline Extension for Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	Janet Wilson	JANET WILSON	16703-19th SW	98166
2	JOE WISE		16703 19th Ave SW	98166
3	GAIN CARON		2444 SW 172nd St	98166
4	David Caron		2444 SW 172nd St	98166
5	Roger Neuberger	ROGER NEUBERGER	2649 SW 172nd St	98166
6	Joyelle Neuberger	Joyelle Neuberger	2649-8th St	98166
7	MARK S. SWYDER	Mark S. Swyde	2816 SW 172nd St	98166
8	CARMELLA A FRANZ	Carmella A Franz	2821 SW 172nd St	98166
9	Lisa Ebinger		16460 Sylvester Rd SW	98166
10	Mark Ebinger	Mark E. Ebinger	16460 Sylvester Rd SW	98166
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Petition to the City of Burlen for a Timeline Extension for Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	GARY H. NIEMANN		2685 SW 172nd St. Burleson, WA.	98166
2	Martin Barrett		18903 Maplewild Ave SW	98166
3	Beth Barrett		16903 Maplewild Ave SW	98166
4	Holly Moore		2438 SW 172nd	98166
5	Elaine Manning		2438 SW 172nd	98166
6	D.W. CLISTER		2451 S.W. 172nd	98166
7	LORRAINE Custer		"	"
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	Printed Name	Signature	Address	Zip
1	CURT BAUER	CAB	3130 SW 172 ND ST	98166
2	Chris Jermis	<i>[Signature]</i>	15802 12 TH AVE SW	98176
3	KAMI BAUER	<i>[Signature]</i>	15802 12 TH AVE SW	98166
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	Printed Name	Signature	Address	Zip
1	Rita Galardo	Rita Galardo	16056 - 10 th Ave SW	98166
2	Gregory Ross Reynolds		15820 10 th Ave SW	98166
3	Vicki Reynolds	Vicki Reynolds	15820 10 th Ave SW	98166
4	Brian Thorston	Brian Thorston	3304 SW 172 nd	98166
5	George Vermet	George Vermet	2745 SW 156 th St	98166
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	Printed Name	Signature	Address	Zip
1	Robert H. Cancro	<i>Robert H. Cancro</i>	55w Three Tree Pt Ln, Burien, WA	
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The following 105 signatures were obtained from the online version of this petition at:

www.ipetitions.com/petition/smp

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101 Michael L Arnold	mike.arnold@ki.com	15101 28th ave SW Burien

102 Ingrid Hansen
103 Carol A Schroeter
104 KEITH I ROBINSON
105 Kris Bolt

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15219, 28th sw, seahurst
16331 Maplewild Ave. SW, Burien, WA 98166

To The Burien City Council
To The Burien Planning Commission
From-Chestine Edgar
Re-The SMP and the presentation by Nicole Faghin/Reid Middleton at the 2/23/10
Planning Commission meeting
Date of letter-3/01/10

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MAR 02 2010
CITY OF BURIEN

I am writing to you because citizens are no longer allowed to speak to the Planning Commission at their meetings. This letter is to clarify some misinformation that Nicole Faghin/Reid Middleton presented to the Planning Commission during the February 23, 2010 meeting. You can review the posted video of her presentation by advancing to the 2 hour point. <http://www.burienmedia.org/default.aspx>

Definition and Use of Best Available Science (BAS) Ms. Faghin stated that BAS was required in the Growth Management Act and the Critical Areas Ordinance but was not required in the Shoreline Master Act (SMA). However that is not completely correct as a statement. BAS is required in the SMP if the shoreline is in a Critical Area. Lake Burien is designated as a Critical Area. For that reason, Policy CON 9 of the Burien SMP, page II-12 specifically states, "*The City requires the use of Best Available Science for protecting critical areas within the community pursuant to the Growth Management Act RCW 36.70A.172(l)*".

Burien Wetland Rating Scale Lake Burien was always designated as a Category 2 wetland under King County. In 2003, when the City of Burien created its own wetland rating scale for the Critical Areas Ordinance, it created a category not based on any best science, current science or any science. The City of Burien created a category based on a geographic location. There are no size, function, habitat or plant and animal descriptors to explain how a Category 4 wetland is designated. The City of Burien simply states that any wetland associated with Lake Burien is automatically Category 4. (page 40-25, chapter 19.40, Ord.394). Now perhaps no one caught this error in the wetland rating scale up until this point in time, but now that it has been called to the City's attention, the City can not continue to use it into the future by saying "that's the way we did it in the past in the CAO and we are not going to address or correct it in the SMP." Ms. Faghin is incorrect in stating that the SMP does not have to address this issue for the Critical Area of Lake Burien. I encourage the Planning Commission and the City Council to have the city attorney investigate this issue immediately. Additionally, I encourage the Planning Commission and The City Council to request a presentation from the Department of Ecology to clarify what is required. The Burien Critical Areas Ordinance (BMC 19.40.300) establishes a wetland classification system that does not match the currently accepted science-based systems. It even includes the provision that all Lake Burien wetlands are Class 4 wetlands and applies a default 30 foot buffer to them regardless of their characteristics. Additionally the Class 4 designation is based solely on a geographical name and does not have any scientific characteristics of the wetland. The wetland system must be changed to use the current science for wetland protection. I am recommending the use of the Washington State Wetland Rating System for Western Washington-Revised. This supports both 20.30.25(2. a.) and Policy CON 9 of the Burien Shoreline Master Program.

No Net Loss as a concept Ms. Faghin stated that the development is not going to stop because of the SMP. All development causes “net loss” and so the environment is going to experience degradation and then we are going to work to bring it back to its baseline (no net loss point) and hopefully exceed the baseline. This is an incorrect presentation on this concept. There is a sequence to be followed in the WAC 173-26-201 that states, in priority steps, the first step to be considered is “*avoiding the impact altogether by taking no action or parts of an action*”. However, she then goes on to explain that the baseline measure for not net loss is established through the Technical Documents.

Technical Documents Ms. Faghin stated to the Planning Commissioners that they did not need to read or bother with the Technical Documents (appendices) because they were already vetted with the State. She went on to state that the Technical Documents were correct as they were written and did not really need to be revised. This is incorrect. The Planning Commission is responsible for reading those technical documents to check for their accuracy as they will set the baseline for no net loss in the SMP document. If there are errors in the information, it is the Planning Commissioners responsibility to call these errors to the attention of the consultant for correction.

Additionally, Ms. Faghin stated to the Planning Commissioners that the Technical Documents only needed to be based on the current, available science not BAS. She failed to mention that the WAC also states that the information in these documents must be accurate and complete scientific and technical information. The WAC further states that information should be solicited through the public participation process. The consultant and the city have resisted correcting the errors in these technical document by attempting to discredit the public input on these documents through the 5 D Process (deny, delay, discredit, derail and don't take anymore oral comments).

The Shoreline Inventory, Cumulative Impacts Analysis, and the Shoreline Analysis and Characterization Technical Documents have serious flaws in their content with regard to Lake Burien. This happened because the consultant did not even use the current available science to write the documents and did not thoroughly review the CAO for Burien. Additionally, the consultant claimed to use sources of information that do not exist and claimed to have made site visits to Lake Burien that are not documented in the Methodology. I have written to the Planning Commission and the City Council about this on at least 3 different occasions and I have made oral comments on these documents also. In spite of that input, Ms. Faghin has advised the Planning Commission that the documents do not need to be accurate and complete because they are vetted with the State.

Again, here is a listing of the documents and the areas of them that contain errors and need to be corrected:

Shoreline Inventory Sections 1.1,1.2, 1.4,2.3, 2.9,3.1, 3.5, 9,10.5 (Current Land Use, Critical Areas, Opportunities for Conservation and Restoration), Bibliography(Lake Burien was part of the King County, 10 year small lakes study. None of this material was reviewed or included in this inventory. It can easily be found online by just searching under the parameter *Lake Burien*). Additionally the CAO for Burien (stating that Lake Burien is a class 4 wetland) was not reviewed because repeatedly Lake Burien is referred to as Class 2 wetland in all 3 documents and as a result the wrong conclusions are drawn about future development, cumulative impacts and restoration issues. By the way, using current science, Lake Burien really is a Class 2 wetland. Therefore, no buffer recommendation in the SMP for Lake Burien should be considered until the correct information is put into all 3 of the discussed Technical Documents and further analysis is done.

Shoreline Analysis and Characterization Sections 1.4, 3.2 (Reach LB, Table 7, Current Land Use, Other Habitat Function), 4.1.5., Bibliography.

Cumulative Impacts Analysis Sections 2.2.1 (Reach LB, Table 2.6, Other Habitat Function, Table 2.7, 3.4, 3.5, Summary, *Bibliography*.)

These Technical Documents and the SMP cost the citizens of Burien and the state of Washington \$98,000 for their development-up to this point in time. They should be accurate, complete, scientifically sound and of high quality as is reflected by their cost. It seems only reasonable that the consultant/Reid Middleton correct the errors in these documents at no further cost to the citizens of Burien as well as to the citizens of the State of Washington.

Chestine Edgar

RECEIVED

MAR 01 2010

CITY OF BURIEN

To The Burien Planning Commission
The Burien City Council
Department of Ecology
Director of Fish and Wildlife
House Legislative Committee on Ecology and Parks:
Representative Dave Upthegrove
Sen. Joe McDermott

Re: Citizen Concerns Regarding The Burien Shoreline Master Plan Update Public
Comment Summary

The City of Burien is in the process of updating The Burien Shoreline Master Plan. They have an impressive list of scientific sources but unfortunately these sources do not show accurate information concerning Lake Burien. If you are going to be producing policy concerning Lake Burien the city needs to obtain information that is current and accurate.

As evidence of this lack of accurate data, we refer to the Shoreline Inventory (March 27, 2008) for the Burien SMP. Note that on page 11, in Table 4 "Documented Priority Habitats and Species within the City of Burien shoreline jurisdiction", Inventory Reach LB which states "None listed specifically for Lake Burien". (i.e. we did not find any published data about this area). Essentially they are saying, we don't know anything about this area so there must not be anything there. We have requested that the City of Burien document Lake Burien Priority Habitats and Species just like it has done for the other shorelines.

Additionally the city and Reid Middleton (the consultant) have claimed to use, "Lake Burien Shore Club on line inventories of fish, birds and wildlife." We do not find these inventories listed in the bibliography and as members of the LBSC we are unaware of any on line inventory of fish, birds and wildlife for Lake Burien. They also claim to have made several site visits to the lake but the findings are not noted in the Methodology of Scientific Method used.

In 2008 King County updated their Comprehensive Plan to refine the states definition to include native species listed as priority species by WDFW, bird species whose populations in King County are known to have declined significantly over the past 150 years, anadromous salmonids and aquatic species whose populations are particularly vulnerable to changes in water quality and quantity. King County policy makers realize more localized declines of species within King County may not be captured by state and federal listings. King County advises protection of native species of local importance. King County Comprehensive Plan 2008, Federal and State Listed and Candidate Species E-484 through E-498.

Lake Burien residents gave input to the city of Burien that ten of the native bird species listed as priority species by King County migrate to the lake for a time each year, making their habitat on Lake Burien. These include but are not limited to the Western Grebe,

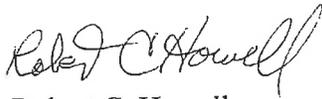
Great Blue Heron, Hooded Merganser, Barrows Goldeneye, Common Goldeneye, Osprey, Band-tailed pigeon, Belted Kingfisher, Purple Finch and Hairy Woodpecker. Numerous other birds are commonly found visiting and living on Lake Burien. Here they find a source of clean quality and quantity water where they can feed, mate and clean themselves.

Lake Burien is also a major hunting ground for the Bald Eagles that are found in Seahurst at Eagle Landing. They can be seen flying back and forth between the lake and the park, especially in the summer. The lake is a source of Coots, other small birds and fish for them to survive on.

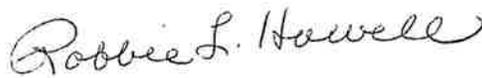
The lake has also acquired more Marsh birds since the Port of Seattle built the third runway right over the top of the wet lands they previously called home. Among these are the Ruddy Ducks. As has been said before, "They didn't know they were supposed to move to their mitigation area in Auburn."

Because of its Priority Habitats, its importance for the survival of the Bald Eagles, Blue Herons, migrating bird's, native turtles, fish and crustaceans we hereby request that a physical inventory of Lake Burien be conducted to establish a proper baseline for the SMP before any changes are contemplated. Please reverse the deliberate invalidation of the Lake Burien Inventory Reach and validate it by adding it to Table 4, page 11 of City of Burien Shoreline Master Program Update Shoreline Inventory.

Respectfully submitted,



Robert C. Howell



Robbie L. Howell

FEB 25 2010

CITY OF BURIEN

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Burien, WA 98166
206-242-9874
e-mail: kskarbo@comcast.net

February 24, 2010

To: City of Burien Planning Commission
From: Kathi Skarbo
Re: Shoreline Master Program Update

After speaking at last night's Planning Commission meeting about section 20.30.035.2.d of the Shoreline Master Program, it seemed there was still some confusion among the commissioners. This is another attempt to explain and clarify the issue. This paragraph in the SMP defines at what point public access is required when a lot is developed into a number of parcels. I am providing the relevant sections of several documents, with emphasis on the phrase that defines the number, and a clear interpretation of what it means. I have previously provided to you copies of the complete sections of these documents, and I will excerpt only the appropriate paragraphs here.

1. In the current draft of the Burien SMP, dated 11/17/2009, section 20.30.035.2.d states:

- d. Public access shall be required for all new shoreline development and uses, except for; water dependant uses, individual single family residences and **subdivisions of less than four parcels.**

Interpretation: Developments/subdivisions of 4+ parcels require public access.

2. WAC 173-26-221[4.d.iii], states:

- (iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the **subdivision of land into more than four parcels.** In these cases, public access should be required except:

Interpretation: Developments/subdivisions of 5+ parcels require public access.

3. WAC 173-26-221[4.d.iii.C], which follows the "except" in the above WAC, states:

- (C) For individual single-family residences **not part of a development planned for more than four parcels.**

Interpretation: Developments/subdivisions of 5+ parcels require public access.

4. The Shoreline Advisory Committee approved the following language for section 20.30.035.2.d on September 23, 2009:

- d. Public access shall be required for all new shoreline development and uses, except for water dependent uses and individual single family residences **not part of a development planned for more than four parcels.**

Note: It was suggested at the 9/23/2009 meeting that the number be changed to more than five parcels, and the committee chose to keep the language as proposed since it came directly from a WAC.

Interpretation: Developments/subdivisions of 5+ parcels require public access.

I was quite surprised when I saw staff's draft response (item 31A) on the matrix of public comments dated 2/18/2010. In essence, staff recommends that no changes be made to this section of the SMP because all they did was change the language to make it more understandable. I have tried to communicate to you that staff did much more than change the language – they changed the intent. You can see that very clearly from the above references. Apparently staff doesn't understand this. The language is very confusing, with some passages stated in the affirmative and some stated as exceptions, and even a negative of an exception. I believe it is your responsibility to take enough time to read through and understand the excerpts I have provided above, and then correct the mistake staff made. The state and the advisory committee set the number at "more than four" and the Burien SMP should also.

At the February 9, 2010 Planning Commission meeting, I suggested this change:

Revise 20.30.035.2.d as follows:

- d. Public access shall be required for all new shoreline development and uses, except for; water dependant uses; and individual single family residences and subdivisions of less not part of a development planned for more than four parcels.

I believe this is the most appropriate wording to use because it reflects the language in the paragraph of the WAC that follows the words "except for," just as it does in the Burien SMP. It is ironic that it was suggested at last night's meeting to use the exact language from the WACs during discussions of other items on the matrix. The same should be done for section 20.30.035.2.d.

cc: Burien City Council
Burien City Manager
Department of Ecology
Department of Fish & Wildlife
Rep. Dave Upthegrove, House Ecology & Parks Committee Chair
Sen. Joe McDermott
Rep. Eileen Cody
Rep. Sharon Nelson

David Johanson

From: Julie Dow [jbd@dowhotelco.com]
Sent: Wednesday, February 24, 2010 4:43 PM
To: David Johanson
Subject: SMP Comment Matrix 49a

Good afternoon David.

Concerning my comments included in the comment report and the staff response, item 49A.

RWC 50.58.900 reads : This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. –end-

Therefore requesting striking the wording in the Burien SMP which continues.... “ policies and standards” and phrase “Exemptions to this Act or Master Program are to be narrowly construed”. Each of the phrases in quotes is not required by RCW 50.58.900.

Thank you, Julie Dow

David Johanson

From: Mike Martin
Sent: Wednesday, February 24, 2010 11:19 AM
To: Scott Greenberg; David Johanson
Subject: FW: Requests in association with the proposed SMP that would revise the private Lake Burien shoreline to become Public Access

From: DANNA SIVERTS [mailto:dsiverts@msn.com]
Sent: Wednesday, February 24, 2010 11:18 AM
To: director@dfw.wa.gov; jcha461@ecy.wa.gov; Dave Upthegrove; mcdermott.joe@leg.wa.gov; cody.eileen@leg.wa.gov; nelson.sharon@leg.wa.gov; Council; Mike Martin; Susan Coles; gdia461@ecy.wa.gov; srud461@ecy.wa.gov; ldum461@ecy.wa.gov
Subject: RE: Requests in association with the proposed SMP that would revise the private Lake Burien shoreline to become Public Access

As a long time resident on Lake Burien, I am very concerned about protecting the health and environment of the lake. Elements of the revised SMP, if implemented, will seriously endanger the ecological balance of this small, shallow lake. Other lakes that have allowed public access have been almost destroyed by millfoil brought in by transient boats. Lake Killarny is a prime example of millfoil encroachment. Residents of Lake Burien have a commitment to the health of this very special lake, and allowing public access would take that process out of our hands and put the lake at risk. We enjoy a large variety of migrating birds who spend time on Lake Burien during migration. In addition we have resident eagles, osprey and other unique birds who depend on Lake Burien for their subsistence, which would be disrupted by public access. Please consider the requests made below.

Danna Siverts
15709 14th Pl SW
Burien, WA 98166
206-246-5678

The City of Burien is currently planning a SMP that as proposed would take private access on Lake Burien, a lake with abundant wildlife and minimal access limited to the private property owners residing there, and turn it into a high priority public access area.

I am against public access for this lake.

- **I request that you do an EIS (Environmental Impact Study) before the proposed SMP goes to the City Council**
- I request you change wording in the Public Access *Policy* in draft SMP section 20.20.015 Public Access Policy 5 to read "**Highest priority should be placed on reaches without existing public access except for the Lake Burien reach because it cannot support the additional impact that public access would create.**" (the underlined portion is the revision)
- I request you revise the wording in the *regulation* for public access in draft SMP section 20.30.035 2. to read "**Public access improvements shall not result in a net loss of shoreline ecological functions. For any reach without existing**

public access, public access shall not be permitted unless it has been demonstrated that such use or access will not jeopardize the environment of the reach in question and will not interfere with pre-existing shoreline uses." (the underlined portion is the revision)

- **The SMP once approved must not be devolved into other policy and regulation documents in City of Burien.** If it is devolved in that fashion, the future updates of the SMP will not be able to be done against a single document. Also baseline affects and effects will not be easily assessed.
- **The City MUST commit in the SMP to a scientific baseline collection of water quality, flora and fauna inventories both resident and migratory over 3 years or more in order to have a solid baseline of conditions and standard variations before they can ever bring a park to the Lake.**
- **The City Planner is not well versed on environmental issues or the science.** Therefore the SMP should not be adjudicated in policies or regulations. There are other municipalities that have dealt with this same issue and they have defined requirements for the person in the role of SMP Administrator/Director

Thank you
Danna Siverts
15709 14th Pl SW
Burien, WA 98166
201-246-5678

Susan Coles

From: Sue Love [mslove7@comcast.net]
Sent: Tuesday, February 23, 2010 5:45 PM
To: director@dfw.wa.gov; jcha461@ecy.wa.gov; upthegrove.dave@leg.wa.gov; mcdermott.joe@leg.wa.gov; cody.eileen@leg.wa.gov; nelson.sharon@leg.wa.gov; Council; Mike Martin; Susan Coles; gdia461@ecy.wa.gov; srud461@ecy.wa.gov; ldum461@ecy.wa.gov
Subject: Requests in association with the proposed SMP that would revise the private Lake Burien shoreline to become Public Access

The City of Burien is currently planning a SMP that as proposed would take private access on Lake Burien, a lake with abundant wildlife and minimal access limited to the private property owners residing there, and turn it into a high priority public access area.

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- **The City Planner is not well versed on environmental issues or the science.** Therefore the SMP should not be adjudicated in policies or regulations. There are other municipalities that have dealt with this same issue and they have defined requirements for the person in the role of SMP Administrator/Director

Thank you
Sue Love

February 23, 2010

City of Burien
Attn: Planning Commission

RE: Proposed Shoreline Management Plan

After reviewing the proposed SMP I would like to make clear the impact this will have on the overwhelming majority of Burein waterfront homeowners and the City of Burien. While 90+% of existing Burien single family waterfront homes are within 65' of the Average High Water Level, the SMP would make all of these homes non-conforming. I have built three new Burien waterfront homes in the last eight years and while all were built to code through an extensive permitting process, not one of these structures will be conforming under the proposed SMP. Has the Planning Commission looked into the economic impact this will have on individual property values and City property tax revenue. Prospective homebuyers looking at purchasing waterfront properties here will no doubt significantly discount property values based on them being non-conforming. Since our homes are only worth what someone is willing to pay, this impact should be seriously considered before moving forward.

Sincerely,

Mike Keenan
2817 SW 172nd St
Burien, WA 98166



RECEIVED
FEB 23 2010
CITY OF BURIEN

RONALD A. FRANZ

2821 S. W. 172nd Street
BURIEN, WASHINGTON 98166
(206) 242-6322

RECEIVED

FEB 22 2010

CITY OF BURIEN

February 22, 2010

By hand delivery

Burien Planning Commission
400 152nd Street
Burien WA 98166

Re: Shoreline Master Program

Dear Commissioners:

Here are my comments and concerns with respect to the draft Shoreline Master Program.

Due process notice

I attended the open house on the SMP on November 30, 2009. I signed in as an attendee and was assured by a Burien representative that I would receive notice of future meetings. Unfortunately I received no such notice and this prevented me from commenting on the draft before now. A person from the planning department has now advised that no one who attended the November 30 meeting received notice of other meetings. See attached email from D. Johanson dated January 20, 2010.

The touchstone of due process is notice and opportunity to be heard. The city's failure to provide the notice it promised has deprived me of this right. I request that the city repeat the meetings for which it failed to provide notice. Any delay would be short and will enable me and other waterfront property owners to help you produce a better end product.

Protection of private property

The Shoreline Management Act and its implementing regulations require that a local program contain adequate measures to protect private property from public access and intrusions. The draft SMP does not meet this requirement. To the contrary, the draft allows and encourages encroachment onto private property. It is clear to me that this draft ignores WAC 173-26-186 with respect to the attorney general's article and takings.

I request that you add the following provision to 20.20.015 and 20.30.035:

In the implementation of this program the city shall not impose any condition or take any action which may facilitate or allow physical public access to private waterfront property

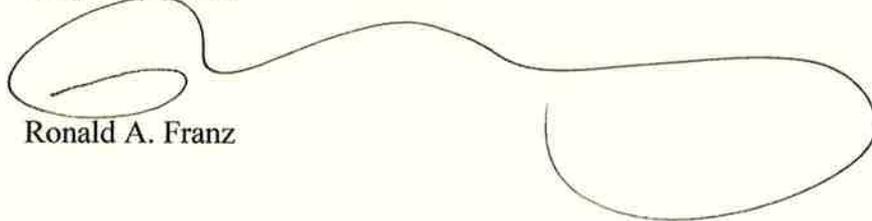
absent the consent of the waterfront property owners.

Setback

The current setback for a single family residence from high water is 20 feet. The proposed setback of 65 feet makes no sense. Almost all of the shorelines in Burien are developed. A greater set back may have made more sense a hundred years ago before development began. It makes no sense now. Leave the setback at 20 feet.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long, sweeping horizontal line that ends in a large, rounded loop on the right.

Ronald A. Franz

FW: Public Hearing Notice

From: **Bill Bailey** (b.bailey@baileysales.com)

Sent: Fri 2/19/10 6:09 PM

To: counselordogbone@msn.com

Attachments:

OpenHouseNoticeNov09.doc (124.0 KB), SMP Handout 11-30-09.docx (587.2 KB), Shorelines Mailing List.xls (61.5 KB)

Ron: Welcome home! I wanted you to be aware of this. I also have photos regarding the signage at each access points to the beach. See you tomorrow. Bill.

From: Bill Bailey

Sent: Thursday, January 21, 2010 2:03 PM

To: fosberg@msn.com; jilljudy@johnlscott.com

Subject: FW: Public Hearing Notice

FYI, Bill.

From: David Johanson [mailto:DAVIDJ@burienwa.gov]

Sent: Wednesday, January 20, 2010 9:18 AM

To: Bill Bailey

Subject: RE: Public Hearing Notice

Mr. Bailey,

Thank you for your inquiry regarding Burien's Shoreline Master Program update. The City appreciates your interest and participation in the process of crafting the required updates to our Shoreline Master Program.

By law, the City must meet minimum public noticing requirements by publishing in our paper of record, The Seattle Times (BMC 19.65.080[4]). The Planning Commission public hearing notice was published on December 22nd. Additionally, notice was posted on the City of Burien website and on the B-Town Blog. The City also included the hearing date on the notice for the November public open house and on handouts available at the open house outlining the adoption process (see the second pages of both documents). The open house notice was mailed to all property owners, based on King County property records, within the affected areas. Both of these documents are attached for your reference.

The City also mailed to parties that specifically requested to be on our shorelines mailing list. When I received your e-mail I double-checked the mailing lists; there were many, from each of the Shoreline Advisory Committee meetings and the two open houses. I was dismayed to discover that only the list from the May 2008 open house was used; it was not combined with the list from the November 2009 event. I have included both lists, as requested.

Although the oversight in merging the lists is disappointing, there are more opportunities for the public to provide input on the proposed Shoreline Master Program update. They are:

- Provide comment to the Planning Commission during the public comment portion of the agenda.
- Provide written comment at any time.
- Provide comment to the City Council during the public comment portion of its meetings; a

public hearing also is planned but no specific date has been set yet.

- A public hearing also will be conducted by the state Department of Ecology. Again, no specific date has been set, but it appears it will be near early summer.

Again, thank you for bringing this oversight to my attention. Your attention to this detail will ensure that our future expanded noticing efforts are comprehensive and thorough. Your interest is greatly appreciated.

Please feel free to contact me if you have any further questions.

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

Phone: (206) 248-5522

From: Bill Bailey [mailto:b.bailey@baileysales.com]
Sent: Tuesday, January 19, 2010 1:15 PM
To: David Johanson
Subject: Public Hearing Notice

Last week I attended the Public Hearing on January 12th and for your information we live in the Three Tree Point neighborhood. I was very surprised that just a handful of people from our area turned out for the meeting.

Within a couple of days after the meeting I asked neighbors why they didn't attend. The response was mostly that they didn't receive the notice as I had. My inquiries were to people that were at previous meetings or the open house at City Hall. This puzzles me because a lot of these people left their names and addresses on the sign in sheets. I remember that all that signed in would get notices of future meetings. If they didn't get the notice, who would have the mailing list with all names and addresses that should have received the notice?

I don't want to point any fingers but, I want to make sure people that have interest in this project are included in the process. Please have the list e-mailed to me or tell me where and when I could view the list.

If you don't have this information, please pass the request to the party that does. Thank you for your consideration.

Bill Bailey

Bailey Sales & Assoc Inc
12303 E Marginal Way So
Seattle, WA 98168
Phone 206-903-5387 Fax 206-433-7744
E-Mail: b.bailey@baileysales.com

February 17, 2010

To: David Johanson, City Planner
City of Burien

From: John Upthegrove
1808 SW 156th, Burien

Please place this document in the packets for the Febr. 23, 2010 Planning Commission meeting and make it part of the public record.

Please consider adding the following to the Draft Shoreline Management Plan:

Appendix: City of Burien Shoreline Advisory Committee Selection Process

1. Notification

In addition to established city notification process, residents residing on the shorelines in Burien will be given at least a 30 day written notification of pending formation of such committee.

2. Committee Membership

The Committee will be composed of no more than 20 members. Eleven members will be selected from residents of Burien, six of which will be shoreline residents. These eleven members may not include a member of the Planning Commission or staff or advisory members. These eleven will be the voting members of the committee. The city may select up to nine additional advisory members, including no more than one member from the Planning commission. Advisory members will not have a vote.

3. The Committee will perform its duties as prescribed by the Shoreline Advisory Committee Operating Guidelines (Appendix A).

David Johanson

From: Max B. Sprague [max.s@comcast.net]
Sent: Friday, February 12, 2010 3:56 PM
To: David Johanson
Subject: Land Use Planning

Mr. Johanson: my wife and I are property owners on Three Tree Point. We attended the 2/9/10 session @ the Burien Library. I assume the city staff at that hearing came to the same conclusion we did.....resistance to your proposals for water front "acquisition" is formidable, to say the least. I highly recommend you conduct a formal needs assessment of public use of existing waterfront parcels open to the public. As a regular "user" of both Seahurst Park and Eagle's Landing, I continue to be shocked at the under utilization of those established City properties. 2000+ foot frontage AND 178+ acres represents a significant portion of waterfront encompassed within the city limits of Burien!!! Given your current strategy, your tax base will erode substantially if you proceed with eliminating private waterfront properties. Common sense would dictate that you should optimize what public lands that are already available. Ask your members of the planning commission to HONESTLY reflect: how many times have we personally gone to Seahurst Park, Eagle's Landing, or accessed Three Tree Point (via current easements) over the last 12 months? The honest answer to that question I believe will clearly demonstrate the folly of your plan.

Thank you.

Max B. Sprague
M. B. Sprague & Associates, Inc.
Office: 206-938-2900
Fax: 206-938-0388
Email: max.s@comcast.net
maxbsprague@mba.com

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David Johanson

From: Ryan, Andrew F [andrew.f.ryan@boeing.com]
Sent: Friday, February 12, 2010 3:00 PM
To: David Johanson; Susan Coles
Subject: SMP mtg

Good afternoon, there was an article in the Highline Times indicating the next SMP mtg is Feb 23. I see in the city website that there is a planning commission mtg that night. Will SMP be part of that? As I've been out of town on business for the last two meetings I want to make sure I'm able to attend the next SMP mtg if there is another one.

Related to the SMP, is there a process in which the affected residents can have a working meeting w/ the commission on the SMP? I don't mean the public forum where the citizens get their 3 minutes of fame, but the opportunity for a real side by side discussion where both "sides" can discuss their objectives, fears and concerns. I believe the current process by it's very nature puts us in adversarial positions and the end result will be highly controversial.

Sincerely
Andrew Ryan

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FEB 16 2010

CITY OF BURIEN

February 16, 2010

Greg and Ronda Dill
3568 SW 172nd
Burien, WA 98166

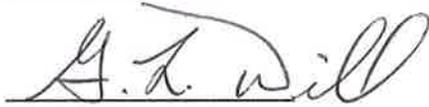
City of Burien Planning Commission
Suite 300
400 SW 152nd ST.
Burien, WA 98166

In the City of Burien there are unique aspects of both Puget Sound and Lake Burien shorelines that are unlike any other in the region and possibly the state. The way that some were developed and marketed as summer homes along with geographic, economic and cultural factors have created unique aspects within the neighborhoods.

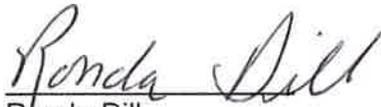
Descending steep slopes to access your home, all your worldly possessions reside between the bottom of a steep slope and the edge of the water, parking and walking trails to and from your home and car, extremely limited parking, little or no yard, living with your front door opening onto a street, cars, bikes, runners and walkers passing by directly outside you windows, restrictions that do not exist at most residences, strangers arriving and using your property, litter and debris left by passers-by as well as the tide, dealing with groups of large birds and their by products, accelerated corrosion and weathering of everything you own, property taxes that take a heavy bite out of all and especially fixed incomes, absorbing the brunt of storms and dealing with their aftermath, maintaining your yard, the beach and adjoining public access in ways that protect each..... These are things that may not be obvious to the occasional visitor but are a way of life for residents of the Burien shoreline. The benefits were and are judged to be worth the costs by those living on the shoreline, let's not, through haste or inattention to the contents of the Burien Shoreline Master Program add to the struggles and put at risk those residents who own property within Burien.

Recognize that we are where we are because of decisions, policies and practices of the past, let's not penalize people for the legacy but chart a course that balances the current state with a vision for the future and recognizes that Burien's shoreline will always be unique.

We respectfully propose the following revisions to the Shoreline Advisory Committee Draft dated November 2009.



Greg Dill



Ronda Dill

20.20.010 Economic Development Element

Pol. ED 1

Protect the beauty and function of the natural environment to maintain a community where ~~workers~~ **people** want to live and work.

Rationale: Include a broader group who we want to encourage to live in Burien than 'workers'.

20.20.015 Shoreline Public Access Element

Pol. PA 13

Promote, **within individual parks**, a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points that increase the amount and diversity of opportunities for **outdoor enjoyment**. ~~walking and chances for personal discoveries.~~

Rationale: This seems to state that Pocket Parks, Regional Parks, Special Use Parks and Conservancy Parks should be connected by something other than the public roads that exist today. It is understood that 'promoting' and 'executing a plan' are two entirely different things but the prospect of even building sidewalks, which is arguably the most practical way to connect these locations, would be a massive undertaking. Connecting Seahurst Park, Eagle's Landing, the street ends on SW 170th, 163rd PI and 172nd and any other locations the city now has or should acquire is not something I desire the City of Burien to promote.

We are fans of personal discoveries but also recognize that some personal discoveries are best kept to oneself and not targeted for exploration in public places. There are out-of-the-way, secluded areas, both public and private, in every neighborhood, the utility access trails in the Three Tree Point area are one example of this. These trails bring walkers uncomfortably close to homes, this is longstanding part of the neighborhood and with cooperation and tolerance between neighbors it usually isn't a problem. Increasing this type of pathway, sidewalk or passageways to join parks and promoting their use would create problems. Our ability to control crime and vandalism is already being tested and I'm not so sure we are winning, adding more difficult to police areas will require additional security resources or an admission that neighborhoods are on their own. Providing pathways and passageways located in neighborhoods, if promoted for 'personal discoveries', will turn into routes for those seeking to discover what personal items are in surrounding homes.

20.20.025 Circulation Element

Pol. CI 4

Public transit systems should provide service to **Seahurst Park**. ~~designated shoreline public access points.~~

Rationale: Providing public transportation to Special Use Parks would be a drain on public transportation and increase traffic on roads that have heavy pedestrian use. The limited capacity and activities available at street end parks make these marginally useable for recreation of any duration. People being dropped off will likely soon be ready to leave based on the lack of facilities and near-by amenities, leaving them there for extended periods will only promote decreased use and potential for trouble. Seahurst Park is a large facility

which can accommodate visitors with ease, this should be the beach destination targeted for transit service if passenger traffic is adequate to command it for any Burien park.

20.30.035 Public Access

2. Regulations

c. If a public road is located within shoreline jurisdiction, any unused right of way **may** shall be **considered for** dedicated **designation** as open space and public access **provided it is not infeasible because of incompatible uses, safety, security, or constitutional and other legal limitations.**

Rationale: Recognize that all unused right of way should not automatically be dedicated as open space and public access designation, the decision on how it will be used should be based on careful consideration on a case by case basis.

~~d. Public access shall be required for all new shoreline development and uses, except for, water dependant uses, individual single family residences and subdivisions of less than four parcels.~~

Rationale: Placing penalties on developers or others which require them to surrender some of their property in order to be allowed to use their property for a legal purpose should not be the policy of our city. This would be another hurdle to those seeking to use their property to its highest and best purpose and considering the other protections on the shoreline we should not add a requirement that they surrender a portion for the use of the general public.

20.30.070 Bulkheads and Other Shoreline Stabilization Structures

2. Regulations d.ii

Replacement walls or bulkheads **may** shall not encroach waterward of the ordinary high water mark or existing structure **to the minimum necessary to restore the structural viability of the bulkhead.** ~~unless the residence was occupied prior to January 1, 1992, and there is overriding safety of environmental concerns.~~ In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

Rationale: This is in essence placing a limit on the duration of a presently occupied building site, which has a bulkhead. Limiting further encroachment waterward is appropriate but not through use of an arbitrary date to virtually condemn property. Maintaining bulkheads is critical as failure of one will lead to undermining and failure of adjoining bulkheads with a domino effect. Reasonable limits on waterward encroachment should not prevent an existing bulkhead from being replaced/repared.

2. Regulations h.i

The maximum height of a **new** bulkhead on the marine shoreline shall be no greater than four (4) vertical feet above the OHWM.

Rationale: Establish the limitation for new construction but don't place previously constructed bulkheads in violation or require height reduction.

20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses

(sections a through e may remain)

4. Reconstruction. A nonconforming structure which is destroyed, deteriorated, or damaged ~~more than 50% of the assessed value of the nonconforming structure as established by the most current county assessor's tax role at present or at the time of its destruction~~ by fire, explosion, or other casualty or act of God, may be reconstructed **within it's previous footprint. only insofar as it is consistent with existing regulations and the following.**

Rationale: Make it clear that existing structures can be reconstructed in their existing footprints without regard to the extent of damage or deterioration. Because of the limited buildable area of many lots, due either to lot sizes or terrain of the lot, accommodations should be extended to support the homeowner's ability to rebuild. Failure to have this option the ability to obtain loans and insurance could significantly degrade the value and desirability of properties.

RECEIVED

February 23, 2010

FEB 23 2010

To: The Burien Planning Commission
CC: The Burien City Council
CC: With cover letter to Department of Ecology, and Director of the
Department of Fish & wildlife.

CITY OF BURIEN

Re: Burien Shoreline Master Plan Document, Public Comment Summary.

From: Robert Howell, 15240 20th Ave SW, Burien WA 98166

I wish to draw your attention to Public Comment Summary, Line item 75A.

The comment was a request for CON 27 to use the "Best available science" in determining the priority species and habitats. We noted that the Burien plan is using data from the King County Comprehensive Plan of November 1994 and pointed out that the data has been revised by King County in their Comprehensive Plan of 2008. We also pointed out that this updated information should be used if they really intend to use the best available science.

The draft response states "CON 27 was taken word for word from existing comprehensive plan policy E v4.3 pg 2-31"

While I admit that "best available science" is a moving target, this response tells me that the City of Burien has no intent or desire to use current data even when it is pointed out to them.

It is my hope the Planning Commission will insist on producing an up to date Shoreline Master Program.

Thank you for your consideration.

Bob Edgar
12674 Shorewood Dr SW
Planning Commission Comments
February 23, 2010

RECEIVED

FEB 23 2010

CITY OF BURIEN

The planning Commission has a daunting, and it might appear a thankless, task of reviewing the Shoreline Master Program update. In addition, it must seem that there is a never end to the sea of faces attending your meetings and if they would just go away, you would be able to get something done.

I would like to suggest an alternate perspective: Look at this group of concerned citizens as extra eyes, ears and minds that can help you to prepare a rational, usable Shoreline Master Program.

A number of Burien citizens have been contributing a lot of time and energy to review the draft Shoreline Management Program document, note obvious discrepancies, offer alternative wording, perform extensive research into various aspects of both freshwater and saltwater concerns and solutions, attend Planning Commission meetings (over 180 attended the 2/9 meeting), provide both written and oral comments, and double check the Planning Department's draft responses.

We can help to pursue concerns from being dropped along the wayside.

Here is a prime example of the need for many eyes to review the SMP document and double check the Planning Department's responses:

Concern: The trigger for mandating public access to shorelines on a parcel of land that can be subdivided.

A.1 WAC 173-26-221, (4) Public Access, (d) Standards, (iii), (C):

“Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non-water-dependent uses and for the subdivision of land into more than four parcels.”

A.2 Operational description of the WAC:

A piece of shoreline property must be subdivided into at least 5 parcels before public access is required. Any subdivision less than 5 parcels would be exempt from requiring public access.

- B.1 The September 1, 2009 Draft SMP presented to Shoreline Advisory Committee by the Burien Planning Department: Chapter IV, 20.30.035 Public Access, 2. Regulations, e.:

“Public access shall be required for all shoreline development and uses, except for water dependent uses and individual single family residences not part of a development planned for more than four parcels.”

- B.2 Operational description of the September 1, 2009 Draft SMP:

A piece of shoreline property must be subdivided into at least 5 parcels before public access is required. Any subdivision less than 5 parcels would be exempt from requiring public access.

- C.1 Shoreline Advisory Committee Meeting #6 Summary, September 23, 2009 (5) Shoreline uses and modifications, policies and regulations, Chapter IV, 6. 20-.30.035 Public Access, fifth bullet:

“Don Warren asked that the threshold for providing public access in 2.e be increased to 5 lots. (ie. Change the wording to read “more than five parcels”.) There was a consensus of the committee to keep the language as proposed (ie. “more than four parcels”).

- C.2 Operational description of the documented committee’s consensus:

A piece of shoreline property must be subdivided into at least 5 parcels before public access is required. Any subdivision less than 5 parcels would still be exempt from requiring public access.

- D.1 The November 2009 Draft SMP presented to Burien Planning Commission by the Burien Planning Department: Chapter IV, 20.30.035 Public Access, 2. Regulations, d.:

“Public access shall be required for all new shoreline development and uses, except for; water dependent uses, individual single family residences and subdivisions of less than four parcels.

- D.2 Operational description of the November Draft SMP:

A piece of shoreline property must be subdivided into at least 4 parcels before public access is required. Any subdivision less than four parcels would be exempt from requiring public access. This lowers the trigger for requiring public access from 5 to 4 parcels.

A citizen stated this discrepancy at the January 26th Planning Commission meeting where we were told that all citizen comments would be captured in a working matrix.

At the subsequent February 9th Planning Commission meeting the same citizen voiced the same concern that the discrepancy was not even included in the matrix.

The matrix from the February 9th Planning Commission meeting included the concern but gave essentially a two non-responses.

We are now at the February 23rd Planning Commission meeting and what appears to be a rather straightforward correction still has not been made.

So the Planning Commission should be asking this question: Why is the Planning Department, after three meetings, still reluctant to make such a simple correction?

It is this type of review that you can continue to expect from these concerned citizens you see in front of you. We are here to help.

To- The Burien City Council
To- The Burien Planning Commission
Re- Shoreline Master Plan
From- Chestine Edgar
February 27, 2010

RECEIVED

FEB 28 2010

This Letter is in response to the February 9, 2010 meeting of the Planning Commission and to the topics identified on the "Public Comment Summary Charts" dated 2/4/2010 and 2/18/10.

Topic #0.01-In the draft response noted on the chart, you state that you are not going to make the change that I requested because it is not inconsistent with RCW 90.58.010. That section of the RCW that you refer to is simply the title of the document and sets no priorities. However, in WAC 173-26-020 and WAC 173-26-221, (6) (b)(i)(ii) which set the principles that the SMP must encompass in reference to RCW 90.58.20; it states" (i)Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological function, or significant impact to aesthetic qualities, or recreational opportunities. It is important to note that while RCW 90.58 was passed in 1971, how that document translates into application is fleshed out in the WACs at a later date. In writing and developing a SMP the RCW as well as the WACs must be used concurrently. Therefore I am requesting that the first pointer reflect the above guiding principle cited, Protect the quality of the water and result in no net loss to the natural environment.

Topic#?-I addressed this on page 5(4.) of my February 9th comments and it did not get put onto the Comment Summary Chart; it refers to User's Guide 20.10.010, Components, Figure2. Figure 2 makes no sense to the reader. Some of the lines are missing on the chart or not connected correctly.

The four appendices boxes should be connected to each other because they build on the data and statements from each other and draw conclusions from each other. They are in an incorrect order from when they were created. So the Shoreline Inventory should be the top or the bottom box depending on how you read the sequence of development. It was the first document created in the group. The last document that was created was the Cumulative Impacts Analysis and again it should either be the top or bottom box depending on how you are ordering the creation of the documents. These four boxes should be labeled baseline data for the SMP/Appendices. Then they should have a connecting line over to the City Of Burien Shoreline Program sequence of boxes as they provided the baseline data for the creation of the Burien Program. If you cannot figure out how to do this then remove Figure 2 because it is incorrect and makes no sense to the reader. Also most readers miss these important Appendices because they appear to have no relationship to the SMP or to each other.

Topic16,17,17A,75 -All of this discussion relates to the fact that Burien is not using the best available science for the rating of wetlands. In 2003, The City of Burien hired Adolfsen to work on the Critical Areas Ordinance; the wetlands scientist at that time recommended that the City of Burien adopt the *Washington State Wetland Rating System for Western Washington -Revised* because it was the best available science method for rating wetlands. While the city made a few changes to its own rating scale it never

followed the recommendation of that scientist. It continued to use its own scale. The SMP process allows cities to use their own scales for the Shoreline Inventory to establish just the Inventory but it does not grandfather in old rating scales that do not meet the test of best science. Burien's scale does not meet that test. Again in 2010 when a wetlands scientist from Futurewise reviewed the SMP draft document, he recommended that Burien adopt the *Washington State Wetland Rating System for Western Washington-Revised* and I recommended this change also. The response from the City of Burien has continued to be that they are going to keep their old scale no matter what because they have always used it. The flaws in the rating system are that it does not have the scientific detail necessary for the rating of Burien's wetlands. For example, Lake Burien is a category 4 wetland just because they say it is-there are no scientific descriptors. Small wetlands under a certain size get no protections just because they say they do not-while these wetlands in other cities around Burien are protected on the *WSWRSWW-Revised* those cities use. The *Washington State Wetland Rating System for Western Washington-Revised* is not just a "fly by night system"; it is the one endorsed by the Dept. of Ecology. Burien needs to adopt the *Washington State Wetland Rating System for Western Washington-Revised* for its SMP, use the best available science and step into the 21st century on how it rates its wetlands. The Planning Commission needs to insist that the SMP incorporate the *Washington State Wetland Rating System for Western Washington-Revised* in spite of what the Burien Planning Department says that it is not going to do. Not using the rating system is in direct conflict to the policy statement in the SMP that states Burien will use the best available science. P.S.-I encourage any Planning Commissioner to call the Dept. Of Ecology and have a discussion about this rating system issue.

Topic# 20,25A,78A,82- All of these topics relate to the concept of "no net loss "to the functioning shoreline environment. At the meetings of the Shoreline Advisory Committee as well as throughout this comment period to the Planning Commission, citizens have asked that the SMP have in the Administration Section-Chapter procedures for the on going monitoring of the shorelines for "no Net Loss". Each time the city has responded that; 1.it has no money for this, 2. they are not sure who will do this, 3. they do not know how to do and,4. this process will come later once the SMP is in place. In reality, if a procedure/plan is not written into the SMP document right now there will be not on going monitoring for "no net loss". Currently there is a documented loss of beach area over in the Shorewood area. It has been occurring over the last 12 years. Citizens have reported what is happening there with written comments, photos and verbal comments to the city. The CAO is supposed to take care of "no net loss" issues like this one. However, the city has still not proposed any study or monitoring to address this citizen documented issue of "net loss". Additionally, the city has just issued a statement of non-significance on a new project to a citizen who is proposing even more work in this beach area without insisting on an Environmental Impact Statement to determine whether his property and structures are responsible for the "net loss" to his neighbors. Permits and Regulations do not address these long term issues that result. Even if someone cheats on their permit or in following the regulation, there is a 3 years window in which-if they do not get caught-the rest of us have to live with and pay for the damages. An on going monitoring program would help to prevent such problems. Therefore, I am requesting that the Administration Section of the SMP contain wording to the effect based on these policies in the draft SMP (Pol. RES 10,Pol ALL 1, Pol ALL2, Pol ALL 3, Pol ALL 4, Pol ALL7), The *City of Burien will*

conduct on going sampling studies annually to monitor for “no net loss” of its protected shorelines. This will be accomplished by the listed possible means and with authorization from The Shoreline Administrator and the WDFW.

a. Interagency agreements and partnerships with local environmental groups, city, state agencies, county agencies or tribes.

b. Interagency agreements with universities, colleges, vocational-technical training institutions, schools districts or The Seahurst Park Environmental Center.

c. Data can be collected and submitted by Citizen Scientists for review by the city or the group organizing the monitoring or study.

d. Data from these studies shall be made available to public on an annual basis. The argument by the city that it has no money for monitoring is a mute point. The SMP is a mandated program. The city has an obligation to prioritize its budget to fund mandated items first in the budget.

Topic 12, 21L,30A,30D, 30F, 30J,30K-All of these topics refer to one of the core principles of the in the SMP of protect of private property and public safety. At the Shoreline Advisory Committee Meetings, a number of members of the committee asked that in the Administrative Section-Chapter 5 that there be some kind of provisions or regulations that addressed the need for protection and enforcement to attend to the issues of protection of private property, public property and public safety. The city representative on the committee responded that this could not be put into the document because the city had no money for this. In a letter to the City Council and in an open letter to the B-Town Blog, Jim Branson requested information on how many citations, warnings of fines had been issues to citizens or park users who had violated posted rules or park policies. The answer appears to be none. Additionally, when park incidents have been reported to the police or city there seems to be an indecision on the part of both agencies about who should go and check on it, who is responsible to follow up and who takes action on it. I am reminded of a recent incident in Seahurst Park where a vagrant was living in the Park and threatening citizens trying to use the hiking trails. The police were called and they said that they would not go into the park. As the City has no Park Ranger System, there was no one from the city who had law enforcement authority to check out the situation. Additionally, the city offices are no open on the weekend for monitoring threats to public health and safety in the parks. Therefore, I am requesting the Administration Section of the SMP contain wording to the effect based on these policies in the SMP draft Pol PA 3, The City will establish a working network of processes and procedures for the protection of private property, public property and public safety in the shoreline areas. This will be accomplished by the listed possible means and with authorization of the Shoreline Administrator, Burien Police (King County Police) and, Burien Department of Parks and Recreation.

A. an interdepartmental and interagency plan will be developed to address the issues of protect of private property, public property and public safety in shoreline areas...

b. The interdepartmental and interagency plan will address violations of city laws and shoreline violations-such as who can write tickets, issue fines, etc.

c. A method for collection data on incidents in the reported in these areas will be established and will reflect which department or agency handled the issue. This data shall be available for public review.

d. Should the city develop a Park Ranger Program the plan will address the authority that these individuals have to enforce laws and rules. Again, these are components of the mandated SMP.

Topic 31A, 83-These two topics address the fact that the wording on how many homes being developed in an area will develop a public access. I am not sure why this discussion seems to be unable to be resolved. Here is the history of what occurred-this can be verified by reviewing the Summary Notes from the SAC meetings.-

1. The SAC voted to keep the State wording-d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses and individual single family residences not part of a development planned, for more than four parcels.
2. The SAC met the next meeting and approved the minutes stating that they would stick with the state wording of more than four parcels-which was what was in their working draft at that time.
3. The editors of the Nov. 2009 SMP Draft then took the license to change the wording because they said they wanted to make it clearer. In the process they changed the wording to state less than rather than more than. I'm not sure how that can be construed to clarify anything. Citizens have appeared before the Planning Commission to complain about this change 2 times.
4. In the most recent issuing of the Shoreline Master Program Public Comment Summary, this still appears to be unresolved.

The statement in the SMP should base on WAC 173-26-221(4. Public Access)(c. Planning process to address public access)(iii) page 11; Which addresses that a public access should be required when there is a subdivision of land into more than 4 parcels with the other above stated exceptions. Please make this correction based on what the committee decided at its meeting, state SMP provisions recommended and on citizen input. Essentially keep the wording that was approved by the SAC in the meeting and minutes.
Please make this correction.

Topic 83-This refers to public access and again raises the issue of when a public access has to be created but also raises the issue of how many public access points should be created on a given shoreline area before there is real danger to the environment. As a specific example, should the Ruth Dykeman Children's Center ever be sold; the zoning formula would allow 43 new homes on Lake Burien. How many public access points would this create? Just several houses down the road, there are lots large enough so that they could be sub-divided into more than 4 parcels. Again according to the formula that would create another public access point on the lake. There are at least 5 points that this could happen to on the lake. Just how many public access points can a small lake like this sustain? Again this is why I believe that you need to create an Appendix titled Plan for Public Access to address how these issues will be handled. This kind of analysis does not typically happen in the typical permitting process that they say will take care of these future issues.

Topic 75A-In the draft response, you do not refer which comprehensive plan you are referring to. Again I request that you use the best available science and reference the King County Comp. plan for the protection the listed species in your SMP.

Topic 74, 74A- The cumulative impacts analysis is still incorrect as it does not take into account the amount of development that can occur on Lake Burien as well as the amount of impervious surface and non point pollution this will create. I request that this section of the analysis be reworked to reflect what could happen with future development.

Topic 31e- This area of the Shoreline Inventory is incomplete as it does not address visual access, street ends and utility access points. I m requesting that this section be reworked or that at a table be created in an Appendix to address a Plan for Public Access.

Topic 87- As this is the first time that this administrative position is included in the city documents and this position holds considerable power and demands a wealth of knowledge about shorelines, permitting and regulation of the city, is seems only intellectually correct to include a better description in the document of this administrator. This can be put into the Definitions or the Administrative Section. The public needs to be assured that this person has more qualifications than Brownie did in order to get his job running FEMA. I am requesting that a change be made to flesh out who this administrator is and what are the limits of the position.

There is nothing in the Administrative Section that speaks to the issue of Public Safety on shorelines which is a mandate of the SMP. Burien has no education programs or provisions for the education of the public on water safety or the use of the shorelines. Additionally, the city has very limited signage about how to use the shorelines. Some of the current signage is on the wrong locations, missing or a posted on private property which the public has to cross just to read. I am requesting that a section be developed and added to the Administrative Section-Chapter5 to address the issue of Public Safety on the Shorelines.

Kathi Skarbo

1621 SW 152nd Street
Burien, WA 98166
206-242-9874
e-mail: kskarbo@comcast.net

February 23, 2010

To: City of Burien Planning Commission
From: Kathi Skarbo
Re: Shoreline Master Program Public Comment Summary, Item #31A

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FEB 23 2010
CITY OF BURIEN

Thank you for including my comments that were overlooked in the first draft of the matrix. The draft response to the issue of requiring public access when a piece of property is subdivided reads “The language was changed to make the regulation more understandable. The language as shown in the WAC is somewhat difficult to interpret.” WAC 173-26-221[4.d.iii] was identified as the reference, which states, “Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the **subdivision of land into more than four parcels**. In these cases, public access should be required except: ...” (my emphasis). This is different than the language used in the draft Burien SMP. “Subdivision of land into more than four parcels” is not the same as “subdivisions of less than four parcels.” In my earlier request I referenced WAC 173-26-221[4.d.iii.C], which is an exception paragraph and uses the “not part of a development planned for more than four parcels” language. It is clear that both paragraphs in the WACs intend for the requirement to apply to property divided into more than four (5+) parcels. The Shoreline Advisory Committee agreed. A copy of section 4 of the WAC is attached. Please read it and make the correct revision to the SMP.

It is commendable that changes were made to make the regulation more understandable. Unfortunately, the language change that was made to the SMP changed the *meaning* of the regulation. I don’t care which way it’s stated, as long as the intent is accurate. Below are two suggested revisions, based on two references in the WACs. Please choose one of them and revise 20.30.035.2.d of the SMP.

To be consistent with WAC 173-26-221[4.d.iii], revise 20.30.035.2.d as follows:

- d. Public access shall be required for all new shoreline development and uses, except for; water dependant uses, individual single family residences and subdivisions of four or less ~~than four~~ parcels.

To be consistent with WAC 173-26-221[4.d.iii.C], revise 20.30.035.2.d as follows:

- d. Public access shall be required for all new shoreline development and uses, except for; water dependant uses; and individual single family residences and subdivisions of less not part of a development planned for more than four parcels.

- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
 - Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
 - Development in incorporated municipalities and designated urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.
 - Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.
- (ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

(4) Public access.

(a) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) **Principles.** Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) **Planning process to address public access.** Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible offsite or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) **Standards.** Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater dependent uses and for the **subdivision of land into more than four parcels**. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

(5) Shoreline vegetation conservation.

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

Modified	SHORELINE MASTER PROGRAM PUBLIC COMMENT SUMMARY Planning Commission WORKING DRAFT 3/3/2010					
	#	TOPIC	SUMMARY of COMMENT	DRAFT RESPONSE	WAC/RCW	PC Direction
X	0.01	20.10.001	The first pointer should be changed to read " <u>Protect the quality of the water and result in no net loss to the natural environment</u> ".	The pointers summarize the priorities as stated in RCW 90.58.020. No change is recommended as the statement is not inconsistent with the RCW	RCW 90.58.020	2/23/10 See 0.02
X	0.02	20.10.001	The third pointer should be changed to read " <u>Preserve and enhance public access or increase recreational opportunities for the public along publically owned shorelines</u> ".	Suggestion noted, changes are recommended. The section should be replaced with the exact language of RCW 90.58.020 to provide the state legislative findings that provide a solid explanation of why we are planning for/managing our shorelines.	RCW 90.58.020	2/23/10 Insert language of RCW 90.58.020
	0.03	20.10.001 Figure 1	Suggest that the figure be removed given the ongoing legal discussions regarding the controls of GMA vs SMA.	The issue of GMA vs SMA has yet to be resolved and it would be premature to make the changes based on this uncertainty. If the issue is resolved or clarified, the SMP can be updated to be consistent with the resulting legislative change.		NR
	1	Conservation Element 20.20.035	Request that the over-lying principle of no net loss of ecological functions be implemented and if there is a possibility of net loss then the steps of WAC 173-26-201(2.e) be followed.	BMC 20.30.010 addresses no net loss in Policy 1a and Regulation 2.c outlines the mitigation sequence consistent with WAC 173-26-201(2.e).	173-26-201[2.e]	NR
X	2 (FW)	Urban Conservancy 20.25.015 & Shoreline Residential 20.25.020	<p>There are some areas designated as Residential that have much intact riparian vegetation. These areas have low intensity residential uses (spaced with riparian vegetation between sites) or residences set back well away from the water. These areas need to be protected better than just using the small buffer. We recommend that they be designated as Urban Conservancy, because they meet the criteria for that environment, as noted above. Three stretches of Residential environment have low density segments in them:</p> <ul style="list-style-type: none"> · Along the area where Maplewild Avenue's NE to SW segment lies closest to the sound. · Along the area of Maplewild Avenue's north-south segment and continuing north to 152nd Place · A segment of shore near the intersection of Shorewood Dr. and 30th Ave. <p>These areas need to be re-evaluated and appropriate areas re-designated as Urban Conservancy.</p>	<p>Items 1 and 2 are areas that have significant residential development. It may appear highly vegetated on the aerial photos however there is a significant amount of residential development.</p> <p>In item 3, it appears they are referencing the Shorewood Community Club property which in all likelihood would not be developed. It should be noted that this property does meet some of the designation criteria for "urban conservancy",</p> <p><u>Urban Conservancy Designation Criteria</u></p> <ul style="list-style-type: none"> A) They are suitable for water-related or water-enjoyment uses; B) They are open space, flood plain or other sensitive areas that should not be more intensively developed; C) They have potential for ecological restoration; D) The retain important ecological functions, even though partially developed; or E) They have the potential for development that is compatible with ecological restoration. <p><u>Shoreline Residential</u> Purpose - ... to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.</p>	173-26-221 [5. E.iii] and [5.f]	

				<p>Designation Criteria – Assign a “shoreline residential” environment designation to shoreline areas inside urban growth areas, as defined by RCE 36.70A.110, incorporated municipalities, If they are predominately single-family or multi-family residential development ore are planned and platted for residential development.</p> <p>The area referenced in item 3 also matches the purpose of the “shoreline residential” environment and some of the designation criteria (inside UGA, planned for res. Dev.). The shoreline permit matrix (20.30.001) allows community beaches and a conditional use in the Residential designation, while in the Conservancy designation it is listed as a prohibited use.</p>		
	3	Shoreline Permit Matrix 20.30.001, Figure 4	Commercial and Office have been deleted from Figure 4 by the SAC and section 20.30.075 Commercial, Institutional and Office was removed. These uses should be included in the table and specifically listed as prohibited uses to accurately reflect the consensus of the SAC.	This is an accurate comment and the table should be amended to include commercial and office as strictly prohibited uses.	173-26-241	2/23/10 Add uses to the table as prohibited. Also See # 4.
	3 A	Shoreline Permit Matrix 20.30.001, Figure 4	Commerical and office needs to be also added back into Chapter IV, 20.30.075 (per the Sept. 1, 2009 draft)	If the uses are prohibited then there would be no need to have regulations associated with them.		Conditional use criteria are acceptable for review criteria and standards.
X	4 (FW)	Shoreline Permit Matrix 20.30.001 (Figure 4)	<p>We recommend including Community Services, such as government buildings/uses, schools, churches, hospitals, etc., with commercial uses, such that the category becomes Commercial Uses and Community Services.</p> <p>The definition of Commercial should be expanded to include Community Services, or a separate definition should be added. Regulations in several locations and also the tables include provisions for Schools, which would be similar to community services and should be treated as such.</p> <p>Community services should be limited the same as commercial uses in their location in shoreline areas and their placement within buffers/setbacks.</p>	<p>Allowing these uses does not fit local circumstances. Other than the existing Ruth Dykeman facility, these type of uses are not planned for shoreline areas.</p> <p>The following terms will be used in the permitted use matrix. Direction is requested on what review process would be required for each use. UPDATED PERMIT MATRIX TABLE NEEDED</p> <p>(Prohibited) 19.10.465 Retail – A commercial enterprise which: provides goods and/or services directly to the consumer; and, whose goods are available for immediate purchase and/or rental; and, whose goods are available for immediate removal from the premises by the purchaser and/or whose services are traditionally not permitted within an <i>office use</i>. The sale and consumption of food are included if: a) the seating and associated circulation area does not exceed ten percent of the <i>gross floor area</i> of the <i>use</i>, and b) it can be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded. Goods and services offered include, but are not limited to: <i>convenience retail uses</i>.</p> <p>(Prohibited) 19.10.385 Office – A place of employment providing professional, administrative, educational, business or governmental services other than</p>	173-26-241	<p>2/23/10 Request that the appropriate use term be used to align with terminology of zoning code.</p> <p>Direction needed for permit process for Env Learning Cntr, Marine Tech Lab and RDCC.</p>

				<p>production, distribution, sale or repair of goods or commodities. The following is a nonexclusive list of office uses: medical, dental or other health care; veterinary, accounting, architectural, engineering, consulting or other similar professional services; management, administrative, secretarial, marketing, advertising, personnel or other similar services; sales offices where no inventories or goods are available on the premises, real estate, insurance, travel agent, brokerage or other similar services.</p> <p>(Environmental Learning Center) BMC 19.10.420 <u>Public park and recreation facilities</u> – A natural or landscaped area, <i>buildings</i> or <i>structures</i>, provided by a unit of government, to meet the active or passive recreational needs of people.</p> <p>(Marine Tech Lab) BMC 19.10.210 <u>Government facility</u> – Services and facilities operated by any level of government, excluding those uses listed separately in this Code.</p> <p>(Ruth Dykeman) BMC 19.10.065 <u>Community residential facility</u> - Living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services, including but not limited to counseling, rehabilitation and medical supervision, excluding drug and alcohol detoxification; if staffed by nonresident staff, each 24 staff hours per day equals one full-time residing staff member for subclassifying community residential facilities as follows:</p> <ol style="list-style-type: none"> 1. Community residential facility-I: Nine to ten residents and staff. 2. Community residential facility-II: Eleven or more residents and staff. 		
	5 (FW)	Shoreline Permit Matrix 20.30.001	The SMP needs to include Commercial Uses and Community Services in the development standards, which in turn need to address the SMP Guideline requirements – especially the limits on non-water-dependent uses and limits on over-water construction.	Commercial use was specifically removed at the SAC level. These uses are not allowed by the existing zoning or comprehensive planning designations. Please also see #3 above.	173-26-241	See #3 above.
X	6 (FW)	Shoreline Permit Matrix 20.30.001	The SMP Guidelines have specific requirements for parking. These need to be added to the table and the development standards.	It may need to be added to the table but please note there is a parking section with standards, see 20.30.100. “Parking” will be added to “Transportation Facilities”	173-26-241 [3.k]	Parking should be added to the table along with Transportation Facilities.
X	7 (FW)	Shoreline Permit Matrix 20.30.001	Cell Towers are listed in the table, but there is no indication that they are subject to the utility standards. This needs to be clarified.	We believe this code section can be clarified. Change use to “Personal Wireless Service Facilities” to match terminology in Zoning Code. The following is a <i>summary</i> of BMC 19.50 relating to PWSF (many other	173-26-241 [3.l]	

				<p>requirements apply):</p> <p><u>PLA-2 (Ruth Dykeman): PWSF antennas can be attached to:</u></p> <p>1) Existing utility poles (with administrative review). 2) Other existing structures (with a Type 1 review and construction permits) 3) New monopole (with a Type 2 review)</p> <p><u>RS Zones: PWSF antennas can be attached to:</u></p> <p>1) Existing utility poles (with administrative review). 2) Other existing structures (with a Type 1 review and construction permits)</p>		
	8 (FW)	Shoreline Permit Matrix 20.30.001	We also recommend that boating facilities have to be added to the use table, and development standards need to be established. The SMP Guidelines require local SMPs to deal with recreational Boating Facilities as a specific use category. These facilities (excluding docks serving four single-family residences or less) are intensely used and need special provisions for dealing with such use.	The relevant types of boating facilities for Burien shorelines are included in the permit matrix (e.g., buoys, ramps, covered moorage, docks, piers and floats).	173-26-241	
X	9 (FW)	Shoreline Permit Matrix 20.30.001	<p>Concern is that the proposed table doesn't cover all the different land use possibilities nor all the uses and modifications listed in the SMP Guidelines – leaving gaps.</p> <ul style="list-style-type: none"> · The following are uses and modifications that are missing in the use table, and also do not have development regulations: Commercial, Agriculture, Boating Facilities and Marinas, Parking Areas. · The following is missing from the table, even though they are covered in the development regulations: Shore stabilization measures other than bulkheads. · The following is allowed in the table, but has no development regulations: Forestry. 	<p>It is suggested that the following uses are added to the table and specifically listed as “prohibited”.</p> <p>1) Commercial 2)Agricultural 3)Forestry.</p> <p>It is recommended that shoreline stabilization measures other than bulkheads should be added to the table.</p> <p>The shoreline permit matrix table should be modified to include “Transportation Facilities <i>and Parking</i>” to be consistent with the development regulation section BMC 20.30.100.</p>	173-26-241	Leave agricultural, forestry and marinas off the table.
	10 (FW)	Impact Mitigation 20.30.010	Section 20.30.010 Impact Mitigation. Regulation A states that “development and uses shall occur in a manner that results in no-net-loss of ecological functions” as required by the SMP Guidelines. However, it goes on to add that doing so is only required “to the greatest extent feasible,” which implies that some loss of functions is acceptable. Such an exception to the no-net-loss standards is not found in the Guidelines, and is contrary to the concept of mitigation sequencing - which requires avoidance of impacts first, then mitigation of impacts, then replacement or compensation for any lost impacts. If ecological functions are lost, they must be replaced in full, not “to the	The proposed changes are recommended to be included.	173-26-201[2.e]	2/23/10 Accept the proposed language.

			greatest extent feasible.” This phrase needs to be removed from the regulation. In the context of mitigation in the Guidelines, the term “to the extent feasible” is only used as it relates to the first two sequencing steps. Projects have to avoid and minimize “to the extent feasible.” All impacts still have to be mitigated.			
X	11 (FW)	Impact Mitigation 20.30.010	A policy link between conservation and restoration is needed. Suggested Language: <i>Policy (a) – Impacts to the ecological functions and values shall be mitigated to result in not net loss of shoreline ecological functions and process. <u>Mitigation for impacts of new development projects should use enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.</u></i>	Staff/consultant support the proposed change. Direction is needed on the suggested language. A new policy should be added. b. <u>Mitigation for impacts of new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.</u> And a new regulation should be added. f. When requiring compensatory measures or appropriate corrective measures pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. <u>Compensatory mitigation of impacts from new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources, If this is not feasible the second priority should focus mitigation on areas that are in need of restoration.</u> Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.		2/23/10 Consider both a policy and a code change.
	12 (FW)	Land Use 20.30.015	The regulations do not implement the water dependency preference. Simply restating the water dependency preferences from the SMP Guidelines does not result in preferences being implemented. The regulations need to actually do something to make that preference real. This can be accomplished in several ways: · Not allowing uses or modifications based on their lack of water-dependency in different environments. This can be done in the use table by making distinctions in different uses for water-dependency. For example, water-dependent or water related uses	This comment does not relate or fit local circumstances. Water dependent and commercial uses do not exist and not are planned for the shoreline areas.	173-26-176[3.a]	

			<p>commercial uses could be allowed while commercial uses that do not depend on a waterfront location can be prohibited or only allowed as a conditional use.</p> <ul style="list-style-type: none"> · When non-water-oriented uses and modifications are allowed, they can be required to obtain a Conditional Use Permit. This can be done in the table by using the CU entry for some environments. · More stringent development standards can be applied based on lack of water dependency. 			
13 (FW)	Land Use (20.30.015) or in the use table notes:	<p>We support the idea of “Shoreline uses and modifications should be compatible with the adjoining shoreline environment and designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.” But there is no implementing regulation</p> <p>Suggested language: <u>“Where a use or modification may occur in the Aquatic environment as indicated in Figure 4 and in the corresponding regulations for that use, it shall also be subject to any more restrictive permit processes or prohibitions on that use or modification as indicated for the adjacent shoreland environment.”</u></p>	This appears to make sense and should be added.			Karen, Jerry Miniutes.
14 (FW)	Critical Areas BMC 19.40 20.30.025 [2.a]	<p>Exemptions for stormwater, utilities and trails allowed in the CAO (BMC 19.40) should not be allowed in the shoreline jurisdiction. Exemptions for water dependent uses should however remain.</p>	Trails provide public access and should be allowed in shoreline jurisdiction. Policy CI 9, 10 and 11 state that utility crossings in shoreline areas should preserve shoreline ecology and water quality.			
15	<p>Critical Areas 20.30.025 (2.c)</p> <p>And</p> <p>Definitions 20.40</p> <p>Fresh Water</p>	<p>Requests that Critical Freshwater Habitats be section be added to 20.30.025 (2.c) pursuant to WAC 173-26-221(iv) and be given equal protection similar to Critical Fresh Water Habitats.</p> <p>Lake Burien is considered a critical area, but there is no definition in the draft SMA of fresh-water habitat. Fresh-water habitat should be added to the SMP. Freshwater habitat needs to be defined and practiced in the SMP so there is no net loss. This can be done by identifying the habitat of birds and fish.</p> <p>The protection of freshwater habitat is not mentioned in the SMP. According to the consultant, it was not included because they do not know how to define it. Research has been done and scientists consider freshwater habitat definable by threatened species that use the area as well as by what were and are the continued native species that currently use the area.</p> <p>The overall goal of the SMP is to protect the ecological function of</p>	<p>The term “critical freshwater habitat” is not specifically defined in the WAC 173-26 or RCW 90.58. However, one Dept. of Ecology document attempts to characterize these habitats (Shoreline Master Program Critical Area Segment Amendment Submittal Checklist—September 29, 2009). http://www.ecy.wa.gov/programs/sea/sma/news/Checklist_CriticalAreaSegment.pdf</p> <p>This checklist applies to jurisdictions amending the critical area portions of their SMPs outside of the overall update process that we are currently following.</p> <p>According to this checklist, the section on critical freshwater habitats “Applies to streams, wetlands, lakes, CMZs, and flood plains <u>designated as critical areas by the local government</u>; along with additional areas identified by Ecology as vital to fish and wildlife conservation.” (emphasis added)</p> <p>The checklist language is slightly different from the applicability section of WAC 173-26-221, which “applies to master program provisions affecting critical freshwater habitats, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains <u>designated as such.</u>” (from WAC 173-26-221(2)(c)(iv)(A) emphasis added)</p>	173-27-030		

		<p>the shorelines of the State that are located within the boundaries of the City of Burien. Small, fresh water habitats are in far shorter supply on this planet compared to saltwater habitats and should be afforded greater, if not, equal protection. Critical freshwater habitat of Lake Burien is recognized in the SMP, but no definition is provided. However, it does define a critical saltwater habitat. This suggests that protecting the freshwater habitat is of less importance than protecting saltwater habitat.</p>	<p>The WAC appears to require that a lake or wetland be specifically designated as a critical freshwater habitat (for which there is no definition or designation criterion) while the checklist assumes that all lakes and wetlands that are also locally-designated critical areas are critical freshwater habitats.</p> <p>If we follow the checklist, Lake Burien and its wetlands would be considered critical freshwater habitats. Regardless of whether Lake Burien and its wetlands are designated as critical freshwater habitat, the draft SMP complies with all of the provisions in WAC 173-26-221(2)(c)(iv)(B) and (C) applying to critical freshwater habitat:</p> <p>“(B) Principles. Many ecological functions of river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of the river channel. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions downstream. Likewise, gradual destruction or loss of the vegetation, alteration of runoff quality and quantity along the corridor resulting from incremental flood plain development can raise water temperatures and alter hydrographic conditions and degrade other ecological functions, thereby making the corridor inhospitable for priority species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of river and stream corridors depends on:</p> <ul style="list-style-type: none"> (I) Planning for protection, and restoration where appropriate, along the entire length of the corridor from river headwaters to the mouth; and (II) Regulating uses and development within the stream channel, associated channel migration zone, wetlands, and the flood plain, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development. <p>As part of a comprehensive approach to management of critical freshwater habitat and other river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore the corridor's ecological functions and ecosystem-wide processes.</p> <p>Applicable master programs shall contain provisions to protect hydrologic</p>		
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				<p>connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.</p> <p>Master program provisions for river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.</p> <p>(C) Standards. Master programs shall implement the following standards within shoreline jurisdiction:</p> <p>(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss.</p> <p>(II) Where appropriate, integrate protection of critical freshwater habitat, protection with flood hazard reduction and other river and stream management provisions.</p> <p>(III) Include provisions that facilitate authorization of appropriate restoration projects.</p> <p>(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.”</p>		
15 A	Critical Freshwater habitats	Again request that critical freshwater habitats be added to 20.30.025[2.c].		There is no specific definition of critical freshwater habitats, for lakes, comparable to the term used for saltwater habitats, but yes there is a section addressing how critical freshwater habitats are to be managed. The proposal is to use the existing wetland regulations found in BMC 19.40.	173-26-221 Gen Mste. Prg. Req[2.c.iv], pg 60	
16 (FW)	Critical Areas 19.40.300 20.30.025 [2.a]	BMC 19.40.300 excludes small wetlands from protection. This provision needs to be excluded from the parts of the CAO incorporated into the SMP.		Comment noted. Wetlands within shoreline jurisdiction will be protected or mitigated consistent with provisions in Title 19.40.	173-26-221[2.c.i]	
17 (FW)	Critical Areas 19.40.300[3,4] 20.30.025 [2.a]	The wetland rating system needs to be changed to use the current science for wetland protection. We recommend the use of Ecology’s Washington State Wetland Rating System for Western Washington – Revised.		The SMP inventory on pg. 9 discusses the sources used for wetland identification that included the City of Burien CAO, King County GIS data, National Wetland Inventory, Ecology’s Digital Coastal Atlas, WDFW Priority Habitat, and a 2005 report for Seahurst Park.	173-26-221[2.c.i]	
17 A	Critical Areas Wetlands 19.40.300[3,4]	The system reference in #17 above should be used to ensure the SMP is consistent with Policy CON 9 which requires the use of best available science. The current system in the BMC is a less scientific system.		The category 4 wetland rating was determined by review of the sources listed in #17 response above.		
18 (FW)	Critical Areas BMC 19.40 20.30.025 [2.a]	Storm water and utility alterations to streams, wetlands and their buffers should be required to mitigate or impacts – currently facilities only have to repair damage to the pre-damage condition, not compensate for the new impacts from corridors or facilities...		BMC 20.30.105 (2.k) requires reclamation and maintenance to ensure success of newly planted vegetation.	173-26-221[2.c.i]	
19 (FW)	Critical Areas 19.40.310 – 350	Stream and Wetland buffer reductions should require that the option of buffer averaging be tried first. To implement the		Comment noted. Wetlands within shoreline jurisdiction will be protected or mitigated consistent with provisions in Title 19.40.	173-26-221[2.c.i]	

		20.30.025 [2.a]	mitigation sequencing concept.			
20	Shoreline Public Access Element 20.20.015	Increasing the amount of public access will not achieve the “no net loss standard”; improve the ecology of the Lake or Puget Sound. If access is granted things such as milfoil will be introduced to the lake. There are no data or analysis of the lake, its water quality, and carrying capacity to support the assumption that public access will do no harm and cause no net environmental loss. (see Turtle v. Fitchett upholding objections to public use on Lake Burien, 1930).	<p>The issue of access was discussed during the Shoreline Advisory Committee meetings. There was a specific policy decision to address access as shown in the Shoreline Advisory Committee Shoreline Master Program draft. There is specific policy that addresses how access is to be provided. Please see SMP policies: PA 3 and PA 4.</p> <p>Public access to shorelines of the state is generally required by the SMA. The Shoreline Master Program Guidelines state....</p> <p><i>173-26-176 (2) General Policy Goals of the Act and Guidelines for Shorelines of the State. “The policy goals for the management of shorelines harbor potential for conflict. The Act recognizes that the shorelines and water they encompass are “among the most valuable and fragile” of the state’s natural resources. They are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research and education. Thus, the policy goals of the Act relate both to utilization and protection of the extremely valuable and vulnerable shoreline resources of the state. The Act call for the accommodation of “all reasonable and appropriate uses” consistent with “protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life and consistent with “public rights of navigation.” The Act’s policy of achieving both shoreline utilization and protection is reflected in the provision that “permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public’s use of the water.” RCW 90.58.020</i></p> <p>An existing policy statement (PA 9) addresses the concern regarding the process by which public access points are designed improved or created. This provides guidance on the public process to ensure that it is designed consistent with the policy intent and address neighborhood concerns.</p>	RCW 90.58.020 173-26-176 [2] 173-26-221[4]		
21	Shoreline Public Access Element 20.20.015	Access will increase littering, vandalism, property destruction. There are already access points available to the public and it would be expensive to fund and maintain that which is proposed in the plan. The plan should include language to assure that before any changes are made the residents of those areas be given: 1) Notice of any specific plans that the City may already have and adequate opportunities to respond and express concerns about impacts of those plans on the community.	<p>The issue of access was discussed during the Shoreline Advisory Committee meetings. There was a specific policy decision to address access as shown in the Shoreline Advisory Committee Shoreline Master Program draft. There is specific policy that addresses how access is to be provided. Please see SMP policies: PA 3 and PA 4.</p> <p>Policy language exists (PA 9) that provides direction on public involvement when shoreline projects are being planned.</p>	173-26-241		

			<p>2) Opportunity to be involved in decisions affecting our communities BEFORE specific plans are made.</p> <p>3) Opportunity to offer alternative ideas or suggestions to reduce the impact of any such plans on the residents of affected communities, their private property, and their safety and well-being.</p>			
21 A	Shoreline Public Access 20.20.015 Goal PA	Proposed language: Increase Promote and enhance public access to shoreline areas <u>on public lands</u> consistent with the natural shoreline character while protecting private property rights and public safety.	This is a goal directly taken from the existing City Comprehensive plan. The term “Increase” is used in RCW 90.58.020 which states master programs shall give preference to specific uses. The statements include 5) Increase public access to publically owned areas of the shorelines 6) Increase recreational opportunities for the public in the shoreline.			
21 B	Shoreline Public Access 20.20.015 Pol. PA 1	Proposed language: <u>New</u> developments, uses and activities on or near the shoreline should not impair or detract from the public’s <u>existing public</u> access to the water.	Keep existing language, no changes recommended.			
21 C	Shoreline Public Access 20.20.015 Pol. PA 3	Existing Language: Public access to the City’s shorelines should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy. Proposed language: Public access to <u>shoreline areas on public lands within the City</u> must protect private property rights, public safety, and individual privacy.	This is a policy that is directly taken from the existing City Comprehensive plan. The Planning Commission will consider the proposed language. It should be noted that the goals and policies should be consistent with the regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations.			
21 D	Shoreline Public Access 20.20.015 Pol. PA 4	Proposed language: Public access <u>on public lands</u> should be provided as close as possible to the water’s edge without adversely affecting a sensitive environment with no net loss of shoreline ecological function and should be designed for handicapped and physically impaired persons.	Note: The underlined text “ <u>with no net loss of shoreline ecological function</u> ” was suggested but not underlined in the original comment letter. Strikeouts added. No objection to the proposed changes.			
21 E	Shoreline Public Access 20.20.015 Pol. PA 5	Proposed language: The City should seek opportunities to develop new public access areas <u>on public lands</u> in locations dispersed throughout the shoreline. Highest priority should be placed on reaches without public access. Mechanisms to obtain access include: a. Tax-title properties; b. Donations of land and waterfront areas; and c. Acquisition using grants and bonds. <i>Note that that there is no reference to ‘unused right-of-way’ as a method of obtaining new public access.</i>	The Planning Commission will consider the proposed language. It should be noted that the goals and policies should be consistent with the regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations			
21 F	Shoreline Public Access	Proposed language: The vacation or sale of street ends <u>must comply with RCW 35.79.035. other public right-of-ways and tax</u>	This is a policy that is directly taken from the existing City Comprehensive plan.			

		20.20.015 Pol. PA 6	title properties that abut shoreline areas shall be prohibited. Vacation or sale of publicly owned tax title properties that abut the shoreline areas shall be prohibited., The City should protect these areas for public access and public viewpoints.		
21 G	Shoreline Public Access 20.20.015 Pol. PA 7	Proposed Language: <u>Publicly owned shoreline street ends</u> Waterfront street ends should be recognized as: <ul style="list-style-type: none"> a. An important community resource that provides visual and physical access to the Puget Sound; b. Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods; c. A destination resource, where limited facilities and enhancements are provided. 	This is a policy that is directly taken from the existing City Comprehensive plan. Street ends are owned by the City, however the language does provide further clarification. Another option may be use of the term “city right-of-ways”.		
21 H	Shoreline Public Access 20.20.015 Pol. PA 8	Proposed Language: The City should manage and develop <u>publicly owned shoreline waterfront</u> street ends by: <ul style="list-style-type: none"> a. Supporting their use by residents city-wide, yet ensuring that the street ends and their supporting facilities are developed at a level or capacity which are appropriate to the neighborhood character, promotes safety, <u>protects private property rights and individual privacy</u>, and is consistent with City risk management practices; b. Ensuring that public parking is available <u>and limited to a level appropriate to the capacity of the public access site that it supports when used in a manner that results in no net loss of shoreline ecological function,</u> and that any new parking that is developed would be harmonious with the surrounding neighborhood; c. Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area; d. Installing signs that indicate the public’s right of access and <u>the rules of use, and peanalties for misuse; encourage appropriate use;</u> e. Installing limited trail improvements and enhancements <u>in the street ends</u> to allow access to the water; f. <u>Protecting adjacent private property, individual privacy, and public safety; Minimizing the potential impacts associated with their use on adjacent private property;</u> and g. Developing a street ends plan that promotes <u>public shoreline waterfront</u>access <u>and public safety.</u> 	Note: underlined text in the comment letter did not accurately reflect the proposed changes to the policy. The comment underlines were modified to accurately reflect the proposed changes. Strikeouts were also added. This is a policy that is directly taken from the existing City Comprehensive plan. The Planning Commission will consider the proposed language. It should be noted that the goals and policies should be consistent with the regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations		

21 I	Shoreline Public Access 20.20.015 Pol. PA 9	Proposed Language: Waterfront Shoreline street ends or other <u>public</u> shoreline access should be planned in conjunction with the affected neighborhoods. However, the broader community should be notified during the public notification process.	This is a policy that is directly taken from the existing City Comprehensive plan.		
21 J	Shoreline Public Access 20.20.015 Pol. PA 11	Proposed Language: The public's Existing visual access to the City's shorelines from streets, paths, trails, and designated viewing areas should be conserved and enhanced <u>preserved</u> .	This is a policy that is directly taken from the existing City Comprehensive plan. The Planning Commission will consider the proposed language.		
21 K	Shoreline Public Access 20.20.015 Pol. PA 12	Proposed Language: Public views from the shoreline upland areas should be enhanced and conserved <u>preserved</u> while recognizing that enhancement <u>preservation</u> of views should not be necessarily construed to mean removal of vegetation. <i>The state document is about preservation of shorelines and not making things worse, while the wording in the City document appears to be aimed at "increasing" or "enhancing" public access, both physical and visual.</i>	This is a policy that is directly taken from the existing City Comprehensive plan.		
21 L	Shoreline Public Access 20.20.015 Pol. PA 13	Proposed Language: <u>On publicly owned lands</u> , promote a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points that increase the amount and diversity of opportunities for walking and chances for personal discoveries <u>while protecting private property rights, individual privacy, and public safety</u> .	The Planning Commission will consider the proposed language.		
22 M	Shoreline Public Access Element 20.20.015 & Public Access 20.30.035	Determinations of adequacy of public access should be based on individualized analysis of the water body to determine if a policy can be appropriately applied.	Please see #'s 20 and 21 above.		
22 N	Shoreline Public Access Element	Request that a plan for public access be created and added to the SMP appendix. It is a pro-active document element that addresses public concerns about what steps will be followed by the city when Public Access come up as a topic for consideration.	Public access opportunities to Burien's shoreline areas would entail expanding and improving facilities at existing sites. Any new shoreline public access sites must minimize effects on adjacent properties, minimize adverse impacts to ecologically sensitive areas and not create a public safety risk consistent with the proposed polices in the SMP. Public access is addressed in the SMP Inventory and Shoreline Analysis and Characterization reports.		
23	Public Access 20.30.035.2.e (pg IV-8)	The words 'historically significant community' should be to the added to the regulation. Comment was related to (SW 172 nd Street)	It is unclear what is intended by the comment and how it would affect the implementation of the regulation.		

24	Public Access 20.30.035.2.e (pg IV-8)	No net good will flow to the City through public access to Lake Burien. No net good will come to the Lake from providing public access. Harm will occur to Lake Burien through public access. Therefore, there is no rational reason the City could have to provide public access to Lake Burien. Including Lake Burien in the reaches that the City should attempt to provide public access is very problematic and jeopardizes the Lake and the City.	Please see # 20 above and # 25 below.		
25	Public Access 20.30.035.2.e (pg IV-8)	A major factor to Lake Burien's health and freshwater habitats is the low impact of human use. Opening up Lake Burien to unrestricted access threatens to impact the water quality of the lake as well as any unintended consequences downstream such as Miller Creek in Normandy Park. The Shoreline Master Program must play a key role in protecting the critical freshwater habitat of Lake Burien by not allowing unfettered, unregulated public access.	No new public access is being proposed. Public access is described in Policy section 20.30.035 as "Public access includes physical access or the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline is considered visual access." In addition, any access that may occur in the future should follow the policy direction contained in the shoreline master program.		
25 A	Public Access	There must be base line information on the health of Lake Burien before access is contemplated, the response table says no access is proposed however the City Manager was directed by a city council member to explore purchasing property for city use.	Monitoring of lake water quality is not currently conducted by the City. No public access is proposed to Lake Burien.		
26	Public Access 20.30.035.2.e (pg IV-8)	There was a drive to provide public access to all reaches of Burien shorelines without regard to impacts.	The issue of access was discussed during the Shoreline Advisory Committee meetings. There was a specific policy decision to address access as shown in the Shoreline Advisory Committee Shoreline Master Program draft. Many of the policies provided in the SMP are taken from the existing comprehensive plan. Eight (8) of the 14 goals and policies in the SMP are taken directly from the comprehensive plan and one (PA 5) was a comprehensive plan that was modified by the SAC.		
27	Public Access 20.20.015 20.30.035	Public access can be defined as physical or visual. Why is physical access being the only one discussed for Lake Burien?	Public access is described in section 20.30.035 as " <i>Public access includes <u>physical access</u> or the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline is considered <u>visual access</u>.</i> " Sections regulating access do not specifically state that access must be "physical".		
28	Public Access 20.35.035	Items a, b, and c need to be clarified that existing property along SW 172 nd Street is not impacted or disturbed in any way in order to provide physical or visual access to the water. Reference to "unused right-of-way" in item c should be removed from the document.	Comment noted.		
29	Public Access 20.20.015	Parking is limited at some access points and infringes on parking of existing residents.	There are existing policies in the comprehensive plan as well as the SMP that address provision of parking and the design of access areas as well as impacts to adjoining		

				properties. See PA 3, PA 4 and PA 8.		
	30	Public Access 20.20.015	This is not a plan, it serves as guidelines for any plans that are made. There needs to be assurance in the SMP that residents of affected communities are involved in the development of any plans and there needs to be assurances that there is sufficient funding for such plans.	Please see # 20 above.		
	30 A	Recreation element 20.20.020 Goal REC	Proposed Language: Develop a well-maintained, interconnected system of multi-functional parks, recreation facilities, and open spaces that: is attractive, safe, and accessible for all geographic regions and population segments within the City; supports the community's well-established neighborhoods and small town atmosphere; <u>protects private property rights</u> ; and results in <u>no net loss of shoreline ecological functions and processes.</u>	No objection to the proposed language.		
	30 B	Recreation element 20.20.020 Pol. REC 2	Proposed Language: Recreational developments should be located , designed and operated <u>in a manner consistent with the purpose of the environment designation in which they are located; and result in no net loss of to be compatible with, and minimize adverse impacts on,</u> environmental quality and valuable natural features, <u>as well as on or</u> adjacent surrounding land and water uses. Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and which leave natural areas undisturbed and protected.	The proposed language was placed in strikeout underline based on the original text of the SMP.		
	30 C	Recreation element 20.20.020 Pol. REC 4	Proposed Language: The City shall plan to provide, in coordination with other agencies, a range of park facilities <u>on public lands</u> that serve a variety of recreational and open space purposes. Such planning should use the following designations and guidelines to provide such diversity: 1. Mini or Pocket Park <i>Use Description:</i> Passive recreation or specialized facilities that may serve a concentrated or limited population such as children or senior citizens. <i>Service area:</i> Approximately 1/3 of a mile radius. <i>Size:</i> No minimum to approximately one acre. <i>Desirable Characteristics:</i> These parks should be in close proximity to dwellings and or other centers of activity. Mini parks should be designed for intensive use and should be accessible and visible from surrounding area. <i>Examples:</i> In Burien these types of parks are primarily private	An existing policy taken directly from the Comprehensive Plan.		

		<p>parcs consisting of beach access for adjacent subdivisions, view appreciation areas (bench or platform), picnic tables and trees in a small area, children’s play area, game tables, or planted areas. <i>Other Considerations:</i> Since maintenance costs of these smaller parks are high relative to their service areas, few jurisdictions are able to meet the desired quantity. This type of park is most suitable to provide unique local needs, such as public shoreline shore access, or as a consideration in the design of new development. The City should seek a variety of means for financing and maintaining mini-parks, including considering opportunities for community stewardship and grant or private funding.</p> <p>2. Regional Parks</p> <p><i>Use Description:</i> Areas of natural or ornamental quality on public property for outdoor recreation such as picnicking, boating, beach activities, swimming, and trails. Such parks may contain special amenities, facilities or features that attract people from throughout the surrounding region. Such facilities require extensive on-site parking and good access by automobile. <i>Service area:</i> Approximately 1/2 to 1 hour driving time. <i>Size:</i> Approximately 90 acres. <i>Desirable Characteristics:</i> Contiguous to or encompassing significant natural resources. <i>Examples:</i> Seahurst Park.</p> <p>3. Special Use Park</p> <p><i>Use Description:</i> Specialized or single-purpose recreational activities such as walking and bicycle trails, street ends, or areas that preserve buildings, sites or features of historical significance. <i>Service area:</i> Variable. <i>Size:</i> Depends on nature of facility. <i>Desirable Characteristics:</i> Compatibility with adjacent facilities and uses. <i>Examples:</i> Examples within Burien shoreline consist primarily of designated view points and historical markers, and publicly owned shoreline waterfront street ends (including those at SW 170th Pl., SW 163rd Pl., and at the intersection of Maplewild Ave. SW and SW 172nd St.).</p>			
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30 D	Recreation element 20.20.020 Pol. REC 10	Proposed Language: The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and /or scenic drives, should be encouraged <u>and must protect private property rights and individual privacy.</u>	The Planning Commission will consider the proposed language.		
30 E	Recreation element 20.20.020 Pol. REC 11	Proposed Language: Development of recreational <u>facility-facilities</u> along <u>publically owned</u> City shorelines should implement Low Impact Development techniques whenever feasible.	Low impact development techniques should be implemented regardless of location. No changes to the existing language are recommended.		
30 F	Circulation element 20.20.025 Goal CI	Proposed Language: Provide safe, reasonable, and adequate circulation systems in the shoreline area that will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline <u>and protecting private property rights and individual privacy.</u>	The proposed language creates a conflict that is inherent when providing necessary circulation systems (roads) and adjacent single-family or other noise sensitive uses.		
30 G	Circulation element 20.20.025 Pol. CI 3	Proposed Language: Provide and Preserve /or enhance <u>existing</u> physical and visual public access along shoreline public roads and trails when appropriate given topography, views, natural features, and surrounding land uses, <u>while protecting private property rights and individual privacy.</u>	Keep existing language, no changes recommended.	RCW 90.58.020	
30 H	Circulation element 20.20.025 Pol. CI 4	Proposed Language: Public transit systems should provide service to designated <u>public parks within the City shoreline public access points.</u> <i>(The designated access points on the saltwater shoreline [other than Seahurst Park] are so small that any public transit of people to these areas would overwhelm the capacity of the access points and result in harm to the shoreline. This is in direct opposition to the purpose of "no net loss" in the state program.)</i>	The Planning Commission will consider the proposed language.		
30 I	Circulation element 20.20.025 Pol. CI 6	Proposed Language: Parking in shoreline areas should directly serve a permitted shoreline use <u>private property owners within the shoreline area, and existing public access points. Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights and individual privacy.</u>	Residential single-family is a permitted shoreline use. Parking is necessary for other facilities, Seahurst Park is one example. Suggest adding the last portion to further clarify the amount of parking. <u>Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights and individual privacy.</u>		
30 J	Circulation element 20.20.025 Pol. CI 7	Proposed Language: Parking facilities should be located and designed to <u>protect private property rights and individual privacy; and to</u> minimize adverse impacts, including those related to: stormwater runoff; water quality; visual qualities; public access; and vegetation and habitat maintenance.	The Planning Commission will consider the proposed language.		

30 K	Circulation element 20.20.025 Pol. CI 8	Proposed Language: <u>Public parking facilities located on public land</u> should be planned to achieve optimum use, <u>result in no net loss of shoreline ecological function, and protect private property rights, individual privacy, and public safety.</u> Where possible, parking should serve more than one use.	The Planning Commission will consider the proposed language.		
30 L	Circulation element 20.20.025 Pol. CI 11	Proposed Language: Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology, <u>protects private property rights and individual privacy,</u> and minimizes conflicts with present and planned land uses.	The Planning Commission will consider the proposed language.		
31	Public Access 20.30.035[2.a]	This section references RCW 35.79.035 but this only concerns limitations on vacations of streets abutting bodies of water.	The RCW sets forth limitations on Cities with regard to vacations of rights-of-way abutting bodies of water. The emphasis of including the reference is on the phrase “maintain, enhance and preserve...access”. It provides a connection to the state law regarding any consideration of vacating the public rights-of-ways abutting bodies of water.		
31 A	Public Access 20.30.035[2.d]	Revise the section as follows: d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses, and individual single family residences and subdivisions of less <u>not a part of development planned for more than four parcels.</u>	The language was changed to make the regulation more understandable. The language as shown in the WAC is somewhat difficult to interpret.	WAC 173-26-221[4.d.iii]	
31 B	Public Access 20.30.035 (1)	Proposed Language: 1. Policies a. Public access to shoreline areas <u>on public lands must protect private property rights, public safety, and individual privacy.</u> should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy. b. Public access <u>on private lands</u> should be provided as close as possible to the water’s edge <u>with no net loss of shoreline ecological function.</u> without adversely affecting a critical area such as a wetland. c. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction. <u>Impacts to existing views from public property or substantial numbers of residences should be minimized by provisions such as maximum height limits, setbacks, and view corridors.</u>	The Planning Commission will consider the proposed language.		

			<i>From page 67, item (iv) of WA State Shoreline Master Program Guidelines)</i>			
31 C	Public Access 20.30.035 (2)	<p>Proposed Language: 2. Regulations</p> <p>a. Public access provided by shoreline street ends, rights-of-way, and other public lands shall provide, maintain, enhance and preserve visual access to the water and shoreline in accordance with RCW 35.79.035. Vacation of streets or street ends abutting bodies of water must be in compliance with RCW 35.79.035.</p> <p><i>(The only mention of right of way in the state document relates to railroad ROW, ROW related to commercial or industrial use, and location of utilities in ROW)</i></p> <p>b. Existing Visual access to outstanding scenic vistas areas shall be preserved provided with the provision of roadside pullovers or broadening of road shoulders.</p> <p>c. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.</p> <p><i>(There is no mention of unused right of way in the state plan. Once again, wording suggesting the take-over of private property for public use – NOT the intent of the state shoreline management program.)</i></p> <p>d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses, individual single family residences and subdivisions of less than four <u>five</u> parcels.</p> <p><i>(Another example of wording suggesting the take-over of private property for public use – NOT the intent of the state shoreline management program.)</i></p> <p>e. Same</p> <p>f. Same</p> <p>g. Same</p> <p>h. Required public access sites <u>on public lands</u> shall be fully developed and available for public use at the time of occupancy or use of the development or activity.</p> <p>i. Same</p> <p>j. Same</p>	<p>Item a - The Planning Commission will consider the proposed language.</p> <p>Item b – The Planning Commission will consider the proposed language.</p> <p>Item c - The Planning Commission will consider the proposed language.</p> <p>Response to comment; A road or right-of-way is public land and therefore there would be no “take over” of private property.</p> <p>Item d – The proposed language is very clear and should be used. It is also consistent with the WAC.</p> <p>Item h - No changes are recommended.</p> <p>It should be noted that the goals and policies should be consistent with the regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations.</p>			
31 D	Public Access 20.30.085[2.h]	Proposed Language: Delete 20.30.085[2.h] and replace with the following language.	The Planning Commission may consider this restriction.			

			<p><u>“Public boating and swimming shall be prohibited on Lake Burien until such time as the city has defined and implemented a series of controls to assure</u></p> <ol style="list-style-type: none"> 1) <u>No invasive species will ever be introduced into the lake.</u> 2) <u>Patrols, funded by the city, monitor the lake assuring no trespass of lands or vandalism of property.</u> 			
	31 E	Public Access	There is not a document or policy that clearly explains the steps, studies and checklist to be completed to provide access. In addition there should be a plan for public access and how monitoring is going to take place. A table was provided to showing an example public access plan table that could be included as an appendix. See comment from C Edgar, dated 2/9/10, page 6	Comment noted. Any public access would proceed through the appropriate permit review process and apply all applicable environmental and shoreline regulations. A map of the access areas is included in the shoreline inventory, which is another method to illustrate existing public access points. It should be noted that the inventory primarily focused on physical access points.		
	32	Inventory, Flood Hazard Reduction 20.30.030	Section 10.5 Lake Burien in on in the 100-year flood plain and there are no landslide or seismic hazards associated with the lake therefore there is no reason to reference the weir at the lake outlet. Item F in 20.30.030 should be removed.	<p>The weir exists within shoreline jurisdiction and must be periodically maintained. It is appropriate to include this in the SMP.</p> <p>The proposed language removed the notion of the City having an obligation to maintain the weir. The change from the SAC draft to the current version was following discussion with the city legal department. The Lake residents have stated that it is their desire to maintain the weir and this policy change would remove any reference to city having an obligation to do so, it also removes the notion that the City will use this an a method to gain access to the lake.</p>		
X	33 (FW)	Shoreline Vegetation Conservation 20.30.040	<p>There is no general statement that vegetation removal in the buffer is not allowed without shoreline review. More language is needed to cover different vegetation alteration situations. Suggested Language:</p> <p><i>b. Alterations to vegetation within shoreline jurisdiction <u>(except for the maintenance of existing or approved conditions) are not allowed without shoreline review. When allowed, alterations to the vegetation shall result in no net loss of shoreline ecological value or function.</u></i></p> <p><i>c. Alterations within the shoreline vegetation conservation buffer shall <u>provide mitigation for new impacts of the development, and shall only be allowed through approval of a vegetation management plan. Mitigation should take the form of vegetation enhancement and improvements to ecological functions.</u> The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40. <u>At a minimum, mitigation shall include:</u></i></p> <p><i>i. <u>Revegetation of degraded buffer areas within 20 feet of the ordinary highwater mark (or top of shore armoring if applicable) or wetland edge with dense native vegetation meeting the standards</u></i></p>	<p>Vegetation alterations require review pursuant to 20.30.040(2.b).</p> <p>There appears to be a mistake in the outline numbering used in the comment letter. b is a, c is b. The correct nomenclature is used below</p> <ol style="list-style-type: none"> a. Staff/consultant can support this clarification. b. The suggested language implies that all alterations will be associated with new development. This may not always be the case. If mitigation is required it should be accordance with other provisions in the SMP such as 20.30.010[2.c], impact mitigation and 20.30.095[2.a] Residential Development. Suggest the following changes. <p><i>Alterations within the shoreline vegetation conservation buffer shall <u>provide mitigation for new impacts of the development, and shall only be allowed through approval of a vegetation management plan. If mitigation of impacts is necessary it should take the form of vegetation enhancement and improvements to ecological functions.</u> The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40.</i></p> <p>No suggested changes to the remainder of the section.</p>		

			<p><u>of paragraph (b)(iii-iv), below. The Administrator may require wider widths or other improvements to mitigate greater impacts.</u></p> <p><u>ii. The above revegetation area may be modified using area averaging when existing structures encroach into the 20 foot width, when access through the area to waterfront facilities is needed, or when water-dependent activities need to take place in the area.</u></p> <p>d. Within a shoreline riparian buffer as set forth in BMC 20.30.050 alterations shall comply with the following;</p> <p>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</p> <p>ii. At least 75% of the buffer area shall be <u>revegetated, where it is degraded;</u></p> <p>and</p> <p>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions <u>rather than a landscaped yard;</u> and</p> <p>iv. Vegetation <u>planting areas</u> shall consist of <u>a</u> mix of native trees, shrubs and ground cover – <u>lawn is not an acceptable groundcover;</u> <u>and</u></p> <p><u>v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and</u></p>	<p>c. These are good clarifications however references too lawn not being an acceptable ground cover is not necessary as it is prohibited by section vii. Agree that section v. should be removed, this is overly restrictive in that any alteration cannot remove vegetation areas, this is may not be possible in some development scenarios. The section is suggested to read as follows:</p> <p>d. Within a shoreline riparian buffer as set forth in BMC 20.30.050 alterations shall comply with the following;</p> <p>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</p> <p>ii. At least 75% of the buffer area shall be <u>revegetated, where it is degraded;</u> and</p> <p>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions <u>rather than a landscaped yard;</u> and</p> <p>iv. Vegetation <u>planting areas</u> shall consist of <u>a</u> mix of native trees, shrubs and ground cover – <u>lawn is not an acceptable groundcover;</u> and</p> <p><u>v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and</u></p> <p>v. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</p> <p>vi. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</p> <p>vii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality.</p>		
34	Conservancy Park/Restoration Pol. REC 9 (pg II-7)	Seahurst Park North Seawall Removal – could debris be place at 60-80’ depth off park as an artificial reef? Ex: reef of Des Moines Marina/Pier was enhanced as a marine life environment	Seahurst Park has an approved Master Plan. The plan does not include an artificial reef and a component however when the plan is updated or reconsidered this project could be considered.			
35	Dimensional Standards 20.30.050 (Fig. 5) (pg IV-12)	Lots adjacent to Lake Burien should be rezoned back to 12,000 square foot minimum lot size to protect the health of the lake or a method should be created to limit development based on shoreline footage.	Pursuant to WAC 17-26-211 (3) “local comprehensive plans constitute the underlying framework within which master program provisions should fit.” Therefore zoning and comprehensive plan changes were not included in the scope of the update process.	WAC 17-26-211 (3)		
36 (FW)	Dimensional Standards 20.30.050 (Figure 5) Shoreline Buffers 20.30.055 (1)	The buffer width for the Urban Conservancy area should be a science based buffer which is at least 100 feet wide (150 feet preferred).	We could support this change; however future developments in Seahurst Park will be the most affected. It appears only one SFR would be impacted, which is located south of the Park.			
37	Restoration	There needs to be a funded monitoring program to watch the water quality/fresh-water habitat on Lake Burien. None is	Suggested that this could be included, but need to identify the specifics of what should be monitored, by whom and if there is a funding source.			

			currently written into the SMP.			
X	38 (FW)	Shoreline Buffers 20.30.055	There doesn't appear to be a policy for how vegetation is to be protected. A policy needs to be provided or supplemented that provides a foundation for the vegetation and setback regulations, and describes the SMP's strategy for riparian vegetation	A policy could be added to clarify the relationship between vegetation protection and the associated strategy. Please see the suggested policy language below. c. <u>Vegetation within the city shoreline areas should be enhanced over time to provide a greater level of ecological functions, human safety, and property protection. This should be accomplished by managing alterations within shoreline jurisdiction and implementing vegetation management standards that will maintain or enhance the ecological functions. Emphasis on vegetation maintenance and enhancement should be focused in degraded areas and areas that are most beneficial to shoreline ecological functions.</u>		
	39 (FW)	Bulkheads and Other Shoreline Stabilization Structures 20.30.070	Shore stabilization standards should be in the general standards section with other environmental protection standards. A project proponent, and perhaps even staff, may not normally go the shore stabilization section for find standards about avoiding shore stabilization.	Comment noted but no changes are recommended.		
	39 A	Bulkheads and Other Shoreline Stabilization Structures 20.30.070 & 20.30.075	Requests that the following be added: A. <u>Normal maintenance or repair of existing shoreline components (including damage by accident, fire, or elements) shall be permitted.</u> B. <u>Shoreline structures shall be designed to minimize the transmission of wave energy.</u> (from Medina)	Item A - Please see 20.35.025(4.B) Item B – 20.30.070 [2.f] could be modified to include the proposed language. Staff would support this change.		
	40 (FW)	Docks, Piers and Floats 20.30.075	The policies and regulations in Section 20.30.075 do not refer to docks and piers together consistently... These facilities need to be treated the same, especially for standards that allow or don't allow them.	The code should be amended to include both facilities having similar regulations.		
	41 (FW)	Docks, Piers and Floats 20.30.075 Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045 (FW)	The issue of repair and replacement is not addressed as it relates to bringing piers and docks into conformance with the code as substantial parts are replaced over time. We recommend that you supplement the materials to fully address the issues. The City of Kirkland and City of Kent have thorough piers/docks provisions that we recommend you use as templates.	We could research additional guidance if requested by the Planning Commission. The Shoreline Advisory Committee did not discuss this.		
	42	Dimensional Standards for Shoreline	Saltwater reaches have been treated similar to fresh water reaches.	Saltwater reaches were treated differently than freshwater reaches. Saltwater and freshwater reaches have different buffer widths, 50 feet for saltwater and 30 feet for fresh water.		

		Development 20.30.050 & Shoreline Buffers 20.30.055				
	43	Dimensional Standards for Shoreline Development 20.30.050 & Shoreline Buffers 20.30.055	Requesting that the issue of reduced lot size and buffers around the lake need to be analyzed to ensure there is no net loss of ecological functions pursuant to WAC 173-26-221 (2.b.iv), and c, l and A, B, C, D and WAC 173-26-201 (2.e). Request that this issue be addressed in 20.30.050 and 20.30.055 or as a zoning issue.	See # 35 above, responding to zoning and comprehensive plan land use related comment. In addition see response to potential conflicting policy goals of the SMA and uses adjacent to shorelines (173-26-176[2]). The Act's policy objective is to achieve both shoreline utilization and protection.		
	44 (FW)	Docks, Piers and Floats 20.30.075	The piers/docks section needs to address the problem of the proliferation of boating structures, as required by the SMP Guidelines; 8 and we recommend adding specifics to better guide how it's done. This is a primary issue for us, as it is needed to protect the shoreline functions. We recommend the following new regulation to reduce proliferation through a comprehensive strategy that addresses all aspects of piers and docks. Avoid the proliferation of pier/dock & boating structures through the use of mitigation sequencing, using the following preference criteria: 1. New single family residential subdivisions may only use shared or community facilities. Such facilities should have limits on their size, and single-user structures are not allowed. 2. For existing single family residential lots: · Non-waterfront lots may not have boating structures, but rather must use a marina, community, or public facility. · Waterfront lots first should try to share nearby existing facilities or use nearby public facilities. When that is not possible, new facilities shall be shared with adjacent or nearby lots that do not have facilities, if there are any present. Cost sharing or late-comer agreements, similar to those used for shared roads, driveways, and utilities shall be established as necessary. 3. Multi-family development is not water-dependant, and may not have such structures, unless permitted as a Boating Facility use.	1. Staff and consultant do not object to including this language. 2. Staff and consultant support the inclusion of this language. 3. Staff and consultant support the inclusion of this language.		
X	45 (FW)	Residential Development 20.30.095	The residential standards need to be supplemented to address accessory uses and facilities, such as utilities, transportation, recreation, etc. Mitigation sequencing needs to be built into these provisions: avoid first, then minimize, then compensate. We recommend that: <ul style="list-style-type: none"> -Non-water-dependent facilities (storage sheds, decks, driveways, utility lines, entertainment decks/patios) should 	These appear to be good clarifications and should be included in the document. g. Accessory structures. Accessory structures that are not normal appurtenances as defined at the end of this chapter must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural		

			<p>meet the buffer/setback.</p> <ul style="list-style-type: none"> -Only water dependent facilities (crossings, boat facilities, etc.) should be within the setback/buffer. -Waterfront facilities should be co-located with each other to reduce the footprint of the facilities. -Water-dependent facilities should be minimized, rather than maximized (smaller dock rather than larger dock, boat slip rather than boat garage, pocket swim area rather than frontage-wide swim area) 	<p>features.</p> <p>Accessory structures shall not be located in required shoreline setbacks where feasible and where a shoreline location is not necessary, and shall be prohibited over the water unless clearly water-dependent such as moorage (docks and floats) for recreational or personal use.</p>		
	46 (FW)	Residential Development 20.30.095[c]	The Common Line Setback and buffer reduction process (Regulation (c)) allows buffers smaller than those in the buffer table. However, this provision needs to be clear in reminding the reader that they still must meet the vegetation conservation and mitigation standards.	Clarification could be added but it may not be needed, the development regulations apply and require vegetation management and that development comply with the no net loss standard.		
X	47 (FW)	Residential Development 20.30.095[c]	The common line setback provision needs to be limited to only the Residential environment, where the situations it is designed for are prevalent.	<p>The code section specifically references “residential development”. It however could be expressed more clearly and directly.</p> <p>d. Common-line riparian buffer and building setback standards. Riparian buffer and building setback standards for single-family primary residential structures may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve reduced buffer and setback for residential development under the following conditions:</p>		Direction requested for 3/9/10 meeting.
	48	Residential Development 20.30.095(2.C.ii)	This section should not make a difference if the shoreline resident lives next to a vacant lot. The proposed restrictions for reconstruction next to an empty lot would leave little or no property upon which to rebuild for many property owners. Undeveloped green space should not be a punishment to current adjacent homeowners. They should be allowed to rebuild after a disaster within their current existing footprint, including deck overhangs beyond existing foundation or pilings supporting decks.	The City proposed code allows the reconstruction of non-conforming structures in their legally established location (see # 52 below). The common line setback line scenario that is provided would only apply when a structure is proposed to constructed or expanded. In addition, there always is an opportunity to apply for a shoreline variance, however the project must meet the applicable criteria.		
X	49 (FW)	Residential Development 20.30.095[2.i & j]	<p>This section needs to strengthen the proposed requirements for sharing facilities, otherwise it will not happen. This is part of the first and second steps in mitigation sequencing – avoidance and minimization of shoreline development.</p> <p>Suggested Language: <i>Stairs and trams to the beach are allowed, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use</i></p>	<p>The City could support this language, although it is very unlikely that adjacent property owners will share a beach tram or stairs (too many legal issues could be involved).</p> <p>Staff recommends the following language. <i>Stairs and trams to the beach are allowed, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use and the possibility of a multiple-owner or</i></p>		

			<u>and the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and is not feasible. New facilities shall be shared with adjacent properties that do not already have such facilities, and shall include shared maintenance easements and agreements as necessary. Only one stair or tram system is allowed – duplicate facilities are not allowed.</u>	<u>multiple-user facility has been thoroughly investigated and is not feasible. New facilities shall be shared with adjacent properties that do not already have such facilities, and shall include shared maintenance easements and agreements as necessary. Only one stair or tram system is allowed for each primary residential structure – duplicate facilities are not allowed.</u>		
	49 A	SMP Applicability 20.30.005	The phrase “the plan shall be liberally construed... exemptions shall be narrowly construed” leads to value judgements, which could become overbearing and opens the city and its citizens to the possible abuse of government authority.	This is a requirement found in the SMA, see RCW 90.58.900.	90.58.900	
	50 (FW)	Exemptions from Shoreline Substantial Development Permits 20.35.025[4.B]	The exemption for Repair and Maintenance includes provisions for when replacement is an acceptable means of repair. A statement should be included: “ <u>The need for replacement resulting from a neglect of maintenance and repair is not considered a common method of repair.</u> ”	Staff and the consultant have no objections to the proposed language. CANT’ CHANGE WAC, OK but make sure it is noted as different from WAC	173-27-040(2)(b)	2/23/10 Include the proposed language.
	51 (FW)	Letter of Exemption 20.35.030.1	Section 20.35.030.1 Letter of Exemption, General states: “Applicants for other permits or approvals must obtain a written letter of exemption.” We recommend that for ANY development project subject to the SMA that might qualify for an exemption, the city should document what is being authorized in a Letter of Exemption. This provides documentation of compliance to the applicant. It also helps the city track the development occurring on its shorelines. So we recommend that “Applicants for other permits or approvals” be deleted and “ <u>Persons requesting an exemption</u> ” be substituted in Section 20.35.030.1.	The City has no objection to the proposed change in language.	173-27-050(1)	
X	52	Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045(3) 20.35.045(4)	Foundation walls should include allowing existing homes and their deck structures to be rebuilt to set overhang beyond the existing deck piers. If damage occurs to the residence, property owner should be allowed to rebuild exactly as structure was before damage. A policy should be added to SMP that Burien will not see a re-build as a ‘take-away’ & that reconstruction is not viewed as a harm to the community’s ‘no net loss’ goal.	The existing language of 20.35.045 could be improved to clarify the intent of the regulations, which is to allow reconstruction of legally established structures in the same location so long as there is no net loss of ecological functions. Non-conformance thresholds were taken from the existing non-conforming chapter in the Burien zoning code. The decision to use the language in the draft SMP was to treat non-conformances citywide the same. Consistency with other local regulations was the approach. Consistency avoids confusion on the issue on nonconformance. Please see BMC 19.55.030[3.B], for the source used as a basis for determining the non-conformance threshold. It contains the 50% threshold. It should also be noted that the existing SMP contains the same 50% threshold, however it is based on market value.	173-27-080	2/23/10 Include language. And Please see table outlining non-conforming thresholds for approved SMP’s.

				<p>Proposed Revision</p> <p>4. Reconstruction. A nonconforming structure which is destroyed, deteriorated, or damaged more than 50% of the assessed value of the <i>nonconforming structure</i> as established by the most current county assessor’s tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with existing regulations and the following:</p> <ol style="list-style-type: none"> The structure must be located landward of the ordinary high water mark. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program. The remodel or expansion reconstruction shall not cause adverse impacts to shoreline ecological functions or processes. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into the riparian buffer, or the minimum required side yard setbacks require a variance. An application is filed to reconstruct the structure within 18 months of the date of the damage. <p>RCW 90.58.100 6. Provides protection to SFR’s and appurtenant structures.</p>		
X	52 A	Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045(4)	<p>Proposed Language:</p> <p>4. A nonconforming structure which is destroyed, deteriorated, or damaged by more than 50% of the assessed value of the nonconforming structure as established by the most current county assessor’s tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed <u>within the original footprint of the destroyed structure only insofar as it is consistent with existing regulations and the following:</u></p> <p><i>This issue is CRITICAL because it will affect the ability to finance a loan to rebuild and the ability to obtain insurance on the house/property. Home Lenders will disallow mortgage financing if security for the loan (the house) cannot be rebuilt; and the inability to obtain property insurance will eliminate the ability to refinance. In effect, the City is potentially displacing homeowners if this is allowed to stand.</i></p>	<p>The proposed language does not preclude the ability for a single family home to be reconstructed.</p> <p>Please see table outlining non-conforming thresholds for approved SMP’s. Provided in 3/9/10 packet.</p>		
	52 B	Alteration or	Concern was expressed regarding the language relating to	The suggested language should add further clarity and align with terminology used in		2/23/10

X		Reconstruction of Nonconforming Structures or Uses 20.35.045(3) 20.35.045(4)	expansions and the language was unclear.	<p>the zoning code.</p> <p>20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses</p> <p>5. Expansion. Enlargement or expansion of single family residences within the riparian buffer ore building setback less than 500 square feet of roof area building coverage may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of roof area building coverage by the addition of space to the primary structure or by the addition of normal appurtenances as defined in <u>Section 20.40</u> 20.40.000 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:</p> <p>The existing definition of building coverage in the zoning code is as follows;</p> <p>BMC 19.10.050 <u>Building coverage</u> – The percentage of the area of a <i>lot</i> that is covered by the total horizontal surface area of the roof of a <i>building</i>.</p>		Include proposed language. Staff proposes additional language.
	53	Stormwater	Burien should make a policy to regulate grass and lawns for all Burien property owners, not just property owners on the shoreline. Most stormwater run-off flows to the Puget Sound and all property owners should be treated equally.	The jurisdiction of the Shoreline Master Program is the upland area within 200' of the ordinary high water mark as well as any associated wetlands and therefore this document can not regulate all other properties in Burien.		
	54	Shoreline Advisory Committee	The Citizen's Advisory Council (CAC) composition and affiliations were not documented in the SMP nor the notes. There was a lack of proper notion of consensus of people who live in Burien.	The comment has been noted and an acknowledgements section was always envisioned and will be added to the Shoreline Master Program in future drafts.		
	55	Process	Public participation promised was not delivered by City planner et al. Lack of promised public participations during the early stage of the process.	There were several opportunities and more opportunities to come for public participation. There were two open houses, nine (9) Shoreline Advisory Committee meetings and a public hearing with the Planning Commission. There will be additional public hearings with the City Council, as well as a public hearing with the Washington State Department of Ecology.		
	56	Process	Poor method of documenting what was said in the meetings to the point that much of the important stuff was lost and much was misquoted.	Meeting summaries were compiled at each Shoreline Advisory Committee. After the meeting, the summaries were prepared and included in the next meeting's packet for the Shoreline Advisory Committee to review, comment on, and approve/disapprove. All meeting summaries were approved by the Committee.		
	57	Technical documents	All decisions about the use of critical areas are not required to be based on the Best Available Science about the critical area. Not once during the process of preparing the SMP Update has the Lake Steward for Lake Burien been contacted by the City of information about the lake with regard to: water quality practices, noxious	There were presentations to the Shoreline Advisory Committee on the shoreline inventory to specifically ensure that it accurately captured the best information available. The inventory and shoreline characterization were vetted during that process. In addition other attendees that had opportunities to review the inventory and characterization reports to pursue accuracy and thoroughness of the documents.		

			weed control, studies on the lake residents have been involved in, flood issues, operational aspects of the weir, threatened species that use the lake, habitat areas used by threatened species, rules that neighbors follow that protects the lake, historical data about the lake, or a basic tour of the lake.	The Lake Steward was a member of the Shoreline Advisory Committee.		
	57 A	Technical documents	The three technical documents have incorrect or incomplete information. Please see letter from Chestine Edgar, dated February 9, 2010, Topic # 57 that contain 9 items	The City will issue an errata sheet.		
	58	Land use	The saltwater waterfront lot size on the shorelines of Puget Sound is zoned RS-12,000. The freshwater waterfront lot size on the shorelines of Lake Burien is zoned as RS-7,200. As a result, the city is allowing that the land around Lake Burien develop to a higher density that it is requiring for land development on the Puget Sound. Since small, freshwater habitats should be afforded greater, if not equal protection. This seems to be just the opposite and contrary to the intent of the SMP to protect the ecological function of Lake Burien's shoreline.	Whether the zone is RS-12,000 or RS 7,200, the Shoreline Master Program requires all development to obtain no net loss. In requiring no net loss associated with development, the ecological functions of all shorelines are being protected. Please also see # 35 above.		
	59	Inventory 1.2	Section 1.2 of the inventory refers to supporting sources in the Bibliography, Section 7, Appendix A. There is a stated lack of reference for Lake Burien reach. Lacking evidence of any and every kind is not a scientific baseline as required by law, practice, and precedence.	The SMP inventory was accepted by Ecology as adequate to establish the baseline conditions. The inventory research also included King County lake information for the Lake Burien, as well as, the Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake. From RMI		
	60	Inventory 1.4	Section 1.4 of the inventory contains a typographical error for perimeter measurement of the lake. Source of the measurement is not cited.	Comment noted. The Restoration Plan, dated March 2009, Table 1 has been revised to include the corrected dimensions and conversion for the perimeter of Lake Burien.		
	61	Inventory 2.1	Section 2.1 a statement challenging the studies and methods that resulted in the assessment for Lake Burien an all reaches of Burien. The studies referenced are too general and is not use full as a base line for impact assessment.	The SMP inventory was accepted by Ecology as adequate to establish the baseline conditions.		
	62	Inventory 10.5	Section 10.5 there are no document at all on the wildlife, resident or migratory of Lake Burien, there are no documents for flora or fauna noted in this or any document associated with the SMP of are of any detail that would allow for baseline adjudication against future status and conditions.	King County lake information for the Lake Burien watershed was studied, including water quality data and aquatic plants and fish. In addition, the Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake was researched and evaluated. From RMI		
	63	Inventory	The shoreline inventory is incomplete because WAC 173-26-201 (2) a., states that relevant parties should be contacted for available information. The Lake Steward was not contacted for any information about the lake.	The Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake was researched and evaluated. A representative of the club was a regularly attending member of the Shoreline Advisory Committee.		
	64	Inventory	There were also no site visits to confirm the conditions and the inventory is inaccurate and incomplete with regard to fish and	The consultant team visited the site several times in 2007 and 2008 to confirm site conditions.		

			wildlife habitat, migratory species and vegetation.			
	64 A	Technical documentation	Source information was not properly documented in the bibliographies	The bibliographies document the primary sources used.		
	65	Inventory Wetland Category	The section on Wetlands shows Lake Burien as Category 2 with a 100 foot buffer and the SMP has a 30 foot setback with a 15 foot buffer.	This was a typographical error in the inventory. The Cumulative Impacts Analysis evaluated the lake as a category 4 wetland and utilized the 30 foot buffer in the evaluation.		
	65 A	Shoreline Analysis and Characterization Wetland Category	Page 17 of this document also lists the lake as a Category 2 wetland rather than a Category 4. The trail of data, analysis and conclusions should be consistent to ensure the legality and legitimacy of the SMP document.	This correction will be made.		
	66	Inventory	There is no connection made between the lake outlet waters and the Miller/Walker stream basin. Request that additional scientific information and management recommendations be added to the Shoreline Inventory per WAC 173-26-201, (2)(a)(i-iii).	The consultant team did evaluate the Miller/Walker stream basin and Figure 2 in the shoreline inventory depicts the hydrologic connection.		
	67	Public Access Policies ALL 5 and PA 3	Request that wording the Policies ALL 5 and PA 3 be amended to correctly define public access and include the requirement to protect private property and public safety.	Comment noted these policies are the consensus of the SAC and the Planning Commission may consider amendments to address the comment. There is an existing goal and policy that addresses the topics of protection of private property and public safety (Goal PA, Policies PA 3, REC 6)		
	68	Recreation Policy REC 3	SMP policy REC 3 should have the word "public" inserted to reflect the correct area being discussed.	Comment noted however the policy currently refers to both private and public lands. The Planning Commission may consider amendments to address the comment.		
	69	Recreation Policy REC 2	SMP policy REC 2 should be changed to read "Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and which leave the natural areas undisturbed and protected with no net loss of ecological functions. "	Staff and the consultant have no objection to the proposed language.		
	70	20.20.030 Policy USE 8	Request that this policy be re-examined with regard to Lake Burien.	Comment noted this policy reflects the consensus of the SAC and could be considered by the Planning Commission.		
	71	20.20.030 Policy USE 17	Request that the term "joint-use activities" be better defined.	Comment noted, no changes recommended.		
	72	Stormwater	There are claims that there are holding tanks that protect the lake form impervious surface runoff and non point pollution and the diagrams in the SMP do not match these claims.	The diagrams in the appendix are based on the best available information in the city data base. Private stormwater detention tanks, if they exist, may not be captured at this time in the city stormwater system inventory.		
	73	Inventory and Cumulative Impact Analysis	There is a high level of re-development potential around the lake due to its current zoning. This development potential was not adequately captured in the inventory or cumulative impacts analysis.	See # 35 above		
	74	Cumulative Impact Study	The Cumulative Impacts Analysis is incomplete in does not examine the impact of redevelopment in the Lake Burien area based on zoning and a 30 foot rather than a 100 foot buffer. An improved study is needed to reflect the impact of new	Evaluated on pages 28 and 34 of the August 2009 Cumulative Impacts Analysis.		

			development, increased access.			
74 A	Cumulative Impact Study	Requesting that the Cumulative Impact Analysis (CIA), the Shoreline Analysis and Characterization, and the Shoreline Inventory be corrected with regard to Lake Burien and that the discussion item #3 in the CIA (Foreseeable Future Development of the Shoreline) be reanalyze to address the impact of the subdividing the current lot to 7,200 sq. ft. on Lake Burien.	The potential for redevelopment along Lake Burien is discussed on page 28 of the Cumulative Impacts Analysis. A 30 foot buffer and 15 foot building setback from the ordinary high water mark would apply to any development.			
75	Best available science. 19.40.060 (pg 40-4)	Best available science pursuant to 19.40.060 (pg 40-4) appears to be lacking.	Best available science is described in WAC 173-26-201 (2) (a) as: "Base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available.			
75 A	Best available science. Policy CON 9 and CON 27	The city requires use of "Best available science" pursuant to CON 9 but it is not consistent with CON 27. CON 27 should be updated to reference the 2008 King County Comprehensive Plan, Chapter 4. Section E-487, Page 4-58.	CON 27 was taken word for word from existing comprehensive plan policy E V 4.3 pg. 2-31. KAREN			
76	Existing Structures	Nothing in the document should be allowed to negatively impact property or existing structures that were present before this act is approved.	Comment noted.			
77	Implementation	The City must also follow its own rules in shorelines.	Comment noted.			
78	No Net Loss	What date is 'no net loss' measured from?	Generally, 'no net loss' is measured using the shoreline inventory document, which was completed in March 2008.			
78 A	Inventory	The standard of "no net loss" cannot be measured if the inventory in incorrect or missing data. Once corrected the conclusions need to be re-examined based on the corrected information.	Monitoring for no net loss will be part of the implementation of the SMP.			
79	Land Use/Zoning	Fresh water is a very scarce and valuable resource. Freshwater, wetlands, and aquifer recharge areas need protection from over-development if they are to remain clean and useable for things. At some point in time in order to satisfy King County's density requirements, the City of Burien rezoned the land surrounding Lake Burien to the lot size of 7,200 square feet without thoroughly analyzing the impact it would have to this critical area.	Past Comprehensive Plan land-use decisions are not part of the scope of this Shoreline Master Program update. See #35 above.			
80	Lake Burien	The City should remove all language associated to Lake Burien, relying instead on the rest of the regulations of the City, such as the Critical Areas Ordinance and building codes. All notion of controlling Lake Burien through the Shoreline Master program should be removed. The private property owners on the lake will always take action in the best possible health of the lake, its shorelines, and the flora and fauna in and around it.	The Shoreline Management Act and associated update guidelines require the City to apply the provisions within the shoreline jurisdiction which includes Lake Burien. Therefore removing any reference to the Lake Burien would not be consistent with the Washington State Shoreline Management Act or the Shoreline Master Program Update Guidelines.			
81	Restoration	What are the restoration projects beyond Eagle Landing and Seahurst Park? What is the process of adding new projects? What is the process for clarifying the intent of the overly generalized	Please see the restoration appendix. Typically city projects are evaluated and prioritized through the Capital Improvement Program process which is done in coordination with adoption of the city budget.			

			verbiage used in the direction statements which appear throughout the document?			
82	Monitoring	How will the City of Burien be able to prove to the State of Washington that the regulations being followed are helping the goals to be realized? A statement could be added "The City of Burien will establish an interagency agreement with the UW or another such expert scientific agency to proactively design and conduct an ongoing and comprehensive science-based approach that monitors the no net loss of shoreline ecological functions and process while balancing private and public interests.	Permitting will track changes and modifications.			
83	Public Access	Concern regarding public access and how many newly developed houses generate public access.	A detailed study has not been done to determine exactly how many access points could be possible. The number of possible access points is dependent greatly on the development proposal and how lots are configured.			
84	General Comment	How could the SAC reset the priorities of for the Burien SMP above those of the State?	Comment noted. Local jurisdictions may choose as a part of their planning effort to address issues of local concern.			
85	Process	Request a disk of the SMP available for free use.	Digital recordings of the Planning Commission have been posted on the city web site.			
86	Public Access	Concern about private property liability when public access points are opened to unregulated public access.	See RCW 4.24.210.			
87	Definitions	There are references to the Director and Shoreline Administrator. So that it is clear that who these persons are I am requesting the following description be added <u>The City Manager shall designate a responsible official to administer the Shoreline Master Program who shall perform all the duties as ascribed to the responsible official in this regulation. The responsible official shall administer the shoreline permit and notification systems, and shall be responsible for coordinating the administration of shoreline regulations with zoning enforcement, building permits, and all other regulation governing land use and development in the City.</u> <u>The responsible official shall be familiar with regulatory procedures pertaining to shorelines and their use, and, within the limits of his/her authority, shall cooperate with other jurisdictions and agencies in the administration of these procedures. Permit issued under the provision of this Shoreline Program shall be coordinated with other land use and development regulatory procedures of the City. The responsible official shall establish means to advise all persons applying for any development authorization of the need to consider possible impacts to the shoreline. It is the intent of the City, consistent with its regulatory</u>	The only use of the term "Director" is in 20.30.040[2.g] – minimum vegetation management plans standards, 20.35.010 - Permit decisions and 20.35.060-compliance and enforcement, which are appropriate actions/duties of the Director of Community Development.			

			<u>obligations, to simplify and facilitate the processing of shoreline permits and exemptions.</u> (from Medina)			
	88	SMP Implementation	Consider ways to engage the public as partners in implementation of the SMP. Establishing regulations that prohibit or limit the ability to maintain the existing dwellings is not a formula of cooperation. The new SMP can be used to educate shoreline owners and promote environmental management, it also provides a good opportunity for creative program implementation.	See public education related policies REC 3 , CON 10, CON 11, CON 14, CON 15 and CON 32.		
	89	Ecological Functions	The definition of “ecological function” in not lean and opens the door for interpretation.	See the guidelines 173-26-201[3.d.C] which set forth the basic ecological functions.		
	90	Adoption Date	What is the deadline to adopt the updated SMP?	The Act states that Burien should adopt by December 2009, however there is a provision to extend the deadline one year if DOE “determines that the local government is likely to adopt or amend its master program within the additional year.”	RCW 90.58.080	
X	91	20.30.001 Buoys	Process for approving Buoys should be reviewed.	Staff recommends that the process for buoy placement be reduced to an administrative approval. Figure 4 should be amended as follows. <u>Boat Mooring Buoy – P₃ in Aquatic Environment.</u> <u>P₃ – Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with 20.30.090.</u>		
X	92	20.30.095 Shoreline Uses (ADU’s)	Should ADU’s be a specifically allowed use in Shoreline Jurisdiction?	Pursuant to comprehensive plan policy and the GMA, accessory dwelling units should be allowed, however it should be clarified that they should not be allowed in a shoreline buffer or setback. g. Accessory structures. Accessory structures that are not normal appurtenances as defined at the end of this chapter must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural features. <u>Accessory structures that are not water-dependent are not permitted waterward of the principal residence unless there is a compelling reason to the contrary. Accessory and appurtenant structures should not be located within shoreline buffers to assure that buffer integrity is maintained.</u> <u>K. Detached accessory dwelling units shall not be located in riparian buffers or riparian buffer building setbacks.</u> GMA goal. RCW 36.70A.020 (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock. RCW 36.70A.400 & RCW 43.63A.215 state “accessory apartment provisions shall be		

				part of the local government's development regulation, zoning regulation, or official control." [excerpt] Burien Comprehensive Plan Pol. HS 1.11 The development of accessory dwelling units in single-family residences should be allowed to continue. (pg 2-65, [excerpt])		
Planning Commission Requests 1/12/10						
	1	20.35.045	Would like to focus on Non-conformance and reconstruction issues.	1/26/10, additional discussion on regulation language needed. Language provided in Feb 9 th packet.		2/9/10 see above
	2	BMC 19.55 and 20.35.045	A comparison of existing and future codes regarding: Non-conformances Buffers Setbacks	1/26/10 - handout provided.		1/26/10 - handout provided.
	3		A comparison of access in the existing and proposed SMP (provide state law as well).	Response pending.		
	4	BMC 19.40	Provide information on the other buffers in the BMC (i.e., steep slopes, flood hazard, wetlands.)	1/26/10 - handout provided.		1/26/10 - handout provided.
	5		More information on how impacts to the environment can be measured. What have others done?	Response pending.		
	6		Panther lake may be an example that could be used.	Response pending.		
	7		What is the affect of the access language?	Response pending.		
	8		Lot configuration numbers from Mrs. Edgar, can this information be verified.	See # 35 above		
	9	20.30.001 Buoys	Process for approving Buoys should be reviewed.	Staff recommends that the process for buoy placement be reduced to an administrative approval.		Added to table 3/3/10 Direction needed
	10	20.30.001 Shoreline Uses	Should ADU's be a specifically allowed use in	Pursuant to comprehensive plan policy and the GMA accessory dwelling units should be allowed, however they should not be allowed in a shoreline buffer or setback.		Added to table 3/3/10

	(ADU's)	Shoreline Jurisdiction?		Direction needed
11	20.30.001 Shoreline Uses (Home Occupations)	Home occupations should be addressed in the use matrix.	Home occupations could be allowed so long as there were no impacts to the ecological functions. Could be something simple such as limiting the uses or activities that are conducted indoors. More research is necessary. Response pending. Marysville not addressed. Whatcom Co. not addressed Port Townsend not addressed. Monroe not addressed.	
12	20.30.030[1.f] Lake Burien Weir	Review of the weir language in 20.30.030[1.f), revisit SAC language.	The proposed language removed the notion of the City having an obligation to maintain the weir. The change from the SAC draft to the current version was following discussion with our legal department. The Lake residents have stated that it is their desire to maintain the weir and this policy change would remove any reference to city having an obligation to do so, it also removes the notion that the City will use this as a method to gain access to the lake.	See # 32 above.
13	20.30.085[2.h] Motor Craft on Lake Burien	Review proposed language regarding the use of motorcraft on Lake Burien.	This issue was somewhat discussed at the SAC, however the Commission should either modify or reaffirm the regulation of 20.30.085[2.h]. See # XX above.	
14	20.30.001 Figure 4	Modify figure 4 to recognize the Ruth Dykeman Children's Center as a conditional use.	Include Community Residential Facility as a conditional use. This allows the Ruth Dykeman Children's Center to be a legal use and may continue to operate or be modified subject to the conditional use permit process.	Discussed on 2/23/10 and direction given on 3/9/10 ??
15	20.30.025[2.a]	Wetland rating system should be consistent with the options provided in the Guidelines.	State that for wetlands within shoreline jurisdiction shall use the Washington Wetland Rating System for Western Washington. See # 17 above.	

SHORELINE MASTER PROGRAM NONCONFORMING THRESHOLDS COMPARISON

CITY	SMP NONCONFORMING THRESHOLD DUE TO DAMAGE BY FIRE OR OTHER NATURAL ACT	SMP NONCONFORMING THRESHOLD FOR VOLUNTARY ALTERATION
<p style="text-align: center;">Proposed Burien SMP</p>	<p>20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses:</p> <p>4. Reconstruction. A nonconforming structure which is destroyed, deteriorated, or damaged more than 50% of the assessed value of the <i>nonconforming structure</i> as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with existing regulations and the following:</p> <ul style="list-style-type: none"> a. The structure must be located landward of the ordinary high water mark. b. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program. c. The remodel or expansion shall not cause adverse impacts to shoreline ecological functions or processes. d. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into the riparian buffer, or the minimum required side yard setback require a variance. e. An application is filed to reconstruct the structure within 18 months of the date of the damage. 	<p>20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses</p> <p>1. Voluntary Removal, Moving or Alterations. Voluntary removal or alteration of a primary structure or appurtenance that exceeds 50% of the assessed value of the <i>nonconforming structure</i> as established by the most current county assessor's tax roll shall comply with the provisions of this City of Burien Shoreline Master Program. A nonconforming structure which is moved any distance must be brought into conformance with provisions of this shoreline master program and the SMA.</p> <p>2. Expansion. Enlargement or expansion of single family residences less than 500 square feet of roof area may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of roof area by the addition of space to the primary structure or by the addition of normal appurtenances as defined in 20.40.000 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:</p> <ul style="list-style-type: none"> a. The structure must be located landward of the ordinary high water mark. b. The enlargement, expansion or addition to the existing primary residential structure shall not extend further waterward except through application of the common line setback provision of 20.30.100 [2.c]. Expansions shall not extend further into the minimum side yard setback, or further into any critical area unless authorized by the provisions of BMC 19.40. c. The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of Burien SMP section 20.30.030.
<p style="text-align: center;">Existing Burien SMP</p>	<p>25.32.060 B.</p> <p>A use or development, not conforming to existing regulations, which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed insofar as it is consistent with existing regulations.</p>	<p>25.32.060 B.</p> <p>A use or development, not conforming to existing regulations, which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed insofar as it is consistent with existing regulations.</p>

Coupeville	<p>16.30.690. G. Historic sites and structures damaged to an extent exceeding seventy-five percent of the replacement cost of the original development may be reconstructed to those configurations existing immediately prior to the time the development was damaged consistent with Secretary of the Interior's Guidelines and Standards for Rehabilitation, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance. Except in the above cases, if a nonconforming structure is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.</p>	<p>16.30.690.C. Uses and structures that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses and structures in accordance with the following sections. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances.</p>
Darrington	<p>Nonconforming Development, Development & Building Permits and Unclassified Uses: 3. If a nonconforming structure is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;</p>	<p>Nonconforming Development, Development & Building Permits and Unclassified Uses: 1. Nonconforming development may be continued provided that it is not enlarged or expanded and said enlargement does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses; 2. A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;</p>
Douglas County	<p>1.11 Prior development and nonconformance: The provisions of WAC 173-27-070 shall apply to substantial development undertaken prior to the effective date of the Act. The provisions of 173-27-080 shall apply to nonconforming uses.</p>	
Monroe	<p>D.8. If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.</p>	<p>7. A nonconforming structure which is moved any distance must be brought into conformance with this Master Program and the Act.</p>

<p>Marysville</p>	<p>19.44.030 Nonconforming structures.</p> <p>(3) A nonconforming structure which is voluntarily or accidentally destroyed, demolished or damaged, or allowed to deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure, may be restored and rebuilt only if the structure, in its entirety, is brought into conformity with the then-current bulk and dimensional requirements of the zone in which it is located; provided, that a single-family residence with nonconforming status in a residential zone may be restored and rebuilt to any extent as long as it does not increase the preexisting degree of nonconformance; provided, a single-family residence with nonconforming status in zones other than residential may be restored and rebuilt to any extent on the original footprint of the structure's foundation so long as it does not increase the preexisting degree of nonconformance, upon obtaining a conditional use permit pursuant to this chapter.</p>	<p>19.44.030 Nonconforming structures.</p> <p>(1) Nonconforming structures may be repaired and maintained. The interior of said structures may be restored, remodeled and improved to the extent of not more than 25 percent of the assessed value of the structure in any consecutive period of 12 months.</p> <p>(2) The exterior dimensions of a nonconforming structure may be enlarged by up to 100 percent of the floor area existing at the effective date of the nonconformance upon obtaining a conditional use permit pursuant to this chapter; provided, that the degree of nonconformance shall not be increased, and the then-current bulk and dimensional requirements of the zone in which it is located shall be observed with respect to the new portion of the building.</p> <p>(3) A nonconforming structure which is voluntarily or accidentally destroyed, demolished or damaged, or allowed to deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure, may be restored and rebuilt only if the structure, in its entirety, is brought into conformity with the then-current bulk and dimensional requirements of the zone in which it is located; provided, that a single-family residence with nonconforming status in a residential zone may be restored and rebuilt to any extent as long as it does not increase the preexisting degree of nonconformance; provided, a single-family residence with nonconforming status in zones other than residential may be restored and rebuilt to any extent on the original footprint of the structure's foundation so long as it does not increase the preexisting degree of nonconformance, upon obtaining a conditional use permit pursuant to this chapter.</p> <p>(4) When a structure or a portion thereof is moved to a new location, it must be made to conform to all then-current land use restrictions applicable to the new location.</p>
<p>Orting</p>	<p>8.08 Nonconforming Development, Development & Building Permits and Unclassified Uses</p> <p><i>Nonconforming Development</i></p> <p>2. If a nonconforming structure is damaged to an extent not exceeding seventyfive (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;</p>	<p>8.08 Nonconforming Development, Development & Building Permits and Unclassified Uses</p> <p><i>Nonconforming Development</i></p> <p>1. Nonconforming development may be continued provided that it is not enlarged or expanded and said enlargement does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses; A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;</p>

<p>Port Townsend</p>	<p>11.3 Nonconforming Structures 11.3.1 A nonconforming structure that is damaged to an extent of one-half or more of its replacement cost immediately prior to such damage may be restored only if made to conform to all provisions of this title. However, any residential structures, including multifamily structures, in a residential zoning district destroyed by a catastrophe, including fire, may be reconstructed up to the size, placement and density that existed prior to the catastrophe. Structural repair shall be complete within two years after the catastrophe unless the Shoreline Administrator grants an extension for just cause.</p>	<p>11.3 Nonconforming Structures 11.3.2 Necessary repairs and alterations that do not increase the degree of nonconformity may be made to nonconforming residential structures, including multifamily structures, located in residential zoning districts. 11.3.3 A nonconforming building or structure may be repaired and maintained as provided in and as limited by this section. The maintenance of such building or structure shall include only necessary repairs and incidental alterations, which alterations, however, shall not extend the nonconformity of such building or structure; provided, that necessary alterations may be made as required by other law or ordinance. 11.3.6 A building or structure, nonconforming as to the bulk, dimensional and density requirements of this title, may be added to or enlarged if such addition or enlargement conforms to the regulations of the district in which it is located. In such case, such addition or enlargement shall be treated as a separate building or structure in determining conformity to all of the requirements of this title.</p>
<p>Sultan</p>	<p>VI. NONCONFORMING DEVELOPMENT, DEVELOPMENT and BUILDING PERMITS, and UNCLASSIFIED USES A. Nonconforming Development 3. If a nonconforming structure is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;</p>	<p>VI. NONCONFORMING DEVELOPMENT, DEVELOPMENT and BUILDING PERMITS, and UNCLASSIFIED USES A. Nonconforming Development 1. Nonconforming development may be continued provided that it is not enlarged or expanded and said enlargement does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses; 2. A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;</p>
<p>Whatcom County</p>	<p>23.50.07 Non-conforming Development F. Non-conforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no feasible alternative that allows for compliance with the provisions of this Program; provided that, the following are met: 1. The reconstruction process is commenced within eighteen (18) months of the date of such damage; and 2. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection (E) above or (H) and (I) below. <i>[See column at right]</i></p>	<p>23.50.07 Non-conforming Development A. The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the Program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the Program or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section; provided that, agricultural activities shall conform to WCC 16.16.290; provided further that, bulkheads shall conform to SMP 23.100.13. D. Non-conforming structures may be maintained, repaired,</p>

		<p>renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not increased, provided that a non-conforming development that is moved any distance must be brought into conformance with this Program and the Act; provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.</p> <p>E. Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.I apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Chapter 23.100.05.B.1(e).</p> <p>I. Enlargement or expansion of single family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further into areas where new structures or developments would not now be allowed under the Program may be approved by conditional use permit if all of the following criteria are met:</p> <ol style="list-style-type: none">1. The structure must be located landward of the ordinary high water mark.2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.4. The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.
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