



State of Washington
Department of Fish and Wildlife

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JAN 12 2010

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CITY OF BURIEN

January 12, 2010

City of Burien Planning Commission
Attn: David Johanson, Senior Planner
400 SW 152nd St, Suite 300
Burien, WA 98166

SUBJECT: *Comments regarding the City of Burien Shoreline Advisory Committee
November 2009 Draft Shoreline Master Program*

Dear Members of the City of Burien Planning Commission:

The State of Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to review and comment on the City of Burien Draft Shoreline Master Program (SMP). The draft includes several policies and regulations specific to fish and wildlife habitat protection, especially freshwater and marine/estuarine habitat critical to salmonids. We only have a few very minor recommended edits.

II. General Goals and Policies

20.20.035: Conservation Element

Pol. CON 20 (Page II-11): The City shall consider the impacts of new development on the quality of land, wildlife and vegetative resources as a part of its environmental review process and require any appropriate mitigating measures. Such mitigation may involve the retention of significant habitats.

We recommend including aquatic resources. We notice that water quality is a consideration in other policies, but fish habitat may be impacted by new development for a variety of reasons. These could include 1) when/if aquatic vegetation is removed/covered, 2) large woody debris cannot be recruited because it is removed or the riparian zone is too narrow to allow natural recruitment, or 3) stormwater effects on the flow regime of streams.

IV. Uses and Modifications

20.30.040: Vegetation Conservation

Policy (1)(a) – (Page IV-9):

We noticed that "Ecology" is mistakenly capitalized.

20.30.095: Residential Development

Regulation 2(g) Accessory Structures – (Page IV-26): 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.

We support this language that requires accessory structures to be compatible with shoreline uses and natural features. However, we are concerned that there are no limits on the size of an accessory structure and that “proportional in size” could be interpreted in a variety of ways.

V. General Provisions

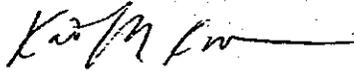
20.35.025: Exemptions from Shoreline Substantial Development Permits

4.A Exemptions – (Page V-7):

We noticed that the written out amount and number amount of the exempt development amount do not match.

Again we thank you for providing an opportunity to comment on your draft Shoreline Master Program. Please contact me with any questions or requests for additional information.

Sincerely,



Katie Knight
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Bob Fritzen, Shoreline Planner, Ecology

futurewise

*Building communities
Protecting the land*

January 12, 2010

City of Burien Planning Commission
c/o David Johansen, Sr. Planner
Community Development Dept.
400 SW 152nd St, Suite 300
Burien, WA 98166

RECEIVED

JAN 12 2010

CITY OF BURIEN

Sent by email to: davidj@burienwa.gov

Subject: Comments on the City of Burien Shoreline Master Program Update Nov. 2009 Draft

Dear City of Burien Planning Commissioners:

Futurewise appreciates the opportunity to comment on the Draft Shoreline Master Program (SMP). Futurewise is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. We have members in the City of Burien, as we do throughout Washington State.

The Burien SMP is important because it encompasses approximately 5 miles of Puget Sound marine shore. The Puget Sound and its tributary streams are home to three threatened species: the Puget Sound Chinook salmon, the Puget Sound steelhead, and the bull trout. Business as usual has resulted in the loss of habitat that has contributed to the listing of these threatened species. We cannot afford a business-as-usual shoreline master program. In many respects the Burien SMP accomplishes protection of shoreline resources, although there are some changes that we urge you to adopt.

There are many good elements in the draft SMP. We urge you to retain these elements:

- The inclusion of a Use and Modification Table to indicate whether shoreline uses and modifications are allowed and what permit review is needed.
- The buffer system is well developed and logically sound for reasons that are described below. It is an example of a good buffer system that can be a model for other cities, with some minor changes.
- The treatment of docks and floats by requiring careful review through a Conditional Use Permit.
- The prohibition on new private boat ramps due to their unnecessary impacts on land and water shoreline ecological functions.
- The provision that prohibits covered moorage and boathouses. Such development is more for convenience than necessity, and adversely impacts fish habitat.
- The public access provisions will provide the city's residents with high quality enjoyment of the city's shorelines.
- The system for reviewing Shoreline Exemptions is well described so that it clearly indicates that exemptions receive an abbreviated review.

While there are many good protection strategies in the draft SMP, there are some areas that need to be strengthened to protect water quality and meet the requirements of the Shoreline Management Act (SMA) and the SMP Guidelines.

Our primary concern relates to the issue of buffers, or setbacks and vegetation management. We have attached our guidance document on using smaller buffers for existing developed areas, while still meeting the SMA and SMP Guidelines requirements for using science and no-net-loss of ecological functions. This guidance document explains why small buffers don't work to protect ecological functions unless they are accompanied by built-in mitigation in the form of enhancement requirements to offset the built-in impacts that come with small buffers. The City's riparian vegetation strategy goes a long way toward matching the recommendations in the guidance document. Only small changes are needed to plug the gaps that remain. Detailed comments on buffers are provided below.

Recommended Strategy for Using Small Buffers/Setbacks

As described in our guidance document, the use of small buffers alone will not adequately protect the ecological functions of shorelines. Over time, urban shorelines will continue to be developed and redeveloped, and existing uses will be expanded and intensified. Shoreline areas will be subject to more and more adverse impacts. The scientific evidence shows that full-sized intact buffers are needed to adequately mitigate the impacts of adjacent development on water features. Small intact buffers are incapable of doing so. And degraded buffer/setbacks are unable to perform their buffering function. If existing developed and degraded areas are to have small buffers applied to them, the only justification for doing so is that it will result in enhancement of the buffers ecological functions to the extent possible.

Thus, small buffers may be acceptable if done right, as described in the guidance document. Using such a system will help reduce the impacts of new development and redevelopment on shoreline resources. It will also result in a gradual increase in vegetation and habitat for fish and small animals over time. This will meet the requirement¹ for no-net-loss of shoreline functions, the requirement² to plan for restoration of the jurisdiction's degraded shorelines, and meet the requirement³ to achieve overall improvements in shoreline ecological functions. It will also help improve the water quality of the Puget Sound. The Burien buffer system comes close to matching the logical criteria laid out in our guidance document.

The vegetation conservation introduction states the importance of vegetated riparian areas on the ecological functions of shorelines, yet there doesn't appear to be a policy for how vegetation is to be protected that will support the proposed regulations that do so. A policy needs to be added (or an existing one supplemented) that provides a foundation for the vegetation and setback regulations, and describes the SMP's strategy for riparian vegetation in different situations. A policy example is provided in the guidance document. Please note that we understand that parts of a strategy are already proposed in the SMP. It simply needs to be supplemented to cover all the different situations.

¹ WAC 173-26-186(8)(d).

² WAC 173-26-186(8)(c).

³ WAC 173-26-201(2)(f).

A policy link between conservation and restoration is needed – probably best placed in the Impact Mitigation section (20.30.010). We recommend the following edits:

Policy (a) – Impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process. Mitigation for impacts of new development projects should use enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.

The proposed vegetation conservation system in the draft SMP (Section 20.30.040) goes far in accomplishing the criteria in our guidance document for using small buffers. It requires that new development provide native vegetation enhancement, and we strongly support it. As described in our guidance document, this is the only thing that makes the small buffers that are proposed workable in the face of the SMA and SMP Guidelines requirements for using science and ensuring no-net-loss of ecological functions.

The buffer strategy proposed in the draft SMP works well for highly developed conditions that do not have much vegetation. However, there is a problem with it. There is no general statement that vegetation removal in the buffer is not allowed without shoreline review. We recommend stronger language in Regulation (a), below, specifically regarding the status of vegetation in the setback, and provisions that it not be removed.

The system establishes a vegetation conservation buffer, which is approximately the size needed for a science-based buffer, within which vegetation management is necessary. It then establishes a riparian buffer that is more based on the existing conditions of many of the City's developed areas. We support the general concept, with some adjustments in Regulation (b) and (c) to fill in the gaps and cover the different situations described in our guidance document. Below are our recommended edits (using ~~strikeout~~ and underline) to the regulations. Following it are explanations for the edits.

9. W Alterations to vegetation within shoreline jurisdiction (except for 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.

10. W Alterations within the shoreline vegetation conservation buffer shall 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. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40. At a minimum, mitigation shall include:

- i. Revegetation of degraded buffer areas within 20 feet of the ordinary high water mark (or top of shore armoring if applicable) or wetland edge with dense native vegetation meeting the standards of paragraph (b)(iii-iv), below. The Administrator may require wider widths or other improvements to mitigate greater impacts.
- 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.

- d. Within a shoreline riparian buffer as set forth in BMC 20.30.050 *alterations* shall comply with the following;
- i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and
 - ii. At least 75% of the buffer area shall be revegetated, where it is degraded; and
 - iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions rather than a landscaped yard; and
 - iv. Vegetation planting areas shall consist of a mix of native trees, shrubs and ground cover – lawn is not an acceptable groundcover; and
- ~~v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and~~

Explanation of edits for paragraph (a): Already described above. —

Explanation of edits for paragraph (b): Development within the science-based buffer (the Vegetation Conservation Buffer in the draft SMP) that is outside the small riparian buffer needs a minimum of built-in mitigation to offset the built-in impacts of using small buffers. Mitigation other than just enhancement could be used, such as removal of shore armoring. A minimum area of enhancement needs to be described. At least 20 feet is needed to support the establishment of trees and shrubs, and provide a minimum of natural and habitat functions.

Explanation of edits for paragraph (c): For development within the buffer, substantial replanting is needed to mitigate new impacts. The 75% buffer area needs to be replanted if it is degraded. The replanted area standards need to clarify that landscaped yard and lawn does not count as mitigation. The last standard is already stated in paragraph (a)

The Dimensional Standards table lists buffer widths. The buffer for Residential environments may be acceptable for those areas. However, the buffer for Urban Conservancy areas does not seem to be consistent with the areas that are designated as such. In reviewing the shoreline areas using Google Earth, the Urban Conservancy areas appear to be capable of meeting a science-based buffer in most situations. A science-based buffer should be established for Urban Conservancy areas, and would be at least 100 feet wide, with a preferred buffer of 150 feet on Puget Sound. *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* recommends buffers from 100 to 600 feet to protect the functions of Puget Sound.⁴ Like the Residential areas, there are already provisions to deal with structures within the buffer area.

The above vegetation regulations, along with the recommended edits, will help the vegetation strategy cover the variety of vegetation situations in Burien, which is summarized below:

⁴ EnviroVision, Herrera Environmental, and the Aquatic Habitat Guidelines Working Group, *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* pp. II-38 to II-41 (October 2007) accessed on November 5, 2009 at: http://wdfw.wa.gov/hab/nearshore_guidelines/

- (1) Science based buffers for the Urban Conservancy environments where vegetation is intact,
- (2) Small setbacks with enhancement for Residential environments, and
- (3) Vegetation enhancement to offset requested reductions in the buffers.

Uses and Facilities Allowed in Buffers should be very limited

The CAO is adopted to protect streams and wetlands within shoreline jurisdiction. However, the CAO allows a large number of activities in streams, wetlands, and their buffers. Some specific problems include:

- Stormwater and utility facilities can be placed in buffers, and sometimes convert the wetland, even though the maintenance requirements will require limiting vegetation near them.
- Trails are allowed in buffers, and take precedence over ecological functions, contrary to the SMA.

Most of the allowed activities are provided with outright statements of allowance, without the need to be actually dependent on the location near the water. Yet they can almost always function equally well if located outside the buffer. The only exceptions to the buffers should be for water-dependent facilities, and it should be stated as such (examples would include access directly to a water-dependent use (beach, pier, or providing a crossing or outfall for a utility). If meeting the buffer would be a hardship for other facilities, they would qualify for a Variance or other reduction. We recommend that these exemptions to CAO buffers be excluded from incorporation into the SMP.

The CAO (in BMM 19.40.300) excludes small wetlands from protection. This provision needs to be excluded from the parts of the CAO incorporated into the SMP. The same section 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. The wetland system must be changed to use the current science for wetland protection. We recommend the use of Ecology's up-to-date *Washington State Wetland Rating System for Western Washington - Revised*.⁵

The stream and wetland alterations sections (in BMM 19.40.320 & -.360) allow stormwater and utility alterations to streams, wetlands, and their buffers. Type 3 wetlands can even be converted to stormwater facilities. This provision needs to be excluded from the SMP. In the CAO, these facilities don't have to meet the buffer requirements, and are often allowed as a first option rather than a last option. We recommend that only water-dependent facilities should be allowed in the stream, wetland, or their buffers. We also recommend that, when allowed, enhancement should be required to mitigate for impacts - currently facilities only have to repair damage to the pre-damage condition, not compensate for new impacts from corridors or facilities that will be maintained in an altered vegetation condition, or from changes in groundwater patterns.

Stream and Wetland buffer reductions (in BMM 19.40.310 & -.350) should require that the option of using buffer averaging be tried first. This implements the concept of mitigation

⁵ The annotated version is available at: <http://www.ecy.wa.gov/pubs/Q406025.pdf>

sequencing as a form of avoidance and minimization, before jumping directly to reduction and compensation.

Shoreline Environments

Aquatic Environment – Section 20.25.010. An unintended consequence of how the Aquatic environment is used is that while the upland shoreline areas have multiple possible environments to distinguish between different shoreline conditions, the open water areas are characterized by one environment – Aquatic. Furthermore the Use Table allows a wide variety of uses in the Aquatic environment. The result is that the uses allowed in the Aquatic environment can be located directly adjacent to all the other environments fronting the water line, resulting in significant land use inconsistencies with residential areas and natural areas.

Management Policy A discusses the paradox of having an Aquatic Environment that allows many uses and modifications being located adjacent to other environments that are protective of ecological functions or residential values: “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.”

We support the idea, but there is no implementing regulation. We recommend the following new regulation, which is similar to what other jurisdictions are using, to be placed either in the Land Use section (20.30.015) or in the use table notes:

“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.”

Urban Conservancy – Section 20.25.015. The Criteria for Designation in this environment states [with emphasis]:

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

There are several areas in the Residential environment that are more appropriately designated as Urban Conservancy. These are discussed further below.

Shoreline Residential – Section 20.25.020. 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:

- 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.

These areas need to be re-evaluated and appropriate areas re-designated as Urban Conservancy. This issue is important because shoreline buffers are based on the environments. If these areas are not changed to Urban Conservancy, they should receive an alternate residential environment designation and vegetation management strategy to deal with the greater setbacks, intact vegetation, and spaced structure pattern with vegetation in-between.

Use Table and Use Regulations

Complete use provisions are important elements in an SMP. We strongly support the use of a table to indicate whether shoreline uses and modifications are allowed and what permit review is needed. Our 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.

The difficulty is that the uses that are not considered or addressed in the use provisions are allowed under a Conditional Use Permit, as provided in the table notes. Thus, uses that are not addressed are allowed by default, rather than by careful consideration of whether they are appropriate in different environments. What is more, they will often be allowed without any detailed development standards because none are provided for that use, even though less impacting uses that ARE addressed may have many development standards. Several uses covered in the SMP Guidelines are not listed, and thus are allowed by default without careful consideration. The result is a system that cannot protect shorelines from uses that are inappropriate for particular areas, especially those that have inherent impacts unsuitable for shoreline environments.

Along with the use provisions that can be found in a table, the SMP Guidelines also require that the different types of uses have specific development standards if they are allowed in the SMP. The Guidelines are also very specific in what is included in the development standards. This requirement results in a problem equal to the incomplete table - there are several uses that are allowed (either by default or in the table) that do not have development standards in the draft SMP.

- 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.

A solution to this problem can take two forms. The simplest solution is adding a note to the table or implementing text, which provides that, if a use is not listed as a permitted or conditional use, it is a prohibited use; and then adding development standards for the few things that are still allowed. The second solution is more complex:

1. Cover all the uses and modifications in the SMP Guidelines for all environments. Incorporate water-dependency where appropriate.
2. Be sure that if a category of uses or modifications is either allowed, or not addressed, that there are development standards included to cover those uses. Otherwise, the SMP should prohibit those uses and modifications.

The main policy for Land Use – Section 20.30.015 – is about establishing the preference for water-dependency found in the SMP Guidelines. There are only two regulations for this section. One restates the no-net-loss requirements under Impact Mitigation. The second discusses over-water structures. However, 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 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.
- 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.

There are few of these types of distinctions for water-dependency in the regulations, and none in this section which is supposed to implement the water-dependency policy. Most references to water-dependency are simply restating the policy preference.

A quirk of the SMP guidelines is that Community Services, such as government buildings/uses, schools, churches, hospitals, etc. are not covered very well. We recommend including them with commercial uses, such that the category becomes Commercial Uses and Community Services. The change would need to be made in several places in the document. 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. The use table allows them in both upland environments, even if they are non-water-oriented. Community services should be limited the same as commercial uses in their location in shoreline areas and their placement within buffers/setbacks.

The SMP also 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. An important tie-in to the commercial use issue is that community services should be subject to the same limits on water-orientation as commercial uses are.

The SMP Guidelines have specific requirements for parking. These need to be added to the table and the development standards.

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.

Residential Development - Section 20.30.095

Under the SMA (RCW 90.58.020), single family residences are "priority" uses that have secondary status to preferred uses, and:

- They get priority only as part of implementing the SMA policy for protecting public health, ecological functions, navigation, and shorelines of statewide significance (the two paragraphs before the listing of priority uses).
- They only get priority if "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible ..."
- They only have priority for "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized".

Residential development and its accessory uses are the primary source of degradation in most shorelines in the state. To place residential uses in context with protecting ecological functions, 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:

- Non-water-dependent facilities (storage sheds, decks, driveways, utility lines, entertainment decks/patios) should meet the buffer/setback.
- 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)

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. Of greater importance is that the common line setback provision needs to be limited to only the Residential environment, where the situations it is designed for are prevalent. The Urban Conservancy environments will likely have intact vegetation that must be preserved, even though adjacent properties may be developed. It would be nearly impossible to do mitigation on sites with intact vegetation for development is that close to the water. In these cases, there must be a hardship that qualifies for a Variance, and then mitigation will have to be provided somehow – likely off-site. Such issues need to be addressed in the regulations.

Shore Stabilization

The section includes policies and standards intended to prevent the need for shore stabilization. Those 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.

Docks, Piers, and Boating Facilities

On a side note, the policies and regulations in Section 20.30.075 do not refer to docks and piers together consistently (see Regulations b, e, and f) - thus some will apply to one facility, but not the other. These facilities need to be treated the same, especially for standards that allow or don't allow them.

Docks and boating facilities have significant adverse effects on Lake Burien and other lakes.⁶ The *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* recommends consideration "of 'a no new piers' policy as the best option for protecting fish and fish habitat. Encourage the use of floats or buoys instead."⁷ The report recognizes that this may not be politically possible and recommends as a backup no net increase in overwater coverage. In order to build a new dock, existing docks would have to be slimmed down to compensate for the increased coverage. So docks and piers should have carefully crafted standards to protect shorelines from their significant impacts.

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.

Related to criteria (3) above, Regulation (e) in the draft SMP allows docks accessory to multi-family residential uses contrary to the SMP Guidelines. The WAC for Piers and Docks⁹ states

⁶ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* pp. 47 - 49 (Prepared for the City of Bellevue: 13 July 2000). Available at: http://www.ci.bellevue.wa.us/pdf/Utilities/dock_bulkhead.pdf

⁷ *Id.* at p. 51.

⁸ WAC 173-26-231(3)(B)

⁹ WAC 173-26-231(3)(B)

(with emphasis): "New piers and docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for access to watercraft..." This has several consequences:

- (1) Residential uses are not water-dependent. However, a special exception is made for single family docks. Single family docks for purposes besides "access to watercraft" are not allowed.
- (2) Docks for other residential uses (multi-family & long-term room rental) cannot be allowed as accessory facilities. If they are allowed, they need to be reviewed through the Boating Facility provision. This is an important distinction, as it comes with use limits and development standards.
- (3) All other uses must be water-dependent or provide public access to have a dock/pier or a float.

Of course, we also recommend that boating facilities have to be added to the use table, and development standards need to be established. The SMP Guidelines require¹⁰ 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. Consequently, the SMP Guidelines require that, when Boating Facilities are allowed, SMPs include regulations to deal with their special issues.

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.

Aside from these issues, the pier and dock provisions do have some good standards that we support.

- We strongly support the prohibition on new private boat ramps due to their impact on upland areas, the water-land interface, and in-water areas. Such impacts are unnecessary given the availability of public ramps to perform the occasional launching and removal of watercraft. The occasional need for dock owners to launch and remove their boats at a public facility or using a boat lift is not a hardship, and greatly reduces facilities in the water.
- We strongly support the provision that prohibits covered moorage.

Beach Stairs and Trams

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.

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 multiple user facility has been thoroughly investigated and is not *feasible*. New facilities shall be

¹⁰ WAC 173-26-241(3)(c).

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.

General Provisions

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 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.

Exemption Process

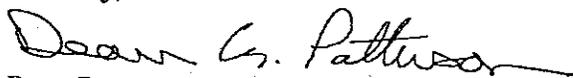
We support the system established for the review of shoreline exemptions. It thoroughly covers the important issues in dealing with exemptions. We have two minor comments.

The exemption for Repair and Maintenance includes provisions for when replacement is an acceptable means of repair. A statement should be included: “The need for replacement resulting from a neglect of maintenance and repair is not considered a common method of repair.”

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 “Persons requesting an exemption” be substituted in Section 20.35.030.1.

Thank you for considering our comments. If you require additional information please contact me at dean@futurewise.org or 509-823-5481.

Sincerely,



Dean Patterson
Shoreline Planner
Futurewise

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JAN 12 2010

CITY OF BURIEN

Introduction

In the course of reviewing Shoreline Master Programs (SMPs), Futurewise has seen several proposals for small buffers in areas of existing development. Some of these proposals seem to be based on the belief that, if a small buffer is established based on existing development patterns, unlimited continued development outside that small buffer will have no additional impacts to ecological functions, and thus no mitigation is necessary. This paper shows that there is no logical basis for such a strategy, and provides a recommended strategy for the acceptable use of small buffers in existing developed areas – especially cities – which we believe allows for reasonable development while also having a reasonable chance of protecting the existing shoreline functions as the Shoreline Management Act and the Shoreline Master Program Guidelines require.

Purpose of Regulatory Buffers – Avoiding & Minimizing Impacts

The Shoreline Management Act (SMA) policy statement in RCW 90.58.020 lists the primary policy objective of the act: “This policy contemplates 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*, while protecting generally public rights of navigation and corollary rights incidental thereto.” In addition, the SMA policy provides that “[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to *minimize*, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”

To implement these policies to protect the ecology and to minimize damage, as well as other policies of the SMA, the SMP Guidelines require No-Net-Loss of Ecological Functions, stating specifically: “Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.”¹

This is accomplished through Mitigation Sequencing,² whereby the first task of mitigation is avoidance of impacts, the second task is minimization of impacts, and the third is compensation for remaining impacts. Stated another way, allowing development to impact the shoreline is supposed to be the last option, not the first option. Impacts should only be allowed to the extent that it is not practical to avoid damage to the environment and the public’s use of the water, and then the development should minimize and compensate for those impacts.

¹ WAC 173-26-186(8)(b) under Governing Principles of the Guidelines relating to ecological functions; and implemented in WAC 173-26-201(2)(c) under Basic Concepts. Despite being called ‘Guidelines,’ the SMA, in RCW 90.58.080(1), requires that shoreline master programs shall be consistent with the SMP Guidelines.

² WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

One of the primary ways to accomplishing mitigation sequencing for shoreline waters (streams, lakes, wetlands, marine waters, etc.) and adjacent shorelands is to protect the functions and values provided by intact vegetation using a regulatory buffer or setback and vegetation retention area of a width supported by science. Such a buffer can provide many important functions and help protect the water quality and water resources.

An adequate regulatory buffer can serve three purposes:

- (1) It helps accomplish the first task of mitigation sequencing – avoidance. *But this is only the case if the buffer is intact.*
- (2) An intact buffer also minimizes the adverse impacts of development and redevelopment – such as water quality, glare, and noise impacts.
- (3) For both degraded and intact areas, the buffer also identifies the area within which new development will cause impacts that need mitigation. Degraded buffers perform functions at a dampened level, depending on the amount of degradation. Even heavily degraded shorelines can perform functions at some level. This is specifically stated in the SMP Guidelines.³ When development (including redevelopment, expansion, and more intensified uses) occurs within degraded buffer area, the impacts can be reduced and compensated for by enhancing the degraded functions.

If the regulatory buffer is not of adequate size to avoid and mitigate impacts, as is the case when using small buffers, new development outside the small buffer will still cause new impacts.

Vegetative Buffer Areas Perform Many Functions

The peer-reviewed scientific evidence shows that intact buffers of a width based on science are needed to adequately mitigate the impacts of adjacent development on lakes, rivers, streams, marine waters, and wetlands.⁴ The scientific studies document that (1) small buffers, even with intact vegetation, are incapable of fully mitigating development impacts; and (2) degraded buffers are unable to fully perform their buffering function. The science of intact buffer areas of adequate width shows that they perform many functions – some are provided below and grouped by similarity. Of particular importance is that even degraded conditions retain some functions, in spite of claims to the contrary.

³ WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions.

⁴ Karen Capiella and Tom Schueler, *Crafting a Lake Protection Ordinance Urban Lake Management, Watershed Protection Techniques* 3(4) p. 756 (2001) accessed on November 5, 2009 at: http://www.cwp.org/Resource_Library/Center_Docs/special/lakes/ulm_lakeprotectionord.pdf; K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* p. XI, pp. 164 – 67 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997) accessed on November 5, 2009 at: <http://wdfw.wa.gov/hab/ripfinal.pdf>; Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* p. 5-55 (Washington State Department of Ecology Publication #05-06-006. Olympia, WA: March 2005) accessed on November 5, 2009 at: <http://www.ecy.wa.gov/pubs/0506006.pdf>; and EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Working Group *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* pp. II-38 to II-46 & pp. III-34 – III-42 (October 2007) accessed on November 5, 2009 at: http://wdfw.wa.gov/hab/nearshore_guidelines/.

Water Quality and Infiltration

- Inhibiting surface erosion from surface runoff and flood flows.
- Filtering sediment from surface runoff and flood flows.
- Removing and transforming nutrients and harmful substances from surface runoff and flood flows.
- Infiltrating and storing surface runoff and flood flows into groundwater for later release to water bodies.
- Removing and transforming nutrients and harmful substances from groundwater passing through root zones.

Stabilization

- Providing stabilization to streambanks and lake shores against erosive water forces through root mats and root-strength.
- Contributing in-water woody debris which reduces and slows erosive water forces against streambanks and lake shores through barriers and increased roughness.

In-Water Habitat

- Providing fish with over-water hanging cover from predators.
- Providing shade to help cool the water, especially for shallow margins.
- Contributing in-water woody debris needed for creation of fish habitat.
- Contributing in-water organic matter to support fish food species (insects and invertebrates), and other aquatic life.
- Screening or dampening noise, glare, and human activity from the water.

Land Habitat

- Providing refuge for fish from fast flood flows, as well as access to large quantities of food.
- Providing natural processes and food web functions to support wildlife.
- Providing wildlife habitat areas (for feeding, reproducing, resting, etc.) for riparian species, and for upland species that use riparian areas.
- Providing a wildlife migratory corridor along the water to other areas.
- Altering the microclimate near the water to be more suitable for aquatic and riparian species by sheltering from wind, holding humidity, etc.
- Screening or dampening noise, glare, and human activity.
- Providing separation from human activity for sensitive aquatic and upland wildlife species.

While full-sized, intact buffers perform almost the full level of the functions above, degraded buffers can perform low levels of functions, and additional development continues to impact these. It is not the case that degraded buffers have no functions, and thus no mitigation is needed for new development outside and arbitrary small buffer area.

Small Degraded Buffers Cannot Protect Shoreline Functions

The currently available science shows that using the science-based buffer for avoidance and mitigation in mitigation sequencing has several logical outcomes that bear on the use of small buffers for existing development:

1. If the science-based buffers are intact, they can protect the resource from many impacts from nearby development.
2. If the buffers are not intact, they cannot protect the resource from adjacent development - even if it meets the buffer width - and there will be impacts.
3. If development takes place within the buffer area, there will be impacts.
4. In the case of existing development within the science-based buffer width, the vegetation is both degraded and there is not enough width. The presence of existing development does not mean that new development will not have impacts or even that existing development does not have ongoing impacts. Just as in #3 above, continued development in the normal science-based buffer area will increase the impacts. Simply making the buffer width number smaller to match the existing development does not change the presence of impacts.
5. Using small regulatory buffer widths to accommodate existing development establishes built-in impacts in the SMP review system.
6. Since the normal path of development in urban areas over time is expansion and intensification, there will be a continual increase in impacts and degradation across shoreline jurisdiction in these areas. This creates issues for both the Cumulative Impacts Analysis and the Restoration Plan.

This information shows that just because the science-based buffer area is degraded, it is not the case that unlimited additional development has no additional impacts as long as it meets a small regulatory buffer or setback.

This evidence also shows that small buffers cannot be applied to areas that may still have intact functions if those functions are to be protected from loss.

Some small buffer systems proposed in some SMPs seem to assume that the smaller degraded buffer works the same as an intact science-based buffer, i.e. adequately providing functions and buffering against impacts as long as development is outside the buffer line. But peer-reviewed scientific literature shows that a smaller degraded buffer is incapable of performing functions adequately and incapable of protecting the resource it is intended to protect.

New Development and Existing Development Impact Shoreline Functions

Expansion of existing development, redevelopment, and new development on vacant land all adversely affect shoreline resources and functions. In fact, even existing development continues to cause impacts to ecological functions. As described above, this is the case even for development outside a small regulatory setback. Consider the following adverse impacts of development on the shoreline resources.

- New structures and impervious surfaces increase runoff volumes, remove vegetation, remove native soils that absorb water, and reduce the area available to infiltrate those volumes. Note that these impacts are partially mitigated through stormwater ordinances. However, stormwater regulations generally only address increased peak

- runoff volumes, not the other impacts.⁵ In addition, small developments are only required to comply with some of the storm water requirements reducing their ability to address these impacts.⁶
- a. The increased runoff is focused into smaller receiving areas, thus increasing the erosive power of the surface runoff in those areas.
 - b. Where infiltration can still occur, the focused runoff drives infiltrated water to the groundwater table more rapidly with less opportunity for treatment.
 - c. Less vegetation area is available to filter sediment and nutrients from flood waters and the larger volumes of surface runoff passing over the site.
 - d. Less vegetation root structure is available to treat groundwater.
 - e. The trend of decreased infiltration in a drainage basin changes the hydrology of the basin by increasing winter flows and decreasing summer and fall flows adversely affecting water quality and aquatic habitats.
- Adding additions or new structures and impervious surfaces, and removing or simplifying vegetation (cutting trees, replacing shrubs with lawn, paving, etc.) also adversely affect habitat:
 - a. Higher value habitat areas and migration pathways are eliminated or replaced with lower value areas, until the most simplified areas (open impervious surfaces) have only limited value for migration pathways and separation areas. More complex areas for nesting and refuge are most susceptible to loss.
 - b. Substituting non-native species for native vegetation results in a loss of food sources for the entire food web. Many native insect species cannot effectively use non-native vegetation for food. The reductions in insect populations then affect the fish that feed on them.
 - c. Natural processes and food web functions are reduced or eliminated with the progressive removal of complex vegetation elements.
 - d. Species (large and small) capable of using degraded areas are greatly reduced with greater degradation.
 - e. Microclimate is altered for species currently using site.
 - f. Reduces the organic matter input to the water from drifting and blowing wind that supports the aquatic food web and life.
 - g. Reduces the large woody debris input from trees and branches falling into the water that is needed to form and diversify fish and aquatic life habitat.
 - In addition removing or simplifying the vegetation near water also:
 - a. Reduces the root strength and root mats that provide bank stabilization.
 - b. Increases sun exposure on shallow water areas and heats them.
 - Residential uses have additional impacts, not directly related to construction, that increase with enlargement or expansion of the use. Aside from lighting, very little

⁵ Washington State Department of Ecology, *Stormwater Management Manual for Western Washington Volume 1 - Minimum Technical Requirements* pp. 1-20 - 1-26 (February 2005). Accessed on November 5, 2009 at: <http://www.ecy.wa.gov/biblio/0510029.html>

⁶ *Id.* at 2-9.

can be done to mitigate these impacts – they are a function of the existence of the development. Non-residential uses can have impacts similar to residential uses that vary depending on the activities and the level of use.

- a. Human presence and activity that impacts or drives off fish and wildlife. Bigger residences mean more people on the property, whether family members or guests.
 - b. Pets that prey on or drive off fish and wildlife. More family members increase the likelihood of having more pets.
 - c. Machinery and vehicular noise that impacts or drives off fish and wildlife. More people on the property increase the likelihood of having more machines and vehicles – including automobiles, watercraft, and mechanical toys.
 - d. Use of chemicals and fertilizers for house and yard. Larger structures and grounds increase the use of chemicals.
 - e. Use of night lighting that impacts or drives off fish and wildlife. Larger structures and grounds increase the use of night lighting.
- Existing uses can also have impacts that increase over time. While shoreline master programs do not apply to most existing uses, these impacts show that allowing an expanded, redeveloped, or new use that continues to rely on existing, degraded buffers or non-existent buffers will result in an increased loss of shoreline functions, contrary to the requirements of the SMA. Further, shoreline master programs do apply to ongoing activities that require five year permit renewals. The SMP should require measures to protect shoreline functions when those permits are renewed.
 - a. Buffers degrade over time, so existing uses increase their pollution loads as the buffers degrade.
 - b. Even if the pollution being discharged to the water body remains the same, the receiving waters can become more contaminated as pollutants build up in aquatic sediments and the water body year after year. Some pollutants are removed or transformed by flushing and biological processes, but others build up over time.

Recommendations Using Small Buffers or Setbacks with Planting Alternatives

Based on the discussion above, regulatory systems that use small buffers alone are ineffective and fail to comply with the SMA. While a science-based regulatory buffer can provide a means of avoidance, and to a lesser degree minimization, small degraded regulatory buffers and setbacks do not, and result in a system with built-in adverse impacts to ecological functions.

Since a system that uses small buffers or setbacks alone cannot accomplish avoidance, or otherwise mitigate the impacts of a development, the only other acceptable strategy for their use if the built-in impacts are offset by built-in mitigation measures, including mitigation for habitat impacts. This is best accomplished by an improvement of the existing degraded buffer or habitat conditions. Even with this approach to using small buffers or setbacks, the SMP must also address the range of different shoreline conditions in a logical and systematic manner. Below is our recommended strategy for jurisdictions to use small buffers or setbacks for existing developed areas.

1. The shoreline area should be carefully mapped, and the existing level of development should be characterized. This should be part of the inventory and characterization regardless of the use of small buffers. When broad variations exist in setback and vegetation, the areas should be categorized based on the character so the protection measures can consider such variations.
2. Science-based regulatory buffer widths need to be adopted for intact or large setback areas. These areas need to be protected from further degradation.
3. Small regulatory buffers widths or setbacks with native vegetation planting (as described in item 4) can be used for areas of existing development, and should be based on the vegetation and setback categories identified during mapping. However, these areas need to be wide enough to function and function over time. For example, the narrowest high quality buffer that can filter nutrients is 13 feet; the minimal width for filtering pollutants is 33 to 52 feet.⁷ And buffers degrade over time as they filter out nutrients and pollutant. Wider buffers are needed to protect other important shoreline functions.
4. Built-in mitigation requirements need to be included when an intact science-based buffer cannot be used to mitigate impacts of new development. This should include various means of enhancing the degraded shoreline areas where doing so is possible – such as planting native shoreline vegetation, removal or reduction of unnecessary shore armoring or other near-water structures, etc. Where native vegetation is planted it needs to include native groundcover, shrub, and tree planting; and needs to extend across the shoreline with allowances for water access.
5. Only very limited uses should be allowed in the setback and no uses can be allowed within the planted areas if they are to function. Encroachments into a buffer or setback vegetation should be limited to those that are water-dependent and water-related. Water-enjoyment and non-water-oriented uses and facilities can function without being in the buffer area.
6. Where native vegetation is not present in the buffer or setback, it must be planted and maintained. This must include native understory, shrub, and tree planting and extend across the shoreline with allowances to access the shoreline. At a minimum, this planted area needs to be large enough to maintain fully grown native trees.
7. Low impact development (LID) techniques should be required to minimize storm water runoff and help maintain a more natural hydrologic system. This is needed to help reduce the polluted storm water that would otherwise overwhelm the narrow planting strip.
8. Major redevelopments and changes in use, must established scientific based buffers, or at least wider buffers, to ensure no net loss of shoreline functions.
9. When permits for activities are renewed every five years, buffers or setbacks and vegetation plantings should be required.

While small buffers can be made acceptable for highly developed urban areas and rural areas, there needs to be policy support for not basing the buffer width on the available scientific information. Of course science-based buffers should be used for intact areas. Such

⁷ K. L. Knutson & V. L. Naef, Management Recommendations for Washington's Priority Habitats: Riparian p. XI, pp. 164 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997).

justification can be provided in the jurisdiction's policy that supports the use of shoreline buffers. We recommend a policy similar to the following:

BUFFER POLICY: While buffers widths based on science are necessary to protect ecological functions, using them is not possible in existing heavily developed areas, such as along some parts of [FILL IN THE BLANK]. In such areas, an alternative strategy is established using smaller buffers [or setbacks and native vegetation plantings] that are based on the existing development pattern, in combination with mitigation requirements for new development that provide enhancement of the smaller buffer and other degraded features to address impacts of the new development outside the small buffer areas.

To: The Burien Planning Commission
From: Robert Edgar
Re: Shoreline Master Program Update Document
Date: January 12, 2010

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JAN 12 2010
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The Planning Commission will need to address a number of items in the current draft of the Shoreline Master Program. Some of those items include the unequal protection of the shorelines on Lake Burien as compared to the shorelines on Puget Sound.

The overall goal of the Shoreline Master Program is to protect the ecological function of the shorelines of the State that are located within the boundaries of the City of Burien. These shorelines are designated as critical areas. The critical issue for properties around Lake Burien is that they are located on wetlands and aquifer recharge areas. These lands areas are natural filters that cleanse runoff before the water is collected in lakes or before the water enters underground aquifers. In order for wetlands or recharge areas to be useful and effective, they need to remain as unencumbered as possible. This means limiting the amount of impervious surfaces that cover wetlands and recharge areas.

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. The critical fresh-water habitat of Lake Burien is recognized in the Shoreline Master Program Update but is no definition is provided. However, it does define a "critical salt-water habitat". This suggests that protecting the fresh-water habitat is of less importance than protecting salt-water habit.

The salt-water waterfront lot size on the shorelines of Puget Sound is zoned as RS-12,000. The fresh-water 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 be developed at higher density than it is requiring for land development on Puget Sound. Since small, fresh water habitats are in far shorter supply on this planet compared to saltwater habitats, fresh water habitats should be afforded greater, if not equal, protection. This seems to be just the opposite and contrary to the intent of the Shoreline Master Program to protect the ecological function of Lake Burien's shoreline.

The City of Burien plays a key role in the City of Normandy Park's ongoing success of attracting fish populations. Lake Burien is one of the larger sources of freshwater feeding Miller Creek. And it is that supply of fresh water that from Lake Burien that can maintain fish populations down stream.

The quality of the Lake Burien's freshwater and freshwater habitats has been part of the ongoing stewardship of the families around Lake Burien. Property owners have been very active for more than 50 years in protecting the waters, lake beds, shorelines, flora and fauna of the lake. This has resulted in good water quality and a strong and involved Lake Shore Club Community that prides itself on its historic stewardship of the Lake Burien and a critical habit for resident and migratory waterfowl, especially since the Port of Seattle filled/destroyed the 25+ acres that were previously used by these creatures. Years of property owner involvement

in monitoring water quality and minimizing pollutants has resulted in a lake that has reached a sustainable equilibrium.

Another major factor to the lake'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. The Shoreline Master Program must play key role in protecting the critical freshwater habitat of Lake Burien by not allowing unfettered, unregulated public access.

I strongly encourage the Planning Commission to seriously consider the need to protect the critical area of lake Burien and since there a lot less freshwater on this planet than salt water, ensure that the SMP takes proactive steps to protect this critical freshwater habitat.

Robert Edgar

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JAN 12 2010

CITY OF BURIEN

To: The Burien City Council
The Burien Planning Commission
From: Chestine Edgar
Re: Shoreline Master Program Update Document
January 12, 2010

It was my understanding that the purpose for the creation of the Shoreline Master Program Update document was to protect all of the shorelines of Burien equally. Additionally, it was to allow citizen input equally from shoreline areas. I raised my concerns about what was happening during the time the Shoreline Advisory Committee was meeting and I am continuing to raise concerns again about some problems that occurred in the process of producing this document.

Approximately 75% of Planet Earth is covered by water. Of the 75%, only one tenth of one percent (0.1%) is available as fresh water. All living things need freshwater. This makes freshwater a very, 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 living things.

Lake Burien is a critical area because it is:

1. a wetland area,
2. a aquifer recharge area,
3. the head waters of Miller Creek,
4. a seismically active area,
5. an area that provides habitat and a food source for threatened species.

All of the homes surrounding Lake Burien sit on this kind of land. This is the kind of land that should have the lowest density (RS-12,000) zoning.

However it some point in time in order to satisfy King County's density requirements, the City of Burien rezoned this land to the lot size to 7,200 sq. ft. without thoroughly analyzing what impact it would have to this critical area. However, the city left the lot sizes of the critical areas on Puget Sound at 12,000 sq ft. This means that more construction of new homes and other structures, impervious surfaces, erosion, vegetation clearing, pollution, and ultimately habitat destruction will be allowed on Lake Burien than on Puget Sound. When I presented this issue to the Shoreline Advisory Committee, they did not include anything in the writing of the document to address this issue. The comment from the city representative was that the lot designation was a problem for the Planning Commission. I have brought this issue to the Planning Commission, they remained mute on it. Therefore, I believe that it will be the responsibility of the Burien City Council to address this clear and apparent damage that will happen to Lake Burien critical areas but not to Puget Sound critical areas. Critical areas in the city should be treated equally when determining lot size zoning. Some areas should not be rezoned for administrative convenience.

All decisions about the use of critical areas are required to be based on the Best Available Science (BAS) about the critical area. Not once during the process of preparing the Shoreline Master Program Update has the Lake Steward for Lake Burien been contacted by the city for information about the lake with regard to:

1. practices used on the lake to protect water quality,
2. practices used to protect wildlife using the lake or even the wildlife that is regularly present,
3. noxious weed control,
4. studies that residents have been involved in about the lake,
5. flooding issues around the lake,
6. operational aspects of the weir,
6. threatened species that use the lake,
7. habitat areas used by these species,
8. rules that neighbors follow that protects the lake,
9. historical data about the lake, or,
10. a basic tour of the lake.

After attending a number of the Shoreline Advisory Committee meetings and listening to the comments made by members of the Planning Commission as well as City Employees, I am convinced that these two groups knew very little about the lake and they did not seek out the information. Additionally, they did not clearly understand the impact that the lot size could play on critical area land use. One member made a comment that the seller of a piece of property controlled the lot size that could be used for building, which demonstrated a clear lack of understanding of city zoning codes and allowable land use in the city.

I am attaching a table and a chart that clearly illustrate the critical areas I am writing to you about as well as the impact lot size plays on the critical area of Lake Burien versus Puget Sound.

As summary of that data, when comparing the critical area on Lake Burien versus an equal amount of critical area on Puget Sound this is what can occur with land use:

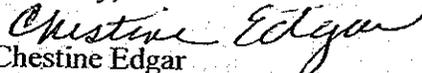
1. Up to 135 additional houses can be built on Puget Sound. Up to ²²³25 houses can be built on the land on Lake Burien.
2. Up to 813,950 sq. ft. of impervious surface will be allowed on the land on Puget Sound. Up to 1,253,890 sq. ft. of impervious surface will be allowed on the land on Lake Burien covering wetland and aquifer recharge area. This is 440,072 sq. ft. more than allowed on Puget Sound.
3. Since the lot size (RS-12,000) on Puget Sound has remained the same probably no major new home development will occur but because the lot size on Lake Burien was reduced (RS-7200) massive amounts of new construction could occur. Currently there are approximately 82 houses around Lake Burien. At a lot size of 7,200', the number of houses could increase to 223. This is almost three times the number that currently exists. This will cause habitat destruction as well as damage to water quality to the lake.

The data for this table was obtained from King County records and the calculations were based on numbers obtained from Burien codes and regulations. I have not seen any tables or studies by the city of Burien that address this issues and its impact on the critical area of Lake Burien. Even though the Shoreline Advisory Committee was not willing to put anything in their document to address these issues or any safe guards to compensate for this lot size issue, I am asking that the City Council address this issue.

Additionally, the protection of freshwater habitat is not mentioned in the document. According to the consultant and the city, it was not included because they do not know how to define it. I have researched the topic, I have found that scientists consider this 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. This is a term that can be defined.

Please consider these issues before making any final decisions about finalizing the Shoreline Master Document. The Shoreline Master Document is a plan to protect critical areas not to contribute to their demise.

Sincerely,


Chestine Edgar

Lake Burien Lots Sizes and Number of Houses

House Number	Lot Size per King County Records		Current # of Houses	Potential # of Houses @ RS:		Potential # of Whole Houses @ RS:	Lake Burien estimated sq. ft. of Impervious Surface of current House (based on earlier zoning codes)	RS 7,200 Allowable sq. ft. of Impervious Surface (@ 70% of future development on Lake Burien	RS 12,000 Allowable sq. ft. of Impervious Surface (@ 45% of future development on Lake Burien	Amount of additional sq. ft. of Impervious Surface allowed in critical areas if zoned as RS 7,200 vs RS 12,000
	Acres	Sq Ft		7,200	12,000					
R. Dykeman	7.49	326,175	4	45.30	27.18	45	60,000	228,322.5	146,779	81,543.8
1201	0.34	14,838	1	2.06	1.24	2	5,400	10,386.6	6,677	3,709.5
1207	0.49	21,179	1	2.94	1.76	2	5,400	14,825.3	9,531	5,294.8
1215	0.43	18,645	1	2.59	1.55	2	5,400	13,051.5	8,390	4,661.3
1223	0.29	12,860	1	1.78	1.07	1	5,400	8,995.0	5,783	3,212.5
1229	0.29	12,650	1	1.76	1.05	1	5,400	8,855.0	5,693	3,162.5
1235	0.43	18,602	1	2.58	1.55	2	5,400	13,021.4	8,371	4,650.5
1239	0.35	15,360	2	2.13	1.28	2	10,800	10,752.0	6,912	3,840.0
1247	0.61	26,359	1	3.66	2.20	3	5,400	18,451.3	11,862	6,589.8
1255	0.40	17,400	1	2.42	1.45	2	5,400	12,180.0	7,830	4,350.0
1261	0.78	34,087	2	4.73	2.84	4	10,800	23,860.9	15,339	8,521.8
1405	0.62	26,868	1	3.73	2.24	3	5,400	18,807.6	12,091	6,717.0
1413	0.60	25,966	1	3.61	2.16	3	5,400	18,176.2	11,685	6,491.5
1425	0.42	18,090	1	2.51	1.51	2	5,400	12,663.0	8,141	4,522.5
1431	0.33	14,336	1	1.99	1.19	2	5,400	10,035.2	6,451	3,584.0
1435	0.28	12,264	1	1.70	1.02	1	5,400	8,584.8	5,519	3,066.0
1443	0.25	11,072	1	1.54	0.92	1	5,400	7,750.4	5,400	2,350.4
1449	0.37	16,224	1	2.25	1.35	2	5,400	11,356.8	7,301	4,056.0
1461	0.39	16,800	1	2.33	1.40	2	5,400	11,760.0	7,560	4,200.0
1603	0.47	20,520	2	2.85	1.71	2	10,800	14,364.0	9,234	5,130.0
Vacant-KS	0.53	23,130	0	3.21	1.93	3	0	16,191.0	10,409	5,782.5
1621	0.90	39,295	1	5.46	3.27	5	5,400	27,506.5	17,683	9,823.8
Vacant-GL	0.30	13,061	0	1.81	1.09	1	0	9,142.7	5,877	3,265.3
1635	0.37	16,089	1	2.23	1.34	2	5,400	11,262.3	7,240	4,022.3
Vacant-GL	0.23	10,096	0	1.40	0.84	1	0	7,067.2	5,400	1,667.2
1803	0.40	17,400	1	2.42	1.45	2	5,400	12,180.0	7,830	4,350.0
1807	0.40	17,400	1	2.42	1.45	2	5,400	12,180.0	7,830	4,350.0
1811	0.45	19,630	1	2.73	1.64	2	5,400	13,741.0	8,834	4,907.5
1825	0.60	26,076	1	3.62	2.17	3	5,400	18,253.2	11,734	6,519.0

Lake Burien Lots Sizes and Number of Houses

House Number	Lot Size per King County Records		Current # of Houses	Potential # of Houses @ RS:		Potential # of Whole Houses @ RS:	Lake Burien estimated sq. ft. of Impervious Surface (based on earlier zoning codes)	RS 7,200 Allowable sq. ft. of Impervious Surface (@ 70%) of future development on Lake Burien	RS 12,000 Allowable sq. ft. of Impervious Surface (@ 45%) of future development on Lake Burien	Amount of additional sq. ft. of Impervious Surface allowed in critical areas if zoned as RS 7,200 vs RS 12,000
	Acres	Sq Ft		7,200	12,000					
15232/15240	0.30	13,222	1	1.84	1.10	1	5,400	9,255.4	5,950	3,305.5
15244	0.47	23,530	1	3.27	1.96	3	5,400	16,471.0	10,589	5,882.5
15252	0.29	12,837	1	1.78	1.07	1	5,400	8,985.9	5,777	3,209.3
15260	0.45	19,477	1	2.71	1.62	2	5,400	13,633.9	8,765	4,869.3
15404	0.51	22,200	1	3.08	1.85	3	5,400	15,540.0	9,990	5,550.0
15406	0.57	24,800	1	3.44	2.07	3	5,400	17,360.0	11,160	6,200.0
15511	2.02	87,991	3	12.22	7.33	12	16,200	61,593.7	39,596	21,997.8
15504	0.35	15,302	1	2.13	1.28	2	5,400	10,711.4	6,886	3,825.5
Common	0	0	0	0	0	0	0	0	0	0
1912	0.62	26,983	1	3.75	2.25	3	5,400	18,888.1	12,142	6,745.8
1908	0.23	9,960	1	1.38	0.83	1	5,400	6,972.0	5,400	1,572.0
1652	0.46	20,060	1	2.79	1.67	2	5,400	14,042.0	9,027	5,015.0
1808	0.43	18,730	1	2.60	1.56	2	5,400	13,111.0	8,429	4,682.5
1804	0.35	15,240	2	2.12	1.27	2	10,800	10,668.0	10,800	0
1626	0.48	20,944	1	2.91	1.75	2	5,400	14,660.8	9,425	5,236.0
1620	0.68	29,670	2	4.12	2.47	4	10,800	20,769.0	13,352	7,417.5
1618	0.27	11,782	1	1.64	0.98	1	5,400	8,247.4	5,400	2,847.4
1602	0.39	17,094	1	2.37	1.42	2	5,400	11,965.8	7,692	4,273.5
1600	0.31	13,320	2	1.85	1.11	1	10,800	9,324.0	5,994	3,330.0
15602	0.93	40,515	2	5.63	3.38	5	10,800	28,360.5	18,232	10,128.8
15703	1.02	44,400	2	6.17	3.70	6	10,800	31,080.0	19,980	11,100.0
Common	0	0	0	0	0	0	0	0	0	0
1440	1.27	55,380	1	7.69	4.62	7	5,400	38,766.0	24,921	13,845.0
15709	0.35	15,180	1	2.11	1.27	2	5,400	10,626.0	6,831	3,795.0
15700	0.25	10,800	1	1.50	0.90	1	5,400	7,560.0	5,400	2,160.0
1418	0.59	25,860	1	3.59	2.16	3	5,400	18,102.0	11,637	6,465.0
15705	0.39	16,907	1	2.35	1.41	2	5,400	11,834.9	7,608	4,226.8
15701	0.44	18,980	1	2.64	1.58	2	5,400	13,286.0	8,541	4,745.0
15703	0.49	21,270	1	2.95	1.77	2	5,400	14,889.0	9,572	5,317.5

Lake Burien Lots Sizes and Number of Houses

House Number	Lot Size per King County Records		Current # of Houses	Potential # of Houses @ RS:		Potential # of Whole Houses @ RS:	Lake Burien estimated sq. ft. of Impervious Surface of current House (based on earlier zoning codes)	RS 7,200 Allowable sq. ft. of Impervious Surface (@ 70%) of future development on Lake Burien	RS 12,000 Allowable sq. ft. of Impervious Surface (@ 45%) of future development on Lake Burien	Amount of additional sq. ft. of Impervious Surface allowed in critical areas if zoned as RS 7,200 vs RS 12,000
	Acres	Sq Ft		7,200	12,000					
15701	0.37	16,101	1	2.24	1.34	2	5,400	11,270.7	7,245	4,025.3
15702	0.36	15,658	1	2.17	1.30	2	5,400	10,960.6	7,046	3,914.5
15704	0.36	15,704	1	2.18	1.31	2	5,400	10,992.8	7,067	3,926.0
1228	0.35	15,320	1	2.13	1.28	2	5,400	10,724.0	6,894	3,830.0
1222	0.33	14,395	1	2.00	1.20	2	5,400	10,076.5	6,478	3,598.8
1216	0.51	22,259	1	3.09	1.85	3	5,400	15,581.3	10,017	5,564.8
1208	0.24	10,644	1	1.48	0.89	1	5,400	7,450.8	5,400	2,050.8
15605	0.25	10,900	1	1.51	0.91	1	5,400	7,630.0	5,400	2,230.0
Vacant	0.04	1,590	0	0.22	0.13	0	0	0	0	0
Vacant	0.40	17,300	0	2.40	1.44	2	0	12,110.0	7,785	4,325.0
15441	0.61	26,593	1	3.69	2.22	3	5,400	18,615.1	11,967	6,648.3
15431	0.43	18,610	2	2.58	1.55	2	10,800	13,027.0	8,375	4,652.5
15427	0.41	17,773	1	2.47	1.48	2	5,400	12,441.1	7,998	4,443.3
15423	0.38	16,460	1	2.29	1.37	2	5,400	11,522.0	7,407	4,115.0
15413	0.36	15,752	1	2.19	1.31	2	5,400	11,026.4	7,088	3,938.0
15407	0.65	28,320	1	3.93	2.36	3	5,400	19,824.0	12,744	7,080.0
15403	0.33	14,586	1	2.03	1.22	2	5,400	10,210.2	6,564	3,646.5
			82			223	481,200	1,253,889.7	813,949.7	440,072.1
						135				



RECEIVED

JAN 12 2010

CITY OF BURIEN

DATE: January 9, 2010

TO: The City of Burien Planning Commission

Subject: Shoreline Master Program Development Regulations

To Whom It May Concern:

Marc and I have been waterfront property owners in Burien since 2003. When we fell in love with Burien, we brought our past environmental learning with us; Salmon Stream Team, Master Home Environmentalist, native plantings and bank stabilization expertise learned at our prior Camano Island waterfront properties. So we highly value, saving and increasing habitat values on the Shorelines of Puget Sound. However, we do not feel we need to give up our own personal property (existing structures) in order for Burien to gain the community goal of "no net loss."

First, we do not understand what date the "no net loss" is measured from? It appears to us that Burien has gained the best and highest leverage for increasing habitat by returning Seahurst Waterfront Park back to an original shoreline ecosystem. Shouldn't this count for a huge gain and credit for Burien? And, also be measured as a big Burien win, by the Department of Ecology, prior to implementing Burien's first SMA?

Restrictions on future new development will ensure that the principle of "no net loss" will be met. We also support vegetation enhancement by existing property owners as they rebuild and get permits after this regulation goes into effect. However, it should also be recognized that adverse environmental impacts to Puget Sound are created by the actions of landowners whose property is not adjacent to the water and they should also be required to take appropriate action to enhance their vegetation when they apply for permits to develop or modify/replace existing structures.

The large strides already made by Burien should be weighed against all the tiny ways private property owners, who desire to reconstruct their existing homes and decks within the existing footprint may be forced to bear additional expense or suffer an unintended loss. Taking of our property should not be considered as a means to further improve the shoreline ecosystem. Further, it should not be seen that we are a menace to the environment just because we own waterfront property that does not conform to new rules for development.

So, please carefully consider the following clarifications to your policies and development regulations:

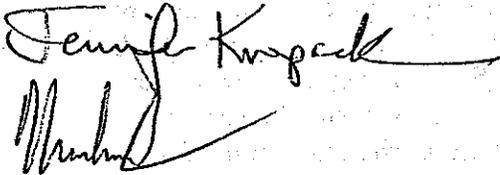
1. In the voluntary removal, alteration section, Chapter 20.35.045 (3) – Foundation walls should include allowing existing homes and their deck structures to be rebuilt to set overhang beyond the existing deck piers.

2. In the reconstruction section, Chapter 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.
3. If damage occurs to our residence, and is greater than 50% of the assessed value of the structure per King County, we believe we should be allowed to rebuild stick-for-stick, all that we currently have – deck and home footprint.
4. An additional policy statement of intent should be incorporated - For the property owners in the buffer area of the shoreline who have existing structures, and who in the future may want to rebuild within the current footprint (extending water-ward a set distance from the existing deck piers to allow for deck overhang), that Burien will not see a re-build as a “take away” and that reconstruction is not viewed as a harm to the community’s “no net loss” goal.

Increasing the gain of shoreline ecosystem function should not be at the expense of current Burien residents in the event of a property loss. Please consider our comments to clarify both the specific and the broad intent of the proposed draft SMA.

Sincerely,

Jennifer and Marc Kropack
2681 SW 151ST PL
Burien WA 98166



Don Warren
15702 13th Ave SW
Burien, WA 98166
January 12, 2010

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JAN 12 2010

CITY OF BURIEN

City of Burien Planning Commission Public Hearing #1 on SMP update
To be submitted to David Johansen and the Planning Commission for the public record

- 1) 9 year resident of Burien, all of that living on Lake Burien at address above
- 2) President Lake Burien Shore Club 2010, 2009, 2008, 2003
- 3) Lake Steward of Lake Burien 2003 through present.
- 4) Member of the Citizen's Advisory Council for DRAFT'ing SMP update for the City
- 5) Past member of the Pedestrians and Bikes Committee
- 6) Member of Environmental Defense, NRDC, Union of Concerned Scientists, Water Keepers Alliance
- 7) Supporter of Ruth Dykeman Children's Center, Austin Foundation, Planned Parenthood, National Parks, etc

Talking points for this evening

No net good will flow to the city thru public access to the Lake.

No net good will come to the Lake from providing Public Access.

Harm will occur to the Lake thru public access.

Therefore there is no rational reason that the City could have to provide public access to the lake.

Therefore the SMP Draft as it stands now 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.

Further, the City should realize that the enlightened self interests of the private property holders having access to the lake will always results in the best possible health of the Lake, its shorelines, and the flora and fauna in it and around.

- 1) Lake Burien has been in private ownership and care for more than 100 years.
- 2) Remove all notion of controlling Lake Burien (boats, floats, docks, motors, vegetation) thru updates to the SMP. All is well handled in the existing codes of the City.
 - a. The Shore Club does a rather fine job and the City could only ruin the Lake thru regulations unneeded since they are already well covered in the Sensitive Areas ordinance of a few years back
 - b. The Shore Club has been very successful in managing the Lake health
 - c. Any advancement of public access to the lake will have a negative impact on the Lake health.

The City would poorly serve the Lake's water quality and Shoreline health in comparison to the job that the enlightened private property owners have and will continue to perform.

The Planning Commission should advise the City Council that the Lake and its surrounding sensitive areas are better served thru a hands off approach relying on the private property owners as members of the Lake Burien Shore Club for their stewardship to assure the long term health of the lake, its shore lands, the downstream waters, and the flora and fauna within that critical and sensitive area.

I have more notes and thoughts than I can share in my short time here tonight. I would love to present my notes, thoughts, advice I have from my own experiences and from the experiences of lawyers and business leaders from around the sound and throughout King County.

I look forward to aiding you in modifying the current DRAFT of the SMP in order to protect the broadest interests of the citizens, the environment, and most importantly this singularly unique, critical and sensitive fresh water eco-system.

For the Record ...

My interests are for maintaining and fostering a healthy lake and the wonderful community of Lake Burien Shore Club Members. I can provide copious notes and a report supported by four people, all Burien Citizens, all members of the SMP Citizens' Advisory Committee, who all agree on the many flaws of the current SMP DRAFT. We can give you ideas on how to avoid the misadventure proposed by the non-citizens and

The Shore Club is more than 30 years older than the city of Burien.

It has worked in a concerted fashion numerous times to assure the health of the Lake for efforts large and small. As a group they are very involved in the community. The Club has many members, almost 100 households, including some major business leaders and largest business owners in the City of Burien. We focus on helping others and building the community. We also focus on keeping the sensitive areas of and around the Lake well maintained in the interests of saving the one last uninfected lake. By infection, I mean all the various vectors of invasion both vegetative, animal, and chemically and physically polluting that are introduced by general public access.

A 1930 Washington Supreme Court Decision ruled that there should be no public access to Lake Burien for various reasons including public safety, public health and private property invasions and nuisance. Recent counseling from a friend of the Lake Burien Shore Club, a recently retired Washington State Supreme Court Justice, indicates the ruling has merit. We are also reminded that even better and more current science supports our view that the Lake would be negatively impacted through heavier use of the Lake and its shorelines than is presently imposed by the less than 95 homes and families that have access to the Lake.

It is not a large lake, something said at one end is heard at the other. It is not very deep. It has no outflow but for about five months of the year. It presently has use measured in

person-hours of less than 10 in a month during those five months. Person-hours of use of the lake in the summer time aren't very high either. And that's good for the lake and the plants and critters that rely on it for their lives.

There are no submerged noxious weeds invading the Lake. What other Lake in King County can say that? NONE ! I know from my involvement with the King County Lake Steward program.

Lake Burien barely qualifies as a shoreline of the state. It is very small, very shallow. And the lake level drops as much as 30 inches from May thru November.

I want to report from my point of view on the proceedings of the Advisory Committee meetings and

- 1) the lack of a proper notion of consensus of people who LIVE in Burien
- 2) the lack of promised public presentations during the early stages of the process
- 3) the poor method of documenting what was said in the meetings to the point that much of the most important stuff was lost and much was misquoted
- 4) the drive to provide public access to all reaches of Burien Shorelines without regard to impacts
- 5) treating the salt water reaches similar to the fresh water reaches

Other ramblings that had little time for review or word smithing

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

There is no science supporting the notion that Lake Burien could survive public access. There is no commitment in the SMP DRAFT submitted to the Planning Commission that the City should avoid public access to the lake should it endanger the lake. Specifically there is no commitment or statement to become informed, stay informed, and control access by the general public

Historians around the lake who have lived there for decades remind us the only deaths occurred

The Citizen's Advisory Council (CAC) composition and affiliations were not documented in the SMP nor the notes

As far as I have seen, there is no detailed accounting of the advisory council members' addresses and affiliations.

There were members who were subject matter experts who were not citizens.

There were at large people not Burien Citizens with focused interests specifically in gaining access to the Lake regardless outcomes with little other than passing interest in other topics. This is all well documented in 100's of pages of notes I have from the CAC meetings

The person who represented Friends of Puget Sound was able to relate conditions of the sound and voice ideas that gained support for protecting the sound reaches.

As the Lake Steward of Lake Burien for more than 7 years, I was afforded no similar appreciation of how to protect the lake by any of the people who had an unflappable commitment going into the process to achieve public access.

All three members of the Planning Commission that sat on the CAC

Public Participation promised was not delivered by City planner et al

There was ONE public meeting between CAC mtgs #1 and #2.

This was held at Gregory Heights Elementary.

Various notes were taken at the time by Planner and staff that poorly represented property owners' comments. Participants and CAC members were promised multiple times that there would be more public involvement. None occurred. Unless you count the Fait Accompli presentation on 20 November; a purely for show event. It collected no input

from citizens from what I can tell. Is anything from the commentary collected that night in the Folio's given to Planning Commission.

What extant or expected threats or opportunities drive the UPDATE to SMP, and the specific content in the DRAFT before you?

Actions suggested to be taken by the Planning Commission prior to forwarding any advice to City Council

- 1) Comparative square feet of parks per person Burien vs similarly sized and demographically matching cities of King County .. do we need more parks and nuisance provided by encouraging broad public access to existing access points

Do not decompose any SMP update into other Reg's of the City

This SMP should stand alone and intact

By devolving it into other city documents, traceability and responsibility is lost
David Johansen told the Advisory Committee that the SMP can be updated at anytime with 5-10 years being usual cycle.

If the SKMP update is devolved or decomposed into other City documents, that update process is made more difficult

There should be more attention paid to WHO is controlling review of things related to this document

There are repeated references to a Director who is supposed to decide various matters. For something so important, whoever is deciding, there should be checks and balances on them, AND they should be a citizen of Burien

For example the City Planner for Burien is not a citizen of the City.

Who is looking out for over all costs to City should wild adventures be proposed where they are unwarranted, opposed by significant populations and supported by only insignificant populations. Who assures actions are taken only as warranted.

Who will assure no jaundiced surveys are taken of populations to support otherwise undesired actions in the city?

DATE: January 11, 2010

TO: The City of Burien Planning Commission

Subject: Shoreline Master Program Development Regulations

RECEIVED
JAN 12 2010
CITY OF BURIEN

To Whom It May Concern:

My husband and I have been waterfront property owners in Burien since 2004. We were attracted by the beautiful environment and wildlife along the shore. We highly value saving and increasing habitats on the shorelines of Puget Sound. However, we do not feel we need to give up the quality of our personal property in the form of existing structures in order for Burien to gain the community goal of "no net loss."

We do not understand what date the "no net loss" is measured from. It appears to us that Burien has gained the best and highest leverage for increasing habitat by returning Seahurst Waterfront Park back to an original shoreline ecosystem. Shouldn't this count for a huge gain and credit for Burien? Shouldn't the Department of Ecology consider this a major contribution prior to implementing Burien's first shoreline master program?

Restrictions on future new development will ensure that the principle of "no net loss" will be met. We also support vegetation enhancement by existing property owners as they rebuild and get permits after this regulation goes into effect but only if Burien will regulate grass and lawns for all Burien building owners. Burien should begin the policy move to doing this everywhere in the City because most storm water run-off flows to the Sound and all property owners should be treated equally. The Governor's State of Puget Sound Report identifies the problem for all of us, not just those whose homes are nearest the beach.

The large strides already made by Burien should be weighed against all the ways private property owners, who desire to reconstruct their existing homes and decks within the existing footprint, may be forced to bear additional expense or suffer an unintended loss. Taking of our property should not be considered as a means to further improve the shoreline ecosystem. Further, it should not be seen that we are a menace to the environment just because we own waterfront property that does not conform to rules for new development.

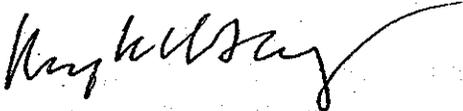
Please carefully consider the following clarifications to your policies and development regulations:

1. In the voluntary removal, alteration section, Chapter 20.35.045 (3) – Foundation walls should include allowing existing homes and their deck structures to be rebuilt to set overhang beyond the existing deck piers.

2. In the reconstruction section, Chapter 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.
3. If damage occurs to our residence, we believe we should be allowed to rebuild all that we currently have within the deck and home footprint.
4. An additional policy statement of intent should be incorporated: For the property owners in the buffer area of the shoreline who have existing structures, and who, in the future, may want to rebuild within the current footprint, including extending water-ward a set distance from the existing deck piers to allow for deck overhang, that Burien will not see such rebuilding as a "take away" and that reconstruction is not viewed as a harm to the community's "no net loss" goal.

Increasing the gain of shoreline ecosystem function should not be at the expense of current Burien residents in the event of a property loss. Please consider our comments to clarify both the specific and the broad intent of the proposed draft shoreline master program.

Sincerely,



Mary M. McGarry
2675 SW 151ST PL
Burien WA 98166

RECEIVED

JAN 11 2010

TO: The City of Burien Planning Commission
FROM: Lee and Caroline Sanders
DATE: January 10, 2010

CITY OF BURIEN

RE: Shoreline Master Program development regulations

Dear Sirs:

We have been waterfront property owners in Burien since 1982. As waterfront property owners, we value preserving both the beauty and the health of Puget Sound. However, we do not feel we should be required to give up our own personal property (existing structures) in order for Burien to gain the community goal of "no net loss." As currently proposed, the Shoreline Master Program Amendments might preclude us from rebuilding our residence, as is and in place, after a fire or earthquake. Such a preclusion would be unfair, unreasonable, and unnecessarily punitive!

First, we do not understand what date the "no net loss" is measured from? It appears to us that Burien has gained the best and highest leverage for increasing habitat by returning Seahurst Waterfront Park back to an original shoreline ecosystem. Shouldn't this count for a huge gain and credit for Burien, and also be measured as a big Burien win by the Department of Ecology, prior to implementing Burien's first SMA?

Restrictions on future new development will ensure that the principle of "no net loss" will be met. We also support vegetation enhancement by existing property owners as they rebuild and get permits after this regulation goes into effect.

The large strides already made by Burien should be weighed against all the tiny ways private property owners, who desire to reconstruct their existing homes and decks within the existing footprint may be forced to bear additional expense or suffer an unintended loss. Preventing us from rebuilding our current residence should not be considered as a means to further improve the shoreline ecosystem. Further, it should not be seen that we are detrimental to the environment just because we own waterfront property that does not conform to new rules for development.

In view of the above, we highly recommend the following clarifications to your proposed policies and development regulations:

1. In the voluntary removal, alteration section, Chapter 20.35.045 (3) - Foundation walls should include allowing existing homes and their deck structures to be rebuilt to set overhang beyond the existing deck piers.
2. In the reconstruction section, Chapter 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.

In short, if damage occurs to our residence, we believe we should be allowed to rebuild stick-for-stick and brick for brick, all that we currently have -- the total current deck and home footprint.

3. In the Common-line riparian buffer and building setback standards section, Chapter 20.30.095 (2Cii) -

It should not make a difference if a shoreline resident lives next to a vacant lot. The proposed restrictions for reconstruction next to an empty lot would leave, for many of us, little or no property upon which to rebuild.

Undeveloped green space should not be a punishment to current adjacent homeowners. They should be allowed to rebuild after a disaster within their currently existing footprint, including deck overhangs beyond existing foundation or pilings supporting decks.

4. An additional policy statement of intent should be incorporated --

For the property owners in the buffer area of the shoreline who have existing structures, and who in the future may want to rebuild within the current footprint (extending water-ward a set distance from the existing deck piers to allow for deck overhang), that Burien will not see a re-build as a "take away" and that reconstruction is not viewed as a harm to the community's "no net loss" goal.

Increasing the gain of shoreline ecosystem function should not be at the expense of current Burien residents in the event of a property loss. Please consider our comments to clarify both the specific and the broad intent of the proposed draft SMA. We greatly appreciate your time and consideration of our suggestions. We hope that, in a sense of reasonable governance and fairness, you will empathize with the existing waterfront homeowners and incorporate our suggestions.

Sincerely,

Lee and Caroline Sanders
2685 SW 151ST Place
Burien WA 98166

Lee A. Sanders
Caroline Sanders

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JAN 20 2010

January 20, 2010

CITY OF BURIEN

To: David Johanson, Senior Planner
City of Burien

Cc: Ted Sturdevant, Director
WA State Department of Ecology

From: John Upthegrove
1808 SW 156th, Burien, WA 98146

Re: City of Burien Shoreline Master Program

Gentlemen:

In the December 2009 meeting of the Burien Planning Commission I respectfully requested that you remove language in Section PA5 of the above referenced document regarding giving highest priority to reaches without existing public access.

More than once, the advisor to the Shoreline Advisory Committee from the Department of Ecology has reminded us that this should be a well-balanced plan, similar to a 3-legged stool (1. Protect the quality of water and the natural environment, 2. Depend on proximity to the shoreline, 3. Preserve and enhance public access...). In the original draft, the plan was somewhat in balance. At the 2nd meeting of the Shoreline Advisory Committee, two members of the committee were permitted to reopen the policy section and introduce an amendment stating that the city would give "highest priority" to public access. This language now places the plan out of balance. If anything, the state's definition places protecting the quality of water and the natural environment as the leading preference in the Shoreline Management Act. (See Section 20.00.002 - your own Overview of the State Shoreline Management Act.)

One must ask, was this Shoreline Advisory Committee formed to establish priorities for the city? My understanding is that the Shoreline Advisory Committee was established to review this document, not to establish city priorities.

In reading the most recent copy of the plan, I note that this "highest priority" language is still in the document. I ask once more that you remove this statement, and return the plan to a balanced approach, your own goal that was stated by staff and consultants at your November 2008 public meeting at Gregory Heights School.



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

Furthermore, it is noted that regular audits are essential to identify any discrepancies or errors early on. By conducting these checks frequently, the organization can prevent small mistakes from escalating into larger financial issues.

In addition, the document highlights the need for clear communication between all departments involved in the financial process. This includes the accounting, sales, and procurement teams. Ensuring that everyone is on the same page helps to streamline operations and reduce the risk of miscommunication.

Another key aspect mentioned is the importance of staying up-to-date with the latest financial regulations and tax laws. The legal landscape is constantly evolving, and failing to keep abreast of these changes can result in costly penalties and legal complications.

The document also touches upon the role of technology in modern financial management. Investing in robust accounting software can significantly improve efficiency and accuracy. Automated systems can handle repetitive tasks, leaving more time for strategic analysis and decision-making.

Finally, it is stressed that a strong internal control system is vital for protecting the organization's assets. This involves implementing strict policies for access to funds and ensuring that all financial activities are properly authorized and documented.

In conclusion, effective financial management is a multi-faceted task that requires attention to detail and a commitment to best practices. By following the guidelines outlined in this document, organizations can ensure the integrity of their financial data and support their long-term growth and success.

It is the responsibility of every employee to adhere to these standards and contribute to the overall financial health of the company. Regular training and updates are provided to ensure that all staff members are well-informed and equipped to handle their financial duties.



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JAN 2 2010

CITY OF BURIEN

January 21, 2010

To: Burien City Council
Burien Planning Commission

Re: Proposed Shoreline Management Plan

To Whom It May Concern:

I am a property owner, resident, and tax-payer on SW 172nd St. I am writing to express my concerns about the proposed Shoreline Management Plan. Since the plan directly references and impacts Lake Burien and the Three Tree Point area, residents of those areas are understandably concerned about any plan that involves changes that could negatively impact private property or the safety of residents. While everyone agrees that protection of the shoreline's ecology is a worthy goal, there are concerns about the potential negative impact that increasing public access to these shorelines may have.

One of my objections to the document is that there is no assurance that the people directly affected by this plan will be involved in decisions and/or changes that occur as a result of the SMP. There needs to be language in the document that specifically assures that the residents directly affected by this plan (Lake Burien and Three Tree Point residents) will be involved in decision making and implementation of any changes that occur in their communities because of the SMP. This means that the City of Burien needs to provide multiple opportunities for residents to get their concerns on the public record and to be directly involved in decision-making about issues that may affect their welfare, safety, and property rights. In addition, there needs to be some language in the document that assures that restrictions placed on property owners related to building or construction in the affected areas also apply equally to the City. If indeed the restrictions are in place for the good of the shoreline, then they apply to everyone, including the City of Burien.

Thank you for your consideration of my concerns.



Carol Jacobson
3324 SW 172nd St.
Burien, WA 98166
(206) 246-8700

CFTK: 02/01/10



Kathi Skarbo

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

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JAN 21 2010

CITY OF BURIEN

January 20, 2010

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

Dear Commissioners:

I wish to convey to you some of my thoughts regarding the draft Shoreline Master Program (SMP) update.

My understanding is that the overarching purpose of the SMP is to insure "no net loss of shoreline ecological functions and processes..." (Section 20.20.005 General Goals and Policies). In other words, to preserve the environment surrounding water bodies and shorelands. I fail to see how increasing the amount of public access will preserve or improve the ecology of Lake Burien or Puget Sound. It seems to me that more public access would do the opposite of that. I was pleased that questions regarding the impact to the environment were already brought up during the discussion period at your meeting on January 12, 2010. I hope you will actively pursue this issue. I believe that using common sense to evaluate some of the provisions in the draft SMP relating to public access will lead you to ask more questions about these issues, in relation to providing maintenance and security, and you will determine that public access will negatively impact the environment of the shoreline.

When I look at the process for updating this SMP, it seems like the Citizens Advisory Committee has tried to subvert the intent of the SMP. A couple of citizens who do not reside in Burien were appointed to the committee and concentrated on advancing the public access issue. It is understandable that people would like to access the water, and Burien already has a wonderful location to do so – Seahurst Park. Apparently this wasn't good enough for these citizens and so they focused on getting public access to Lake Burien. It astounds me that the negative impacts of this access were not seriously considered or studied – the negative impacts to both the environment and the property owners residing on the lake. The water quality of the lake is currently very good and is monitored well and maintained by the residents. I would hate to see one irresponsible fisherman ruin that by bringing milfoil to Lake Burien on a boat that's been on Lake Washington or a number of other local lakes.

I urge you to re-evaluate the sections of the draft SMP relating to public access, starting with section 20.20.015 of the goals, and to delete language that will lead to negative impacts to the ecological function of Lake Burien and Puget Sound.

Sincerely,

Kathi Skarbo

Kathi Skarbo



Linda M. (Plein) Boscarine
1600 S.W. 156th Street
Burien, WA 98166

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JAN 25 2010

CITY OF BURIEN

January 21, 2010

Members of the Planning Commission:

The Washington State Department of Ecology passed the Shoreline Management Act which establishes a broad policy directive giving preference to the shoreline uses.

The first use listed is to "protect the quality of water and the natural environment". Since this is the utmost goal let's examine this statement closely.

First, to protect the quality of water means to keep the quality at the same level or better. By allowing more people to use the lake, many foreign substances will be introduced into the water. Things such as milfoil from other lakes brought in on boats and fishing tackle will be added to the water. Looking at other public access areas nearby reveals no shortage of trash such as discarded food wrappers and used diapers, as well as deposits of fecal matter and urine from both humans and their pets.

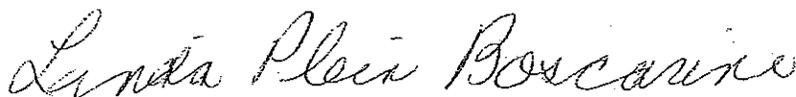
This type of access is not protecting the quality of the water.

Furthermore the natural environment means leaving the reeds and cat tails for the resident and migratory ducks and birds. Natural means leaving the vegetation that is in place. Removing any of the plants will destroy the habitat of the animals. How can the destruction of the habitat be considered protection of the natural environment?

We already have public access at Seahurst Park. It even has rest rooms and public parking.

Please help us to protect our lake from human encroachment.

Sincerely,



Linda M. (Plein) Boscarine

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JAN 26 2010

CITY OF BURIEN

January 25, 2010

To: Burien City Council
Burien Planning Commission
Re: Proposed Shoreline Management Plan
To Whom It May Concern:

We are property owners on SW 172nd St (Three Tree Point). We are very concerned about the proposed Shoreline Management Plan and how it would affect Lake Burien and the Three Tree Point area. The "Plan" involves changes that could negatively impact private property or the safety of residents. By increasing traffic ie: public access to the shorelines that are now privately owned, it appears the negatives far outweigh the positives.

We would assume the Shoreline Management Plan's ultimate goal would be to not do anything that puts this area at risk for property destruction, littering, vandalism and other crimes, as well to not jeopardize the integrity of the beach/shoreline. We have been told over and over by local law enforcement personnel that they don't have the manpower to address even the current issues in this community, where will we be when the issues multiply?

The City of Burien already has the large, beautiful, Seahurst Park, Eagles Landing, and at least 3 public access points to the TTP beach area. Why is there a need for more than those? The areas proposed would take large amounts of funding to develop and maintain for the proposed intent. (We are already maintaining and improving the above mentioned existing parks)

We are requesting, as THE TAX-PAYERS on this property affected, that the Shoreline Management Plan include language that assures that before any changes are made that affect our neighborhood communities (Lake Burien and Three Tree Point specifically, since they are at the greatest risk of being destroyed by irresponsible decisions), the residents of those areas must be given:

1. Notice of any specific plans that the City may already have and adequate opportunities to respond and express concerns about the impact of those plans on the community.
2. Opportunity to be involved in decisions affecting our communities BEFORE specific plans are made.
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.

In addition, the document should read clear, assuring that restrictions placed on property owners related to building or construction in the affected areas, apply equally to the City. If indeed the restrictions are in place for the good of the shoreline, then they apply to everyone, including the City of Burien.

Sincerely,
Mark & Maria Ottolino
3130 SW 172nd St.
Burien, WA 98166
(206) 433-1793

CFTR: 02/01/10



Don Warren,
Lake Burien Shore Club President 2008-2010,
Steward Lake Burien 2003-present
15702 13th Ave SW
Burien, WA 98166-2120
January 26, 2010

RECEIVED
JAN 26 2010
CITY OF BURIEN

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

RE: Public comment on deficiencies in present draft of SMP

Good evening,

As the Lake Steward for Lake Burien over the past 7 years, I am part of a tradition of care for the lake by the people most interested in its health and ongoing ecological viability sustained through low use rates. The position of Lake Steward has existed in the Shore Club for about 30 Years. The Shore Club has existed as a legal entity for more than 50 years. The Lake has been well cared for more than 100 years by private citizens with a long term commitment to assuring the ecological function of the lake and its shorelines.

Tonight I want to direct your attention to specific deficiencies in the present draft of the SMP that was submitted for your review in December, 2009. Generally, the document lacks any measured baseline against which anyone could reasonably assess changes good or bad for ANY reach in the City of Burien.

Please refer to the "Shoreline Inventory" in your binder as prepared by Grette Associates, LLC, revision dated 23 October 2008.

Section 1.2 Methodology – pg 1 .. This section paragraph one refers to supporting sources in Bibliography, Section 7, Appendix A. In that Bibliography there are references to a variety of sources related to specifics in the Marine reaches. 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 precedent.

Section 1.4 Inventory Reaches – pg 2 . This section continues to exist with a typographical error for perimeter measurement of lake. The "miles" don't match the feet. And the feet are not known to be correct since source of the measurement is not cited. Evidence of lack of detail

Section 2.1, page 4, last paragraph and four bullets below it ... Statements indicate conflating the Marine and Freshwater reaches' conditions. Specifically they note in the fourth bullet .. "Contributing toxic chemicals and harmful organic compounds to

nearshore waters and sediments." I challenge the document and ask for copies of the studies and methods by which they were conducted that resulted in the assessment for Lake Burien specifically and all reaches of Burien in General. Reference to Kerwin and Nelson 2000 is not sufficient for the Planning Commission. They do not have time to research all this. Further, by reference the 2000 study referred to is a rather general work for all the green/Duwamish watershed and most likely contains little detail of any specific location, instead treating with conditions generally throughout the watershed. Therefore the study is not useful as a baseline for MSP impacts assessment, controil, or future abatement/redraft of the SMP.

Section 10.5, Reach LB (Lake Burien), first paragraph again refers to a perimeter that is in question as to actual length. ... then ... Third paragraph "Critical Areas" refers to "...there are no Priority Habitat and Species documented within Lake Burien".. So, I call your attention to both the phrasing and to the actual facts admitted in the paragraph; there are no documents 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 that are of any detail that would allow for baseline adjudication against future status and conditions. With the SMP lacking that for Lake Burien and really for all reaches since there is no location specific detail, the SMP is deficient and needs to be fixed thru evidentiary collection and documentation. Or the city can strike the focus on making highest priority for public access on untouched reaches. Instead I suggest the City reword the document to focus funds and energies on the largest of Burien's parks, Seahurst Park and others already providing public access to the sound.

Finally in section 10.5 page 28, Critical Areas, paragraph 2 .. "Lake Burien is not in the 100-year floodplain and there are no landslide or seismic hazards associated with the lake." .. therefore there is no reason at all to have any reference in the SMP to the weir at the outlet from Lake Burien on the Ruth Dykeman Children's Center property. Please see the section 20.30.030 FLOOD HAZARD REDUCTION, , sub I-Policies, sub "f." .. **Maintain outlet weir at Lake Burien .. to minimize the potential for flooding.** Whoever wrote this section is completely uninterested in the Lake. There is no history of flooding on the Lake in the past 100+ years. There's no history of flooding since the weir existed, which was put in place to keep water in once the Lake lost inflow with provisioning of storm drains on roads around the lake in the mid 20th century. Further, the phrasing may lead the public to think the City has any rights at all to that installation and the property owned by Ruth Dykeman Children Center in which the weir exists. **Strike the list item "f." is the best correction here. There is no risk to city or private property owners. No risk to lake or ecology. No reason known to keep the item in. keepin it in does lead to risk for RDCC should public misinterpret who is to maintaint the weir. Rest assured tha Shore Club always has maintained it; it only requires vegetation removal which a fun neighborhood event and has never relied on city, county or state for it to be accomplished.**

Donald Warren
January 26, 2010
Page 3

Sincerely,

Don Warren





RECEIVED

JAN 26 2010

CITY OF BURIEN

Peter J. Eglick
eglick@ekwlaw.com

January 26, 2010

Via Facsimile and U.S. Mail

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

Re: Notice of Appearance and Initial Comment by Counsel for Lake Burien Shore Club

Dear Planning Commission:

This office has been engaged to represent the Lake Burien Shore Club with regard to the treatment of Lake Burien in the proposed Burien SMP Amendments. This letter is submitted for the record to ensure that the Planning Commission does not pass the SMP Amendments forward to the City Council without revision of the manner in which Lake Burien is addressed in the draft currently before you.

As you know, Lake Burien is a very small body of water within the City, completely surrounded by private property. For almost a century, the property owners surrounding the lake have been careful stewards of its shores and water quality, protecting against commercial development and overloading of its carrying capacity. See, e.g., Turtle v. Fitchett, 156 Wash. 328, 287 Pac. 7 (1930) (Washington Supreme Court decision upholding objections to public use on Lake Burien shoreline, citing, inter alia, testimony of King County Health Officer that lake was too small a body of water to support proposed uses). Lake Burien Shore Club has for the past three decades gathered data and monitored the lake's water quality, as well as maintained the weir integral to its health. As a result, the lake supports waterfowl and wildlife populations in relative peace, considering its urban setting.

The proposed SMP revisions calling for public access to reaches such as Lake Burien that currently do not have it would jeopardize these many years of stability for the lake. This is particularly inappropriate because the proposed direction for public access is not supported by the scientific inquiry and data necessary to justify the proposal. The Shoreline Inventory and Characterization is little more than a description. There are no data or analysis of the lake, its water quality, and carrying capacity – nothing to support the apparent assumption that public access will do no harm and cause no net environmental loss.

EGLUCK KIKER WHITED PLLC

January 26, 2010

Page 2

SMP preparation is not just a matter of matching shoreline reaches with policies (for example, matching a lake with public access); it requires individualized analysis of the water body in question to determine whether the policy can be appropriately applied in the particular instance. See, e.g., <http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Chapter7.pdf> (DOE SMP Handbook description of questions to ask and data to gather as part of Shoreline Inventory and Characterization). In light of the absence of such critical, required analysis with regard to Lake Burien, the proposed SMP revisions for it should be "DOA" in this Planning Commission and before the City.

The cardinal rule for physicians is, "First, do no harm." The same principle applies here. With a long-acknowledged fragility and a history of stability reinforced by neighborhood stewardship, any decision to set the City on a policy course toward public access must first be proven to be beneficial, rather than harmful. There is no such proof in the record before you. Therefore, the SMP provisions that would have the effect of setting a course toward public access on Lake Burien should be eliminated from the proposed SMP amendments.

Sincerely,

EGLUCK KIKER WHITED PLLC



Peter J. Eglick

Attorney for Lake Burien Shore Club

cc: Client

RECEIVED

JAN 26 2010

CITY OF BURIE

To: Burien Planning Commission
From: Chestine Edgar
Subject: Document submitted for the meeting of 1/22/10 concerning future impervious surfaces and land development on Lake Burien and the Shoreline Master Plan Document.

In the materials I submitted to you, I mentioned that I had additional concerns about the update to the Shoreline Master Program (SMP) Document and process used to update the SMP.

In summary they are:

1. The Shoreline Inventory is incomplete. Under WAC 173-26-201 (2) a., relevant parties should be contacted for available information. Lake Burien has had a Lake Steward for over 30 years. The current one was trained by King County. He was not contacted for any information about Lake Burien. There were no site visits to the area. A review of the literature was the methodology for the study. Best Available Science methodology usually involves at least one site visit. As a result, the inventory is inaccurate and incomplete in its discussions about fish and wildlife habitat and migratory species that use the lake. I have eagles daily using my property for perching and feeding (see attached photo). During the spring, summer and fall, I have blue herons using my secondary shore lands for feeding. There is no listing of fish, amphibian, mammals or reptile species present. There is nothing about vegetation in the lake, the wetlands and secondary shore lands that provide food and shelter for the species I previously mentioned as well as the fish species and crustaceans that are present.

The Shoreline Inventory considers the current zoning density as low impact on the lake but does not note that the real zoning is for greater impact than the lower impact on Puget Sound and does not include a projection study or make recommendations for a study to determine what will be required to maintain no net loss of ecological functions.

The section on Opportunities for Conservation and Restoration does not address what impact this increased significant amount of impervious surface will have as a result of, storm water input and non-point runoff/pollution nor does it suggest a monitoring or data collection plan to maintain no net loss of ecological functions (See document I prepared on impervious surfaces). There is no discussion of the weir and how it functions or why it exists or how it got to be there.

The section on Wetlands shows Lake Burien to be a Category 2 wetland with a buffer width at 100 ft. per City of Burien code. This does not correlate to SMP document that puts the setback at 30' with a 15' buffer. Nothing is mentioned in the Opportunities for Conservation and Restoration Section to explain how this difference in buffer width could come about. Short term and long term impacts have "to be addressed to assure that the end result will not diminish the shoreline resources and the value as they currently exist." After The Shoreline Inventory and the Cumulative Impacts Analysis were completed, the City went to the Dept. of Ecology and appealed to have the setback and buffer changed. The consultants never reworked their reports to address the future impacts that could result from this change. This is required in WAC 173-26-221.

Lastly, nowhere is it mentioned that Lake Burien is one of the headwaters/tributaries of Miller Creek which is a salmon bearing creek that could be adversely impacted by increased impervious surface runoff, storm water input and non point runoff/pollution. Nothing is discussed in the Opportunities for Conservation and Restoration section about the relationship between Miller Creek and Lake Burien. There is no discussion about the current rules that the residents have agreed to that maintains the lake's water quality as "very good" by King County's grading system. This set of rules will need to be maintained if there is to be no net loss of ecological functions. I am requesting that additional scientific information and management recommendations be added to the Shoreline Inventory per WAC 173-26-201, (2)(a)(i-iii).

2. The lot size and reduced buffer size on Lake Burien put the lake at much greater risk for net loss of ecological functions than the lands on Puget Sound per the SMP document. As mentioned previously, there is no explanation about how a Category 2 wetland that is supposed to have a buffer of 100' has a setback of 30' and a buffer of 15' in the SMP document. I have seen no scientific studies or data analysis in the Shoreline Inventory or in the SMP document to support those numbers. I had asked that a provision for this situation be put into the SMP document and was told by David Johanson/COB that it could not be done. Then I asked that something then be done to affect lot size. David Johanson told me that could not be done either as it was the job of the Planning Commission to address the issue. When I took this issue to the Planning Commission, David Johanson told them that this was never really an issue to be considered the SMP document. As I previously stated, the purpose of the SMP is to protect and preserve critical shorelines. If this is not considered, there will be a net loss of ecological functions on Lake Burien. This is an issue that should be addressed per WAC 173-26-221(2)(b) (iv), and (c)(I) And (A),(B),(C),(D) and WAC 173-26-201(2)(e). I am requesting that this issue be addressed in Chapter 4, 20-30-050 and 20.30.055 of the SMP document or by the Planning Commission as a zoning issue.

3. The SMP Cumulative Analysis is incomplete. It in no way examines the impact of redevelopment in the Lake Burien area due to lot size. Also, it assumes in its analysis that the buffer on Lake Burien is 100'. Therefore its assumptions about setbacks and future impervious surface and the impact on the lake are incorrect. Additionally, the fact that in excess of 8 public access points could result from redevelopment on this small lake is not discussed in the analysis in the Section 3, "Reasonably Foreseeable Future Development and Use of the Shoreline". This kind of access will result in net loss of ecological functions of the lake. This section currently states that significant damage could happen to the aquifer recharge area if increased amounts of impervious surface were added to it. I am requesting that an improved study of the Lake Burien area be done and added to The SMP Cumulative Analysis to reflect the correct impact that could occur to Lake Burien in the foreseeable future due to development and redevelopment.

4. The Figure 4 in Chapter IV has been altered and Commercial and Office have been deleted from the chart since the SMP committee met and discussed the Figure 4. By consensus of the committee, Commercial and Office were prohibited in all shoreline uses of the table. Figure 4, as currently presented, suggests that these uses were never

considered or rejected as uses in the design of the SMP document (see attachments dated Draft September 1, 2009). Additionally, Chapter IV, 20.30.075 which was titled Commercial, Institutional and Office in the September 1, 2009 draft has been stripped out of the November draft. It had been agreed by Shoreline Advisory Committee that this section would be retained in the SMP document with the explanation that this category of land use was to be prohibited in all areas. The Shoreline Advisory Committee wanted to make clear to future readers and citizens that this category of land use had not been overlooked and to ensure that this type of land use was not open to further interpretation and discussion. I am requesting that Figure 4 be restored to reflect the discussion and consensus decision made on October 21, 2009 or that something be added to the document that reflects the discussion and decision in Meeting Summary #8. Once again I would like to say that the committee elected to prohibit these uses in all areas of Figure 4. The properties being considered are shoreline residential, aquatic and an urban conservancy. David Johanson globally told the Committee that they were not allowed to do that. I recall nothing in the comprehensive plan or zoning plan that shows Lake Burien as land available for three story office buildings or commercial development. I have reviewed the SMP Cumulative Impacts Analysis and Lake Burien currently has no zoning or planning for Office and Commercial. So I don't understand his prohibitive comment. I am requesting that Commercial and Office be included back in the chart and or that the document reflect what was discussed by the committee so that future interpreters of this document do not think these uses were not considered and rejected.

5. The regulations in Chapter IV 20.30.025 Critical Areas of the SMP document do not adequately speak to Critical Freshwater Habitat. I requested that a statement somewhat like the one in section "2.c. Regulations" be added to include the protection of Critical Freshwater Habitats or that they be added to 2.c. I was told that the state did not define Critical Freshwater Habitats and so it could not be added. In addition, I was told by the Chair of the Committee that he did not even know what I was talking about because he had not brought his copy of the Draft to the meeting. This area is addressed in WAC 173-26-221, (iv) Critical freshwater habitats. I am requesting that a statement be added to this section to reflect the protection of Critical Freshwater Habitats as equal to those protections given to Critical Saltwater Habitats.

6. Public Access as defined in spirit and tone in the SMP document is not a match for what is in the WAC 173-26-221(4) (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." The SMP Pol. ALL 5 does not reflect the idea of protection to private property as stated in the WAC. The SMP uses the term "recognize" which does not imply protection. Also, it does not make clear that increased public access is to be on publicly owned land. Again, it is inconsistent with the WAC. SMP Pol. PA 3 does not reflect the aspect of protecting private property and public safety. The term "minimize potential impacts" does mean the same as to "provide protection". The definition for Public Access and the requirements under the SMP are not clearly stated in Chapter IV, 20.30.035. Public Access refers to publicly owned lands. In addition, there are two types of public access--either physical or visual access. Either types of access meet the requirements for public access under WAC 173-26-221 and WAC 173-26-201. In the

study done by Reid Middleton, they noted these were several street areas where visual access to the lake is currently available. I am requesting that the wording be changed in these areas of the SMP document to correctly reflect the definition of public access as well as include the requirement for protecting private property and public safety.

7. The wording in Chapter IV, 20.30.035(2)(d) was changed without the approval of the committee on a decision they had come to consensus on. That wording was changed in the November 17, 2009 SMP draft document without approval of the committee. In the September 1, 2009(2)(e) document it read, "Public access shall be required for all new shoreline development and uses, except for water dependent uses and single family residences not part of a development planned for more than four parcels." The committee agreed to keep this number which complies with WAC 173-26-221(4)(C). For some reason, the wording was changed in the November 17 draft (2)(e) to read, "Public access shall be required for all new shoreline development uses, individual single family residences and subdivisions of less than four parcels." I am requesting that the wording be changed back to what the committee agreed on and what is the requirement stated in WAC 173-26-221(4)(C).

8. SMP Pol. REC 3. This should reflect that the recreation facilities in the shoreline area being discussed in this policy are in the "public shoreline" area. I am requesting that the word "public" be inserted to reflect the correct area being discussed.

9. SMP Pol. REC 2. Recreational developments should be required to do more than just minimize adverse impacts on the environmental quality as is currently stated. They should be held to the standard of no net loss of ecological functions as is covered in WAC 173-26-221. I am requesting that the wording be changed to state that, "Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and which leave the natural areas with no net loss of ecological functions."

10. SMP Pol. USE 8. Planned densities for single-family development should encourage a lower development potential in areas with development constraints. This policy is in contradiction to the situation that I have described on Lake Burien. I am requesting that this policy be reexamined with regard to Lake Burien.

11. SMP Pol. USE 17. It is unclear to the reader what is meant by "Encourage joint-use activities in proposed shoreline developments." Joint-use activities is not defined. Where else is it cover or fleshed out in the SMP document? Does it mean that private owners have to compete for parking space in front of their own property, if the only parking they have is on the street or a street end? I am requesting that this be better defined some place in this document.

12. SMP Section 20.20.35 Conservation Element. No part of this section mentions that, in critical shoreline areas, the over-lying principle to be followed is no net loss of ecological functions and if there is the possibility of net loss then the steps spelled in WAC 173-26-

201(2)(e) be followed. I am requesting that these two items be included in this policy section.

13. There was a citizen comment made at the last meeting that stated there were holding tanks all around Lake Burién that would protect the lake from impervious surface runoff, stormwater and non point pollution as a result of new development and redevelopment and so these did not have to be considered as future foreseeable issues for the lake. I am requesting that the Planning Commission study the diagrams in the SMP document because it does not match what she claims.

14. There was a citizen comment that said private property owners did not have to have concerns about liability or law suits resulting from public access and intrusion on to their property. I have checked with my insurance carrier and this is not correct.

The Shoreline Master Program is a very difficult document to read and interpret. The average citizen will have a hard time trying to use it and understand it. The real spirit of the document should be to protect critical area shorelines and to enhance public access (physical and/or visual) to publicly owned lands while protecting private property rights and public safety. This is not intended as a public take over of privately owned land.

Additionally, the intent of the state SMP is the protection of the shoreline environment as the first priority. Construction needs are secondary and must be worked to protect the environment as the first priority. Impact of development must be thoroughly examined. There is case law in the state that makes this mandate clear. The SMP document does not do this adequately.

As a citizen, it was difficult to know what the rules were for citizen input to the Shoreline Advisory Committee as well as understanding the entire process. The committee's operating procedures were at times very vague. Some members of the committee were extremely hostile to each other and unpleasant things were said. This should have been covered in the operating rules for the committee so that this did not happen.

The Meeting Summaries did not always completely reflect what had occurred and what had been discussed. They were only distributed right at the start of the meeting so they could not be thoroughly reviewed before they had to be approved. The time between some of the meetings was sometimes as long as 7 months. And once an area of the document was covered, the committee was never allowed to go back and revisit it because of time constraints set by the city. As a group, the Shoreline Advisory Committee never reviewed the final version of the sections they had completed, especially from the last meeting. The committee was formally disbanded at the end of Meeting #9. This means that they did not have an opportunity to check the work they thought they had just completed. Even though I attended many of the meetings up until the end, I never got to see the complete November Draft document until the last open house and I never had access to the Meeting #9 Summary-if one was ever created. The entire draft document was difficult to secure and required a great deal of persistence to even be able to view it in entirety. The November 30

public open house about the document did not provide the needed information for the average citizen to understand the content of the document.

In conclusion, I believe that this may be the reason that there are some inconsistencies in the document. This document needs to have the Shoreline Advisory Committee reconvene to complete the draft process and then it should be passed on to the Planning Commission for review, edits, etc. Then their recommendations will be pass it on to the Burien City Council.

Sincerely,

Chestine Edgar

Attachments-Cummulative Impacts Analysis,photos



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Attachment from

C. Edwards

CITY OF BURIEN

City of Burien Shoreline Master Program

Cumulative Impacts Analysis

August 2009

SMA Grant No. G0800116

Task 4.1

Reid Middleton

1. Introduction

The Washington State *Shoreline Master Program Guidelines* state that local Shoreline Master Programs are required to “evaluate and consider” the cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions promoted by the Shoreline Management Act. The guidelines further state that “to ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.”

Specifically, the guidelines state that the evaluation of cumulative impacts should consider:

- i. Current circumstances affecting the shorelines and relevant natural processes;
- ii. Reasonably foreseeable future development and use of the shoreline; and
- iii. Beneficial effects of any established regulatory programs under other local, state, and federal laws.

Additionally, the guidelines indicate that an appropriate cumulative impacts analysis will also consider the effects of unregulated activities and development exempt from permitting on shoreline ecological functions and other shoreline functions and uses. Furthermore, the guidelines indicate that particular attention should be paid to policies and regulations concerned with the platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development.

The guidelines note that methods for determining reasonably foreseeable future development may vary depending on local circumstances, including demographic and economic characteristics and the nature and extent of shorelines.

This cumulative impacts analysis is organized into five sections:

1. Introduction
2. Current Circumstances Affecting the Shorelines and Relevant Natural Processes
3. Reasonably Foreseeable Future Development and Use of the Shoreline
4. Beneficial Effects of Any Established Regulatory Programs Under Other Local, State, and Federal Laws
5. Cumulative Impacts Summary



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

Furthermore, it is noted that the records should be kept for a minimum of seven years. This is a standard requirement for most businesses to comply with tax regulations. The document also mentions that digital records are preferred over physical ones due to their ease of storage and retrieval.

In addition, the text highlights the need for regular audits. These audits help in identifying any discrepancies or errors in the records. It is advised that these audits should be conducted at least once a year. This practice not only helps in maintaining the accuracy of the records but also provides a clear overview of the company's financial health.



The second part of the document focuses on the importance of data security. In today's digital age, protecting sensitive information is crucial. The document suggests implementing strong password policies and using secure communication channels. It also recommends regular software updates to protect against vulnerabilities.

Moreover, it is stressed that employees should be trained on data security protocols. This includes not sharing sensitive information with unauthorized personnel and being cautious of phishing attempts. The document also mentions the importance of having a disaster recovery plan in place to ensure that data can be restored in case of a system failure.

Finally, the text discusses the importance of data backup. Regular backups are essential to prevent data loss. It is recommended to use cloud-based backup solutions for added security and accessibility. The document also notes that backups should be tested regularly to ensure they are working correctly.

The third part of the document addresses the issue of data privacy. With the increasing amount of personal data being collected, it is important to ensure that this data is handled responsibly. The document refers to the General Data Protection Regulation (GDPR) and other relevant laws that govern data privacy.

It is advised that businesses should have a clear privacy policy that explains how user data is collected, stored, and used. This policy should be easily accessible to users. Additionally, businesses should ensure that they have obtained proper consent from users before collecting their data.

The document also mentions the importance of data minimization. This means that only the necessary data should be collected and stored. It is recommended to delete data that is no longer needed. This practice helps in reducing the risk of data breaches and ensures compliance with data privacy regulations.



the perimeter of the lake. Additionally, there are approximately 5 overwater structures in the lake that are unattached to the surrounding uplands.

Hydrologic and Hyporheic Function

The shoreline of Reach LB is highly altered and is surrounded almost entirely by privately-owned residences. Given the relatively small size of the lake, there is not much wave action affecting the shoreline; however, the shoreline would effectively attenuate any waves produced in the lake. The lakeshore bank is low bank with a very gentle upland gradient. Flooding along the shoreline of the lake is not a documented problem, as Lake Burien is not located within the 100-year floodplain.

While a system of stormwater drainage pipes has been installed to divert runoff flowing into the lake, several drainage points into the lake remain and the lake still functions as a water storage area. Lake Burien is mapped as an Aquifer Recharge Area, a type of critical area. Alterations to the surface conditions within an Aquifer Recharge Area associated with development, such as changes in impervious surface area, channeling of runoff, and changes in the soils, can affect the rate and quantity of water entering the aquifer. Additionally, contamination of waters within the Aquifer Recharge Area can adversely impact the aquifer.

Vegetation Function

Due to the mostly residential land use surrounding Lake Burien, much of the vegetation within the shoreline of Reach LB consists of manicured lawns. Maintenance of lawns often increases the input of chemicals (fertilizers and herbicides) into the water and limits the input of organic material (including large woody debris) into the lake. However, any trees present contribute to the shading of the shoreline. Due to the topography around Lake Burien, the lack of native vegetation does not greatly increase erosion along the shore; there are no landslide hazard areas associated with the lake.

Other Habitat Function

Lake Burien in its entirety has been rated a Category 2 wetland. The buffer associated with a Category 2 wetland is 100 feet. While there are no Priority Habitat and Species documented within Lake Burien or along the shoreline, wetlands provide habitat for other small mammals, birds, and fish (such as feeding, breeding, and spawning). There is no fish access into Lake Burien; therefore, anadromous salmonids are not expected within the lake.

Table 2.7: Shoreline Master Program Reach Summary.

Reach	Total Parcels (adjacent to OHWM)	Average Setback to SFR	Minimum Setback	% Impervious (between SFR & OHWM)	Area of Structures Beyond OHWM	Average Setback to Accessory Structures	Buoys
M1	67	55.34	1	44%	6,435	N/A	11
M2	14	429.79	50	4%	39	N/A	0
M3	118	68.16	1	22%	1,713	18.8	40
M4	103	82.29	9	52%	503	26.78	46
Lake Burien	67	100	35	5%	28,723	43	2 rafts
TOTALS	369	183.90		31.75%	37,413	44.29	24.25

Based on: July 2007 Aerial Photo

3. Reasonably Foreseeable Future Development and Use of the Shoreline

This section describes the reasonably foreseeable future development and use in each of Burien's five shoreline reaches.

In general, Burien's shorelines have little potential for new future development since they are already largely developed to their current potential. The predominant single-family residential use of the shoreline is not expected to change significantly; therefore, the majority of the reasonably foreseeable future shoreline development activity is expected to consist of the redevelopment of existing structures. Neither activities that would establish a pattern for future development (such as the platting or subdividing of property, laying of utilities, and construction of new neighborhood streets), nor effects of unregulated activities and development exempt from permitting affecting shoreline functions, are expected to occur to a significant extent.

3.1 Reach M1

The zoning designation for Reach M1 is RS 12,000 Residential Single-Family; the comprehensive plan designations for Reach M1 are Low Density Residential Neighborhood and Public Park/Schools/Recreation/Open Space. Additional shoreline development and use information for Reach M1 is summarized in Table 3.1.

Because the comprehensive plan designations closely match current land uses, reasonably foreseeable future use is not expected to change significantly.

Reasonably foreseeable future development in this reach is expected to consist of the redevelopment of existing structures and the possible development of some of the currently vacant parcels (approximately 18). However, the development of the currently vacant parcels is expected to be limited, as they generally have development constraints that would make construction expensive.

Table 3.1. Reach M1 Shoreline Development and Use Summary.

Total Acreage/ Current Land Use ¹	Current Vacant Parcels	Current Zoning Designation(s)	Comprehensive Plan Designation(s)
25.00 acres Single-family: 72% Vacant: 23% Tracts/Other: 4% Low Density MFR: 1% Institutional: 0.01%	Approximately 18 (all privately owned)	RS 12,000 Residential Single-Family	Low Density Residential Neighborhood & Public Park/Schools/Recreation/Open Space

¹ Percentages may not total 100 percent due to rounding during GIS analysis.

3.2 Reach M2

The zoning designation for Reach M2 is RS 12,000 Residential Single-Family; the comprehensive plan designations for Reach M2 are Low Density Residential Neighborhood and Public Park/Schools/Recreation/Open Space. Additional shoreline development and use information for Reach M2 is summarized in Table 3.2.

Because the comprehensive plan designations closely match current land uses, reasonably foreseeable future use is not expected to change significantly.

Reasonably foreseeable future development in this reach is expected to consist of the redevelopment of existing structures and the possible development of some of the currently vacant parcels (approximately 6). However, the development of the currently vacant parcels is expected to be limited, as they generally have development constraints (such as steep slopes) that would make construction expensive. Additionally, Seahurst Park is currently in the process of redevelopment and restoration.

Table 3.2. Reach M2 Shoreline Development and Use Summary.

Total Acreage/ Current Land Use ¹	Current Vacant Parcels	Current Zoning Designation(s)	Comprehensive Plan Designation(s)
28.72 acres Park: 78% Single-family: 14% Vacant: 9%	Approximately 6 (all privately owned)	RS 12,000 Residential Single-Family	Low Density Residential Neighborhood & Public Park/Schools/Recreation/Open Space

¹ Percentages may not total 100 percent due to rounding during GIS analysis.

3.3 Reach M3

The zoning designation for Reach M3 is RS 12,000 Residential Single-Family; the comprehensive plan designation for Reach M3 is Low Density Residential Neighborhood. Additional shoreline development and use information for Reach M3 is summarized in Table 3.3.

Because the comprehensive plan designation closely matches current land uses, reasonably foreseeable future use is not expected to change significantly.

Reasonably foreseeable future development in this reach is expected to consist of the redevelopment of existing structures and the possible development of some of the currently vacant parcels (approximately 31). However, the development of the currently vacant parcels is expected to be limited, as they generally have development constraints (such as steep slopes).

To: Planning Commission
Date: January 26, 2010
Subject: Shoreline Master Program – Shoreline Appendices

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JAN 26 2010

CITY OF BURIEN

Bob Edgar, 12674 Shorewood Drive SW, Burien

Washington Administrative Code (WAC) section 173-26-201, (2) Basic concepts, (e) Environmental impact mitigation, (i), (A) states that the “*top priority*” in protecting and mitigating impacts of shoreline ecological functions is to “*avoid the impact altogether by not taking action or parts of an action*”. In other words, taking a proactive stance against further degradation to the current ecological functions.

I have a concern about the methodology and thoroughness of the current appendices supporting the Shoreline Program Plan and their ability to be used as a baseline measure that protects the current ecological functions of Burien’s critical freshwater habitats from future degradation as mandated by the State of Washington.

In section “1.2 Methodology” on page 1, the Shoreline Inventory states that the methodology for determining the current conditions of Burien’s critical freshwater shorelines is primarily based on the review of previous studies. No primary source data is collected or longitudinal studies are conducted to determine a current inventory of critical freshwater habitats. Nor are there any scientific studies of predictive risks to ecological functions that might occur if elements of the SMP, as currently written, were to be implemented over the next 10 to 15 years.

Evidence of Best Available Science appears to be lacking. The Burien Municipal Code Title 19, 19.40 Critical areas, 19.40.060, Best available science, Page 40-4, states: “*best available science*’ is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, ...”.

There are some who would argue that there is no value in using Best Available Science or conducting studies of any kind on critical freshwater or saltwater habits. The intended consequence of this approach is that, with a lack of baseline data, unchecked degradation of critical freshwater or saltwater habits could occur and any legal challenge concerning degradation would be circumstantial and unsubstantiated without definitive proof.

Private interests have promoted the long term health of the only freshwater habit in the City of Burien. As a result, the quality of the fresh water in Lake Burien is at a much higher level than most other lakes located in heavily urbanized areas. Historically, public municipalities have a very poor track record of protecting the public shorelines and the quality of adjacent waters and aquatic habitats.

Chapter II of the Shoreline Master Program, section 20.20.005 General Goals and Policies Pol. ALL 2, Page II-I, states: "*Regulation and management of Burien's shorelines should be guided by ongoing and comprehensive science.*"

The table on page 20 of SMP Cumulative Impact Analysis written by Reid Middleton 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. It identifies that Lake Burien "*in its entirety has been rated as a Category 2 wetland*". It also notes that "*(t)he buffer associated with a Category 2 wetland is 100 feet*". The analysis of Cumulative Impact on Lake Burien was then based on these pieces of information.

However, City staff has stated that they negotiated with the Washington State Department of Ecology to reduce buffers/setbacks around Lake Burien to 45 feet. The cumulative effect of this change will:

- 1) allow the potential of addition development around Lake Burien, and
- 2) increase the amount of impervious surfaces that can cover critical freshwater wetlands and aquifer recharge areas.

The appendices supporting the Shoreline Master Program as currently written do not provide thorough science-based facts and duration of study to support a future comparative analysis that would determine positive or negative ecological impacts induced by changes advanced through the Shoreline Master Program or any other actions in the freshwater shoreline habitats of Burien.

Therefore,

- 1) Best Available Science must be used in a longitudinal scientific study of critical freshwater shoreline habitats, and
- 2) The Cumulative Impact Analysis needs to address the cumulative impact of reducing the buffer/setback from 100 feet to 45 feet.

Both updated studies should be included as part of the Shoreline Master Program before the program is adopted by the City of Burien.

January 26, 2010

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To: City of Burien Planning Commission

From: Kathi Skarbo

Re: Shoreline Master Program Update

JAN 26 2010

CITY OF BURIEN

It has come to my attention that a change was made to the Shoreline Master Program between an earlier draft and the final draft that I believe is a significant change.

I attended the Shoreline Advisory Committee meeting on Sept. 23, 2009 where a draft of Chapter IV (Policies and Regulations), dated Sept. 1, was distributed. Please see the reverse side of this sheet to see Section 20.30.035 Public Access, paragraph 2.d. (page IV-8 in the final draft) which read:

“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.”

I understood this to mean public access is required if a property is developed into 5+ lots. If my parcel can only be divided into 4, the paragraph does not apply to me. A committee member requested it be changed to “development planned for more than five parcels,” but someone stated that the language came directly from a WAC. (That is correct – WAC 173-26-221 section 4 Public Access.) The Meeting #6 Summary reflects that the committee chose to “keep the language as proposed.”

A few days ago, I came back to the same paragraph in the final draft, dated 11/17/2009. It now reads:

“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.”

Now public access is required if a property is developed into 4+ lots – more restrictive and a significant change.

I have these three questions:

1. How, when, and why was this paragraph changed? How did “more than four parcels” become “less than four parcels?”
2. Did the Advisory Committee have an opportunity to review the final document and approve it?
3. Does the final document *accurately* represent the recommendations of the Advisory Committee?

I encourage the Planning Commission to ask these questions and share the answers with the public. And I respectfully request that the paragraph be changed back to the original intent that was approved by the Advisory Committee.

Thank you.

- b. The vacation or sale of ^{city} street ends or other public right of ways and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints.
- c. Visual access to outstanding scenic areas shall be provided with the provision of roadside pullovers or broadening of road shoulders.
- d. If a ^{public} road is located within shoreline jurisdiction, any unused right of way shall be dedicated to open space and public access.
- e. 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.)~~

- 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.
- e. Public access to shoreline areas shall not be required where it is demonstrated to be infeasible because of incompatible uses, safety, security, or constitutional and other legal limitations that may be applicable.
- f. The City shall utilize alternate methods of providing public access when appropriate and *feasible*, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.
- g. Public access improvements shall not result in a net loss of shoreline ecological functions.
- h. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
- i. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running in perpetuity with the land and shall occur at the time of permit approval.
- j. Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

January 25, 2010

To: Burien Planning Commission

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

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JAN 26 2010
CITY OF BURIEN

Re: Shoreline Management Program

I live on SW 172nd St. and my major concerns about the proposed Shoreline Management Program relate to public access issues and the negative impact that would surely have on our community. No one disagrees with the overall concept of preserving the shoreline ecology, and no one cares more about that than the people who actually live on the shoreline. However, we all share the same concerns about the negative effects that increased public access would have on this area. I am sure that the residents of Lake Burien have the same concerns for their community.

We live here for a reason: we love the peace and quiet and the beauty of this area. We don't want to see our community turned into anything that even remotely resembles Alki or Redondo or Greenlake. If we wanted to live in an area like that we would not have moved here. We have worked hard all our lives to be able to purchase a house in the Three Tree Point community, and we continue to pay an ungodly amount of taxes for the privilege of living here. It is not OK for this shoreline program or any other plan to result in anything that destroys the character of our community, lowers our property values, increases property damage and other crime, or decreases the safety of the residents who live here.

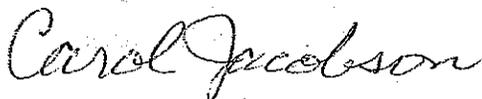
Increasing public access is contradictory to the stated purpose of shoreline management, which is protection of the shoreline ecology. More people = more trampling of shoreline, more litter/garbage/ more crime, more private property trespass and damage, and less safety for residents of these communities. Look at Alki, where a constant police presence is required for safety and crime concerns. Consider the cost of maintenance of more public access sites as well as additional police protection needed for public safety, not to mention the negative impact hundreds or thousands of more people will have on the ecology of the beaches. And where would all of these people park? Parking is so limited now that even residents in the community barely have space to park our own cars – and having visitors at your own house requires negotiation with neighbors for parking.

Even with the existing public access, we have people parking on our property with their car radios blaring at high volume, eating lunch at our picnic table, changing their baby diapers on the picnic table, leaving their garbage, throwing our possessions on to the beach, sleeping in their cars overnight parked in our lot, and then urinating in our lot before leaving. Most of these things have happened in the last 2 months and many times before. We have in the past found syringes, needles, and discarded condoms on our property. I have no interest in seeing this type of behavior and activity multiplied hundreds of times over with additional public access. According

to the maps in this document there are already 4 public access points in the immediate Three Tree Point area, plus Seahurst Park and Eagle Landing Park – how many do we need?

In Chapter IV, page 8, items a, b and c need to be clarified so that existing property along SW 172nd (and anywhere else potentially affected by these items) 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. Nothing in the SMP should be allowed to negatively impact property or existing structures that were present before this act is approved, and homes and structures that exist now need to be grandfathered into this document. The same is true regarding the building restrictions that could prevent our ability to rebuild our homes as they now exist if they were damaged or destroyed. Existing homes and their footprints need to be grandfathered in wherever the proposed restrictions would prevent rebuilding as the home now exists .

Finally, this proposed Shoreline Management Program is not a plan. It should serve as the guidelines for any plans that are ultimately developed related to shoreline areas. The City of Burien may have a “plan” for our community, but we have not seen any such plan in writing. There needs to be assurance in the SMP that residents of affected communities (in this case Lake Burien and the Three Tree Point area especially) are involved in the development of any plans that affect us. There needs to be assurance that there is sufficient funding for any such plans and for the ongoing maintenance of public access areas, as well as for additional police protection that may be necessary to maintain the safety of the community. In addition, there needs to be some language that assures that developers and the City of Burien have to live by the same rules, regulations, and restrictions that this program places on private citizens.



Carol Jacobson

January 29, 2010

To: Burien City Council
Burien Planning Commission

Re: Proposed Shoreline Master Program

To Whom It May Concern:

RECEIVED
JAN 26 2010
CITY OF BURIEN

I first moved to Burien about 25 years ago, attracted by its quiet out of the way bedroom community feel where neighbors were more likely to see their neighbors than anyone else. Burien seemed unharmed by the growth, noise, traffic, crime, and natural environmental destruction that accompanied growth in other nearby communities to the north and east where they are overrun with population and its impacts, but with a more functional community feel than our neighbors to the south. During most of almost any day in the neighborhood, we were more likely to see people out working or recreating in their yards, walking alone or with family or friends, with or without dogs, jogging, or riding bicycles on streets that by virtue of a lack of car traffic were safe for foot traffic without the need for the increased pavement and its costs caused by vehicular traffic.

Fortunately, in my 25 years here, spread across 3 homes in differing communities, I have continued to appreciate my community for what it still is, an out of the way quiet bedroom community which has been self preserved by the residents in the quest to preserve the qualities they moved here for: safety; privacy; low population density; minimal traffic in the neighborhood; natural beauty (if even only in ours and our neighbor's yards); and proximity to plenty of places to safely walk, run, or ride a bicycle where we could enjoy rather peaceful and quiet public access to the more or less intact northwest outdoor experience, even while in the heart of the populated county and mere minutes from Seattle. Over the years, I turned each property where I lived into a more natural, clean, quiet place where people and nature could exist hand in hand to the betterment of each other, making each property better off than I found it from a preservation perspective, and in the sort of condition anyone from the future would consider a place where nature was respected and preserved even though someone did have the footprint of a home and human existence on it.

Recently, I became aware of the Burien Shoreline Master Program related documents, documents whose framework should serve as a guide for preserving our natural environment and quality of life, just as many Burien citizens have striven to do with their own private properties, but on a public scale. Comments I have seen in response to the document demonstrate that many Burien residents value preservation, understand the effort and priority it requires, and the reward to be found in preservation of the communities we moved to because of what they were, not because of what someone from outside thought they could be or they could profit from.

The documents start off well, stating that it should establish a comprehensive vision of how the shoreline areas will be used and developed over time, and goes on to state that the program would indeed be the guideline for that comprehensive vision of how areas will be used and developed. Unfortunately, the documents are really just a collection of broad direction statements which lack any significant definition and clarity from which a person can discern any clear, real description of how the shoreline areas will be developed and used over time, a set of limitations and procedures for what private citizens can do on their property, environment survey type documents, and a single actual plan for the restoration of Seahurst Park and Eagle Landing. The documents say absolutely nothing about what the city has to do to intake, evaluate, approve, plan, and execute any public projects which it desires to undertake in the spirit of the program (preservation, access, minimizing negative impacts to private property and the environment).

For a program to be a program, it should be a collection of specific definitions, activities, and projects which collectively achieve the goals of the program. There should also be a process spelled out for how such definitions, projects, or activities, both private and public, are brought forth for consideration, considered, brought into the governance mechanisms of the program, planned according to requirements of the program, implemented (including mitigating negative impacts and identifying funding mechanisms), measured for success, and remediated if success was not achieved. Without that additional foundation as it pertains to public projects and activities, this set of documents should not qualify as a program. This program only includes one project, and none of the process definition for how new projects will be added. I sincerely doubt if the intent is to have no more public projects once Seahurst and Eagle Landing restoration are completed. What are those projects? What is the process for adding them? What is the process for clarifying the intent of the overly generalized verbiage used in the direction statements which appear throughout these documents?

Here are examples of overly generalized statements that can easily be misused:

In section 20.30.035 item 2 – Regulations it states “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.”

In fact, RCW 35.79.035 has only to do with the “Limitations on vacations of streets abutting bodies of water.”

Statement a. should either be stricken altogether or modified to state that actions to shoreline street ends, rights-of-way, and other public lands shall comply with RCW 35.79.035.

In section 20.30.035 item 2 – Regulations it states “c. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.”

There is no definition of “unused right of way” or how to deal with property owner’s rights to access and use their property through which the road (wherein people pass through their property) passes.

Lastly, I go back to my original reasons for moving to Burien. I'm reminded of the closing of "Field of Dreams". The expression of "build it and they will come" hangs in the air. Darkness settles. An endless line of tightly packed headlights appears in the darkness and stretches for as far as the eye can see. They came from far and wide, some didn't even know why, but they came to find something. End of story. Not quite. Then they were there, no place to park, no facilities, teeming with people, too many in too small of a space. Eventually they would have to leave, and when they did, what did they leave behind - only a mess to be cleaned up and paid for by the very people who had the "vision". What the visionaries had before was gone forever. No more Iowa as they knew it.

Burien has only successfully survived as a desirable place because our individual and public vision has been to preserve our communities through commitment to our neighborhoods and encouraging vast public access only to places where non-residents ought to go - the business districts and organized, containable, maintainable park facilities such as Seahurst. Encouraging a stream of cars circulating through our neighborhoods will be the end of Burien. It will be the antithesis of preservation of what we came here for and of the intent of the program. Let's get this right. Let's get this all defined and clarified so people with ill-conceived or detrimental private or public agendas can't hide behind ambiguous words. Let's save Burien from those outside who have no interest other than taking something from someone who has been preserving it for decades as a bastion of quiet, peaceful, safe, close to nature existence among a sea of ever increasing insatiable appetite for consumption and its associated destruction of even the slightest bit of nature, even if merely through simple overuse with no negative intent. Let's work together to achieve a meaningful program that has a chance of accomplishing what the state intended. Let's make sure that the city fulfills this obligation and corrects this set of documents to actually establish a comprehensive vision with exact wording that portrays true meaning, includes potential public projects and plans and a process for enabling their consideration and implementation, and with full and open inclusion of impacted communities in the process.

Thank you for your consideration of my concerns.

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