



Burien
WASHINGTON

PLANNING COMMISSION AGENDA
March 16, 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** None

V. OLD BUSINESS Discussion and Possible Recommendation: Shoreline Master Program Update
BRING MATERIALS FROM MARCH 9TH PACKET

- a. Public access
- b. Bulkheads, docks, piers and floats
- c. Shoreline designations
- d. Shoreline vegetation
- e. 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
March 30- Discussion and Possible Recommendation: Shoreline Master Program Update
April 13-Introduction: Merger of Remaining BMC Title 18 (Interim Zoning Code) into BMC Title 19 (New Zoning Code)

Jim Clingan (Vice Chair)
Rebecca McInterer

Planning Commissioners
Joe Fitzgibbon (Chair)
Rachel Pizarro

Janet Shull

David Johanson

From: Julie Dow [jbd@dowhotelco.com]
Sent: Thursday, March 11, 2010 3:30 PM
To: David Johanson
Subject: FW: SMP Comment Matrix 49a

Good afternoon David, I noticed in the working draft of the comment table dated 3/3 that the below comment was not included. Can this comment (originally dated Feb. 14) be included in the working table please for the Planning Commission to review.

Thank you for your attention the matter., Julie Dow

From: Julie Dow [mailto:jbd@dowhotelco.com]
Sent: Wednesday, February 24, 2010 4:43 PM
To: 'davidj@burienwa.gov'
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

To: Planning Commission
Date: March 10, 2010
Subject: Section 20.30.075 Docks, Floats and Piers

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The Planning Commission needs to make the following revisions to the Shoreline Master Program:

1. Chapter IV, Section 20.30.075, 2. Regulations, c. iii. (Page IV-19)

Please have the City of Burien Scientist explain the underlined concept of light:
"iii. Minimize adverse effects ...by... incorporating grating to allow light passage or reflective panels to increase light refraction; ..."

2. Chapter IV, Section 20.30.075, 2. Regulations (Page IV-19)

The SMP should acknowledge that docks and piers require maintenance and repair. The following wording should be inserted after regulation "d." and the remaining regulations following the insertion should be re-lettered:

"e. Normal maintenance or repair of existing shoreline docks and piers shall be allowed. Replacement of an existing dock or pier resulting from damage by accident, fire, elements, etc., shall be allowed and may not exceed the footprint of the damaged dock or pier."

3. Chapter IV, Section 20.30.075, 2. Regulations, h.

The 150 square foot maximum surface area for piers, docks and floats appears to be an arbitrary number. For example: since the level of Lake Burien can drop up to 30 inches every year, properties with shallow sloping shore lands must have docks or piers of sufficient length to *"...support the intended water dependent use."* as suggested in Chapter IV, Section 20.30.075, 1. Policies, b. (Page IV-18). The safe use of a dock or pier should not be jeopardized by having a narrow, unsafe width just to compensate for length in order to meet the arbitrary maximum surface area.

Chapter IV, Section 20.30.075, 1. Policy, b. already acknowledges that piers and docks be restricted to *"...the minimum size necessary...to support the intended water dependent use."*

I recommend that "2. Regulations, h." be removed.

Thank you,
Bob Edgar

To: Planning Commission
Date: March 10, 2010
Subject: Alignment with the December 2009 Burien Comprehensive Plan

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CITY OF BURIEN

David Johanson has been strongly suggesting that the Burien Shoreline Master Program be in alignment with the Burien Comprehensive Plan. I would like to support Mr. Johanson by requesting that the Burien Planning Commission make the following revisions to the Burien Shoreline Master Program:

1. 2009 Burien Comprehensive Plan, CHAPTER 2.0 PLAN POLICIES, 2.2 LAND USE ELEMENT, Special Planning Areas, Pol. SE 1.3 (Page 2-21) states:

“Special Planning Area 2 includes the existing Ruth Dykeman Children’s Center facilities on Lake Burien. While the City encourages and supports the continued operation of the Center, any proposed change in use in the future should be reviewed to ensure that:

- a. Public access to the water is prohibited: and*
- b. The development supports the historical link with Old Burien.”*

**→The following wording should be inserted in SMP, Chapter II, Section 20.20.015, Goal PA as:

“Pol. PA 14 Special Planning Area 2 includes the existing Ruth Dykeman Children’s Center facilities on Lake Burien. Any proposed change in use in the future should be reviewed to ensure that:

- a. Public access to the water is prohibited: and*
- b. The development supports the historical link with Old Burien.”*

2. 2009 Burien Comprehensive Plan, CHAPTER 4.0 BURIEN'S EXISTING CONDITIONS, 4.3.2 Water Resources, Wetlands (Page 4-31) states:

"The King County wetland inventory system also designates Lake Burien as a wetland"

Using a wetland inventory system consisting of three Categories of wetlands based on scientific descriptors and criteria, King County has designated Lake Burien as a Category II wetland.

Additional evidence supporting both King County and the 2009 Burien Comprehensive Plan's Category II designation of Lake Burien:

A. Lake Burien Property owners who were required to address wetland buffers and setback for home remodels hired wetland consultants. The documents provided by the wetland consultants designated Lake Burien as a Category II wetland.

B. The City of Burien hired Reid Middleton and Grette Associates to prepare technical documents to support the update of the Burien Shoreline Master Program.

(1) Documented in the March 27, 2008 "Shoreline Inventory", Grette states:

"Lake Burien is mapped as an Aquifer Recharge Area. Wetlands associated with the lake edge are Critical Areas rated Category 2 wetlands. The buffer with a Category 2 wetland is 100 feet." (Page 27)

(2) Documented in the June 12, 2008 (revised October 23, 2008) "Shoreline Analysis and Characterization", Grette states:

"Lake Burien in its entirety has been rated as a Category 2 wetland. The buffer associated with a Category 2 wetland is 100 feet." (Page 17)

(3) The 2008 "Cumulative Impact Analysis" states:

"Lake Burien in its entirety has been rated as a Category 2 wetland" and that "(t)he buffer associated with a Category 2 wetland is 100 feet".

The table on page 20 documents that the average setback of homes on Lake Burien is 100 feet and that 5% the land between homes and the shoreline are covered with impervious surfaces. The 100 foot setback is consistent with a Category 2 wetland.

These technical documents provide additional evidence that supports both King County and the 2009 Burien Comprehensive Plan's designation of Lake Burien as a Category II wetland.

The Planning Department has produced no credible evidence of Best Available Science or currently available science to back up their insistence that Lake Burien is a Category 4 wetland. The Category 4 designation in the Critical Areas Ordinance was not based on any science -- it was documented as being an arbitrary decision. For the Burien Planning Department to insist that a falsehood be carried forward "to be consistent" with the Critical Areas Ordinance is unethical and a breach of the public trust.

**→For the above stated reasons, the following revisions should be made in the appropriate sections of the SMP in order to be consistent with the 2009 Burien Comprehensive Plan as supported by consultant's technical documents:

Change wetland buffer from "30" to "100" in the following:

Chapter IV, Section 20.30.040, 2. Regulations, f. (Page IV-10)
Chapter IV, Section 20.30.040, Figure 5 (Page IV-12)

These two revisions will ensure that the Shoreline Master Program is consistent with the 2009 Burien Comprehensive Plan per Mr. Johanson's direction.

Thank you,
Bob Edgar

To: Planning Commission
Date: March 9, 2010
Subject: Revised Format of Public Comment Summary

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The new revisions to the format of the Public Comment Summary matrix needs to be shared with the public *before* the Commissioners continue their business. Specifically:

1. *“Modified”*

Who fills in the column? Commissioners or Planning staff?

I would like to suggest an adjacent column entitled *“Incorporated”* that will be completed by the Planning Commissioners after they have read the revised draft to ensure that the modifications have been included before the revised draft is forwarded to the City Council.

2. *“PC Direction”*

a) Is the Planning Commission giving direction or receiving direction? If the Planning Commission is receiving direction from the Planning staff, how does that differ from the *“Draft Response”* column which also appears to be giving direction from the staff? Additional explanation should be included in the column header.

b) What does *“NR”* mean? *“No response”*?, *“not required”*?, *“not relevant”*?, *“not ready”*?

3. *Color Highlighting*

What is the significance of words that are highlighted in:

- Green?
- Blue?
- Yellow?

A legend should be included on the matrix.

Thank you,

Bob Edgar

To: Planning Commission
Date: March 9, 2010
Subject: Electronic Access to Shoreline Master Program Files

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Page I-3 of the draft Shoreline Master Program Document identifies the four technical documents that we are told are the baseline for updating the SMP:

1. Cumulative Impacts Analysis
2. Shoreline Restoration Plan
3. Shoreline Inventory
4. Shoreline Characterization

Missing from the Planning Commission webpage:

1. Cumulative Impacts Analysis

The Cumulative Impacts Analysis is not electronically accessible

2. Shoreline Inventory Appendix B

Text in the technical documents frequently refers to numerous Figures that are listed in the Appendix B of Shoreline Inventory, but Appendix B states that all the Figures "*To be included in final*" draft. In order to make sense of the information in the technical documents, Burien citizens need to have access to these figures *before* the final draft is released.

Recommendations:

1. Make the Cumulative Impacts Analysis document electronically accessible
2. Add links to the twenty-nine Figures referenced in the technical documents.

Thank you,

Bob Edgar

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To-The Burien City Council
To- The Burien Planning Commission
Re-The Burien CAO, The Burien Comp. Plan-Dec. 2009, the wetland classification of
Lake Burien
March 8, 2010

MAR 09 2010

CITY OF BURIEN

1. In 1981, Lake Burien was classified by King County as a Class 2 wetland and Lake Burien Creek was a Class 2 stream based on the King Co. wetland rating system.
2. In January 2003, the CAO was adopted and Burien adopted its own wetland rating scale and classified Lake Burien as a Class 4 wetland. This document is supposed to be based on best available science (BAS).
3. In December 2003, the Burien Comp. Plan was revised and it stated that Lake Burien was a wetland based on the King Co. wetland rating system. Using that system it was a Class 2. This is document is supposed to be based on BAS.
4. In December 2009, The Burien Comp. Plan was revised and it kept the language from the December 2003 plan about Lake Burien. So in the Comp. Plan of 2009, Lake Burien was a Class 2 wetland. This document is supposed to be based on BAS.

Clearly the Burien CAO and the Burien Comp. Plan are in conflict with each other about what is the wetland classification of Lake Burien. This needs to be corrected.

5. The SMP draft states in Policy CON 9 that Burien will use the BAS for critical areas. Remember Lake Burien is a critical area and requires BAS. The current Burien wetland rating system does not use BAS. This needs to be corrected in the SMP as well as in its supporting Technical Documents and the buffers for Lake Burien need to be correctly set based on the correct classification and the correct cumulative impacts analysis.

Chestine Edgar



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March 9, 2010

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VIA HAND DELIVERY

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

CITY OF BURIEN

Re: Request for Additional Public Comment Opportunities on the Draft SMP

Dear Members of the Planning Commission:

We represent the Burien Marine Homeowners Association (BMHA), a group of Burien residents whose property is in the regulated shoreline along the Puget Sound. The BMHA is concerned that the City has not provided adequate opportunities for the public to offer comments to the Planning Commission on the update of the Shoreline Master Program. Accordingly, we request that the Planning Commission hold another hearing and extend the public comment period to consider additional input.

While the Planning Commission has held hearings on these regulations, the City did not provided direct notice of the public hearings to all the owners of property within the regulated shoreline. Notably, there are property owners who signed up to receive notice of the upcoming hearings at an Open House last November that did not ever receive notice. These constituents are the citizens that will be most affected by these significant regulations and they were unaware of the hearings. They should be informed of the process and provided an opportunity to be heard.

With an additional opportunity, the BMHA intends to bring significant issues to the Planning Commission's attention. These draft regulations, including provisions governing setbacks, nonconforming structures, public access, and shoreline armoring, will adversely impact waterfront property owners. For example, the proposed 65 foot setbacks (which are in many cases imposed on lots that can be as short as 85 feet) will turn many existing homes into nonconforming structures, thereby significantly impacting property values and the ability of homeowners to seek refinancing or remodel their homes. The Planning Commission needs to consider these issues and amend the draft Shoreline Master Program accordingly. We are confident that the City can adopt regulations that are both consistent with the Shoreline Management Act and sensitive to the concerns of the BMHA.

We encourage the Planning Commission to slow down its process and take the time that these complicated issues require. However, even if the Planning Commission is intent on finishing its work in March, there is still opportunity to schedule and provide notice of a hearing before the end of March. We understand the City may have already generated a list of impacted property owners when it provided notice for the Open House in November. That list could have been used to generate adequate and proper notice for the previously held hearings. It can still be used to provide notice for an additional hearing on this matter later this month.

If given the opportunity, we look forward to working with the Planning Commission to address our substantive issues.

Very truly yours,

GORDONDERR LLP



Tadas Kisielius
tkisielius@gordonderr.com

Susan Coles

From: DW Sykes [sykesdw@hotmail.com]
Sent: Thursday, March 04, 2010 1:55 PM
To: David Johanson; Susan Coles; Public Council Inbox
Subject: Burine Draft Shoreline Management Plan

To: Burien Planning Commission
Burien City Council (council@burienwa.gov)
Susan Coles Community Development Department Assistant (susanc@burienwa.gov)
David Johanson, Senior Burien Planner (davidj@burienwa.gov)

400 SW 152nd St
Suite 300
Burien, WA 98166

Greetings,

Thank you for making the draft documents easier to find on the Burien City website. Also, thank you to all the staff, committee members, and fellow citizens who have dedicated a great deal of time to get the documents to their current state. After reviewing the Draft Burien Shoreline Management Plan (SMP) and the SMP Public Comment Summary, Working Draft, 2/18/2010, I still have several concerns. I would like to make the following comments for the record and trust that the Planning Commission and City Council will consider them when formulating the final Burien SMP.

I believe, in essence, the State Shoreline Management guidelines are that a local SMP should explicitly state recognition and protection for private property with particular preference to Single Family Residences. Also, the SMP should have preferential methods to assure the protection of single family residences. Such enabling language is difficult to find in either the Draft Burien SMP (at <http://www.burienwa.gov/DocumentView.aspx>) or the Public Comment Summary (accessed at: <http://www.burienwa.gov/archives/41/022310Agenda.pdf>).

While this is a rather involved series of comments, I thank you in advance for your consideration.

Douglas Sykes
PO Box 353, Seahurst, WA, 98062.
206 248 2017

From Draft SMP Chapter IV <http://www.burienwa.gov/DocumentView.aspx?DID=1145>

20.30.005 Applicability (p IV-2)

This draft SMP section cites RCW 90.58.100 (2) but does not also cite RCW 90.58.100 (6) nor RCW 90.58.020 which explicitly state recognition and protection for private property with particular preference to Single Family Residences.

The Public Comment Summary also does not appear to address this issue.

I submit that the SMP should explicitly state recognition and protection of private property rights, with particular preference for existing Single Family Residences and their appurtenances.

20.30.001 Shoreline Permit Matrix (pIV-1)

The ** note indicates that Single Family Residences are exempt from a Shoreline Substantial Development Permit (in agreement with the RCWs). However, it does not state the method of permitting in the case an SDP is not required. From the remainder of the SMP, I expect the intent is that a Conditional Use Permit is the proper procedure. Should this be made clearer in the matrix?

From Draft SMP Chapter V <http://www.burienwa.gov/DocumentView.aspx?DID=1145>

Section 20.35.025, Exceptions to Substantial Development Permits

4 Exemptions (pV-7)

This section states exceptions for Substantial Development Permit, but does not state exceptions to Shoreline Conditional Use permits. Bulkheads require CU permits per figure 4 in 20.30.001. How are exceptions for CU permits handled in order to support emergency maintenance / repair? See comments on 20.35.035

The Public Comment Summary does not appear to address this issue.

Section 20.35.035, Shoreline Conditional Use Permits - (pV-10) How are exceptions for CU permits handled in order to support emergency maintenance / repair, especially of protective bulkheads? Section 20.35.025 4d speaks to this issue, but it is in the exceptions to the SDP, not the CU. In the event of storm or other random events, there should at a minimum be a clear, written policy to allow emergency work prior to obtaining a formal CU permit, as long as the repair is subsequently covered by a valid CU permit or Letter of Exception. Please reference RCW 90.58.100 (6) "... The standards shall provide for methods which achieve effective and timely protection against loss or damage..."

The Public Comment Summary does not appear to address this issue.

For your convenience, below are references to the RCWs as provided in the State Guidelines WAC 173-26). From http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/SMP_Guidelines_Final.pdf

(Also reference <http://apps.leg.wa.gov/Rcw/default.aspx?cite=90.58>)

SHORELINE MASTER PROGRAM GUIDELINES

(h) Recognizing and protecting private property rights.

RCW 90.58.020:

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

(i) Preferential accommodation of single family uses.

RCW 90.58.020:

"Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures...."

RCW 90.58.100:

"(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance

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

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Len & Linda (Plein) Boscarine
1600 S.W. 156th Street
Burien, WA 98166
(206) 248-0222

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March 4, 2010

MAR 09 2010

Members of The Planning Commission:

CITY OF BURIEN

Why is the city, with this proposed SMP, changing the old shoreline plan and setting the standard so high that many existing homes will be eventually pushed into nonconforming structures?

That's a very big deal for both the affected property owners and the rest of the citizens of Burien.

The best example I can think of is the threat of a major earthquake such as the one that recently hit Chile. Scientists have been telling us for years that it's not a matter of "if" a major earthquake will hit us but "when."

Any home covered by the SMP that becomes damaged under the new lower limit will become nonconforming. That means that getting the necessary permits will take years longer because of the extra steps required and the backlog at city hall for all of the regular permits for other damaged properties throughout the city. Also there is no requirement that city grant permits to owners of nonconforming structures. A hearing officer can turn down permits for nonconforming buildings for several reasons.

Also, now that the property has a permanent nonconforming label the property owner will not be able to get a bank loan to finance the reconstruction. And, should the property owner somehow come up with the money to rebuild the home the nonconforming designation continues. That means that they will have a much harder time to sell the house because mortgage companies don't like to loan money on homes with nonconforming structures.

Thus, the affected property owners lose much of the value of their property even though have always followed the requirements and guidelines of Burien's Planning Department.

Wouldn't it be more reasonable to "grandfather" the affected homes so that they would be protected? Why not recognize the uniqueness of some of our shoreline properties instead of trying to group every home in Burien together in a "one size fits all" cluster.

And, once the property has been given a nonconforming status, the owner's first step would be to contest its assessment value with King County. That means a property along the shoreline that previous had a million dollar PLUS value suddenly has an assessment of much less (say \$200,000). Multiply that times the number of homes affected and the value of assessed property in Burien could easily drop a half a billion dollars or more.

THAT MEANS THE OTHER PROPERTY OWNERS IN BURIEN WILL WATCH THEIR TAXES GO UP substantially because local, county and state budgets still have to be fully funded even though the pool of Burien property owners has shrunk dramatically.

Thank you for considering this,


Len Boscarine


Linda (Plein) Boscarine