March 1, 2010

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

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

Dear Mayor McGilton,

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

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

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

Thank you for consideration of our request.

Sincerely,

Carol Jacobson

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

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

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

PETITION TO THE CITY OF BURIEN
February 26, 2010

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

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

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

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

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

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

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

SEE ATTACHED FOR SIGNATURES:

	Printed Name	Signature	Address	Zip
1	Donna Bausano	Donna Bausano	5320-8th. 172nd St	98166
2	Mary Scharf	Mary Scharf	3150 SW 172nd St	98166
3	Victoria Adams	Victoria Adams	17108 maplewild AVE SW	98166
4	William Scharf	WM Scharf	3150 SW 172nd St	98166
5	Todd Manola	[illegible]	3554 SW 172nd St	98166
6	Jana Manola	Jana Manola	" " "	"
7	GREGORY L. DILL	[illegible]	3568 S.W. 172ND	98166
8	Janet G. Grello	[illegible]	5584 SW 172nd	98166
9	ROBERT HUBBS	[illegible]	3540 SW 172ND	98166
10	Joy VERANTH	Joy Veranth	3540 S.W. 172nd St.	98166
11	M.L. McKINLAY	M.L. McKinlay	3536 S.W. 172nd St	98166
12	Jana Kleitsch	Jana Kleitsch	3532 SW 172nd St	98166
13	Ursula Haigh	[illegible]	3512 SW 172nd St	98166
14	CARA SAXWOLD	Cara Saxwold	3502 SW 172nd St	98166
15	Brent Saxwold	[illegible]	3502 SW 172nd St	98166
16	Julia Whitney	[illegible]	2852 - SW 172nd St	98166
17	MAURICE J HOFFMAN Jr	Maurice Hoffman	3134 SW 172ND ST	98166
18	Elizabeth Diane Hoffman	Elizabeth Diane Hoffman	3134 SW 172nd St.	98166
19	Mark Ottolino	Mark Ottolino	3130 SW 172ND St	98166
20	MARK S. OTTOLINO	[illegible]	3130 S.W. 172nd ST	98166

	Printed Name	Signature	Address	Zip
1	Milo A. Peterson	Milo A. Peterson	16747 Maplewild Ave SW	98166
2	AUDREY A. PETERSON	Audrey A. Peterson	16747 Maplewild Ave SW	98166
3	PRISCILLA RANDALL	Priscilla Randall	16767 Maplewild Ave SW	98166
4	Priscilla Middleton		16767 Maplewild Ave SW	98166
5	Rassul Ila		145 SW 151st St	98166
6	Faith Middleton	Faith Middleton	16767 Maplewild Ave SW	98166
7	DAVID PARKER		16767 Maplewild Ave SW	98166
8	Barbara SAXWOLD	Barbara Saxwold	16917 Maplewild SW	98166
9		Jack Saxwold	16917 Maplewild S.W.	98166
10	CLAUDE WETZEL	Claude Wetzel	16925 MAPLEWILD AVE SW	98166
11	LORNA MARSHALL		16925 MAPLEWILD AVE SW	98166
12	FRED FINN		16933 Maplewild Ave SW	98166
13	Michael Noakes	Michael D. Noakes	16409 Maplewild Ave SW	98166
14	Catherine Foss	Catherine Foss	16409 Maplewild Ave SW	98166
15	Tetsuo Mori		16413 Maplewild Ave. S.W.	98166
16	SILAS BRAZIL		16507 MAPLEWILD AVE SW	98166
17	Nancy Kaseburg	Nancy Kaseburg	16319 Maplewild Ave. S.W.	98166
18	Karl Kaseburg	Karl Kaseburg	16319 Maplewild Ave. S.W.	98166
19	CRAIG UELAND		16419 Maplewild Ave SW	98166
20	NICOLE UELAND	Nicole G. Ueland	1419 Maplewild Ave SW	98166

	Printed Name	Signature	Address	Zip
1	JOAN M JOHNSON	Joan M Johnson	16207 Maplewild SW	98166
2	Tom Hremow	[illegible]	16207 MAPLEWILD SW	98166
3	Evamarie Johnson	Evamarie Johnson	15622 19th Ave SW	98166
4	Teresa Ann Wright	Teresa Wright	16309 Maplewild AVE SW	98166
5	Tom Cartwright	Tom Cartwright	16309 Maplewild Av SW	98166
6	Karen Boyden	Karen Boyden	16335 Maplewild Ave SW	98166
7	SCOTT M. CREEK	Scott M. Creek	16411 MAPLEWILD AVE SW	98166
8	Ann Stout	A Stout	16425 Maplewild Av SW	98166
9	Jim WIEHOFF	Jim Wiehoff	16519 Maplewild AVE SW	98166
10	ANDY RYAN	Andy Ryan	16525 MAPLEWILD AVE SW	98166
11	Rich Gresly	[illegible]	16621 Maplewild Ave SW	98166
12	Charlotte Sitterley	[illegible]	16621 Maplewild Ave SW	98166
13	JERRY MARTIN	[illegible]	16625 MAPLEWILD AVE SW	98166
14	Max Sprague	[illegible]	16711 Maplewild SW	98166
15	Trista Sprague	[illegible]	16711 - Maplewild Ave SW	98166
16	RANDY COPLEN	[illegible]	16713 MAPLEWILD AVE SW	98166
17	Barb Coplen	[illegible]	16713 Maplewild Ave SW	98166
18	Gordon Buchan	[illegible]	16733 Maplewild Ave SW	98166
19	Debra Buchan	Debra Buchan	16733 Maplewild Ave SW	98166
20	ARTHUR GREEF	[illegible]	16763 MAPLEWILD AVE SW	98166

Petition to the City of Burien
Citizens Request for Time Extention of SMP

	Printed Name	Signature	Address	Zip
1	Murray Lee Dow II	[illegible]	9 Three Tree Point Lane, Burien	98166
2	Julie Bianchini Dow	[illegible]	9 Three Tree Point Lane, Burien	98166
3	Tom Bailey	[illegible]	3728 S.W. 3 TREE PT. LN.	98166
4	Deana Bailey	Deana Bailey	3728 SW Three Tree Pt Ln	98166
5	Rick Simmons	[illegible]	3745 S.W. 171st	98166
6	JERRY ROBINSON	[illegible] Robinson	3774 SW 171st	98166
7	ELSBETH ROBINSON	[illegible] Robinson	3774 SW 171st	981C
8	KEN W. SMITH	[illegible]	3773 S.W. 171st	98166
9	Cheryl K. Smith	Cheryl K Smith	3773 S.W. 171st	98166
10	H CLARK MOUNSEY	[illegible]	3721 SW. 171st ST	98166
11	ELIZABETH MOUNSEY	[illegible]	3721 S.W. 171st ST.	98166
12	MARGARET T STEELE	Margaret T Steele	16955 MAPLEWILD S.W	98166
13	Kathy Anderson	Kathy L Anderson	17120 Maplewild Ave SW	98166
14	TODD ANDERSON	[illegible]	17120 MAPLEWILD AVE SW	98166
15	Dana Bailey	Dana S Bailey	2683 S.W 172nd	98166
16	J Kent Bailey	J Kent Bailey	2683 SW 172nd	98166
17	RONDA DILL	Ronda K Dill	3568 S.W 172nd	98166
18	Laura L. Bailey	Laura L. Bailey	3726 SW Three Tree Pt Ln.	98166
19	BILL BAILEY	[illegible]	3726 SW THREE TREE PT LANE	98166
20	Jane Jirous-Cancro	[illegible]	5 S.W. Three Tree Pt. Ln, Burien	98166

3sisterspreps@comcast.net

	Printed Name	Signature	Address	Zip
1	BRIAN BOVOLNY		16203 Maplewild Ave SW	98166
2	James Bu[illegible]		16067 Marbeuil Ave SW	98166
3	ANDREW R. BILES		16035 Maplewild Ave SW	98166
4	[illegible] Rumbas		16039 Maplewild SW	98166
5	HELEN HOVE		16019 MAPLEWILD SW	98166
6	CARL HOVE		16019 MAPLEWILD SW	98166
7	NANCY TOSTA		15931 Maplewild Dr SW	98166
8	Bob Ewing		1593 Maplewild Dr	98166
9	Deb Havens		15929 Maplewild Ave SW	98166
10	Thomas A. Havens		15929 Maplewild Ave SW	98166
11	ARDEN LEFFLER		15907 MAPLEWILD Ave SW	98166
12	BRIAN MOODY		15907 Maplewild Ave SW	98166
13	Joe Chard		15903 Maplewild Ave SW	98166
14	Cheryl Chard		15903 Maplewild Ave SW	98166
15	James Puckett		15819 Maplewild Ave SW	98166
16	ARDYS Puckett		15819 Maplewild Ave SW	98166
17	RON SEALE		15809 Maplewild SW	98166
18	Jennifer James		15809 Maplewild SW	98166
19	Carol Crean		15824 Maplewild SW	98166
20	Michele Neumann	Michele Neumann	15917 Maplewild Av SW	98166

Petition to the City of Burien for a Timeline Extensi[illegible] [illegible]or Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	Merilyn F. Silver	Merilyn F. Silver	2837 S.W. 172nd St.	98166
2	Cory Mason	Cory Mason	2824 SW 172nd St	98166
3	John Schenck	John Schenck	2825 SW 172nd ST	98166
4	Ron Franz		2821 SW 172nd St	98166
5	Stanley Fossberg	Stanley Fossberg	2813 SW 172 St	98166
6	Gary L. Delich	Gary L. Delich	2801 SW 172nd PL	98166
7	Sharon G. Delich	Sharon G. Delich	2801 SW 172nd Pl.	98166
8	Nancy Leonard	Nancy Leonard	2687 SW. 172nd	98166
9	John Leonard	John Leonard	2687 SW 172nd	98166
10	KATHLEEN A. KORPELA	Kathleen A. Korpela	2685 S.W. 172nd St	98166
11	R KENT WEINBERGER	R Kent Weinberger	2657 SW 172ND ST	98166
12	DIANE WEINBERGER	Diane Weinberger	2657 SW 172 ST	98166
13	PIETER HOOLBOOM	Pieter Hoolboom	2468 SW 172nd St	98166
14	TERRY CAIN	Terry Cain	2450 SW 172nd ST	98166
15	ELLIE CAIN	Ellie Cain	2450 SW 172nd St	98166
16	John Moore	JOHN MOORE	2438 SW 172 St	98166
17	Virginia Hastings	Virginia Hastings	2432 SW 172nd St	98166
18	WILLIAM C. HASTINGS JR	William C. Hastings Jr	2432 S.W. 172ND ST	98166
19	DALE J. SCOTT	Dale J. Scott	2429 SW. 172ND ST	98166
20	DWIGHT ANN BRUNK	Dwight Ann Brunk	2429 SW 172nd ST	98166

	Printed Name	Signature	Address	Zip
1	Scott MacKenzie	Scott MacKenzie	15609 11th Ave SW	98166
2	Dana MacKenzie	Dana MacKenzie	15609-11th Ave SW	98166
3	Rosemary Hulsman	Rosemary Hulsman	15441-11 S.W.	98166
4	ANNA M. KLINE	Anna M. Kline	10012 SE 24th Pl.	98030
5	JERRY RUSTON	Jerry Ruston	15430 11th AVE. S.W.	98166
6	Kathy Rustm	Kathy Rustm	15430 11th Ave SW	98166
7	David Brown	David Brown	15423 11th Ave S.W.	98166
8	Chris Anderson	Chris Anderson	16226 11th Ave SW	98166
9	Paula Anderson	Paula Anderson	15451-11th Ave. S.W.	98166
10	Cynthia Merrell	Cynthia Merrell	15435 11th Ave SW	98166
11	Joe Oferle	Joe Oferle	15435 11th AVE SW	98166
12	Greg Anderson	Greg Anderson	15451-11th ave SW	98166
13	Burrita Perry	Burrita Perry	15407 11th AVE S.W	98166
14	ROBERT PERRY	Robert L Perry	15407-11th AVE SW	98166
15	JASON HOOS	[illegible]	15401 11th Ave. S.W.	98166
16	Cydney Hoos	Cydney Hoos	15401 11th ave SW	98160
17	BETTY ROLEY	Betty Roley	15606-11th S.W.	98166
18	Carole Edwards	Carole Edwards	16055-10th S.W	98166
19	BRIAN C. EDWARDS	[illegible]	16055 10th SW	98166
20	FRANK COBKEN	[illegible]	16056 10 Ave SW	98166

	Printed Name	Signature	Address	Zip
1	Leslie R. Sims	Leslie R. Sims	1616 SW 156th St Burien	98166
2	Daphne J. Weber	[illegible]	15602 18th Ave S.W.	98166
3	Steven Sims	Steven C. Sims	1616 SW 156th St. Burien	98166
4	L. Audrey Edgerton	L. Audrey Edgerton	1600 SW 156th St #A Burien	98166
5	Charles W. Edgerton	Charles W. Edgerton	1600 SW 156th St #A Burien	98166
6	MARCIA MOEN Marcia Moen	Marcia Moen	16003 16th ave SW	98166
7	DAVID IAN ROSS	[illegible]	1606 SW 157th Pl	98166
8	DAVID Andrews	David Andrews	1440 SW. 158 ST	98166
9	Mindy Andrews	Mindy Andrews	1440 SW 158TH	98166
10	DANNA SILVERTS	Danna Silverts	15709 14th PL SW	98166
11	ROBERT SIVERTS	Robert Siverts	15709 14th PL SW	98166
12	B Hope Schulz	B. Hope Schulz	15700-14th Pl SW	98166
13	Henry Schulz	[illegible]	15712 14th PL SW	98166
14	Cynthia Reid	[illegible]	15701 13 SW	98166
15	Terry Lee	Terry Lee	15702-13th SW	98166
16	DONALD R. WARREN	[illegible]	"	"
17	STEPHEN R ARMSTRONG	Stephen Armstrong	15704 13TH SW	98166
18	Garry M Crane	Garry M Crane	15706 13th Ave SW	98166
19	MIYAKO LOBERG	Miyako K. Loberg	1216 SW 157TH ST.	98166
20	Eric Loberg	[illegible]	1216 SW 157th St	98166

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

	Printed Name	Signature	Address	Zip
1	Jeff Downes		2435 SW 172 Burien Wa	98166
2	Marinnn Downes		2435 SW 172 Burien Wa	98166
3	Rick Brown		2399 SW 172nd St. Burien	98166
4	Virginia Brown		2399 SW 172nd St Burien	98166
5	Ethan Janson		2831 SW 172nd St. Burien, WA	98166
6	Toren Drysdale		2834 SW 172nd St Burien, WA	98166
7	Norm Drysdale		2834 SW 172ND St Burien	98166
8	Denise Janson		2831 SW 172nd St Burien	98166
9	Mike Fosberg		2813 SW 172nd St Burien	98166
10	Alana Pederson		2836 SW 172nd St Burien	98166
11	[illegible]	Phil Fleming	2848 S.W 172nd	98166
12	John Fleming		2848 S.W 172 nd	98166
13	Helen Fosberg		2841 SW 172nd	98166
14	Ted Fosberg		2841 SW 172ND ST	98166
15	Amy Frank		2631 S.W. 172nd St	98166
16	Anita Graham		2618 SW 172nd St.	98166
17	Sue Redhed		17133 23rd Pl. S.W.	98166
18	Mark Smith		2472 SW 172 St	98166
19	George Stoll		2456 SW 172 St SW	98166
20	[illegible]			

	Printed Name	Signature	Address	Zip
1	CAROL JACOBSON	Carol Jacobson	3334 SW 172nd St	98166
2	Sean Wittmer	[illegible]	3328 SW 172nd St	98166
3	Julie Allen	[illegible]	3328 SW 172nd St	98166
4	John Bausano	[illegible]	3154 SW 172nd St	98166
5	Larry Berendzen	[illegible]	3160 SW 172nd St	98166
6	MARGI BERENDZEN	[illegible]	3160 SW 172nd St	98166
7	TERRY HAIGH	[illegible]	3512 SW 172nd St	98166
8	Ron Harmon	[illegible]	3316 SW 172nd	98166
9	Kathy Harmon	[illegible]	3316 SW 172nd	98166
10	Anay Kleitsch	[illegible]	3532 SW 172nd	98166
11	MARGARET BOYLE	Margaret Boyle	3108 SW 172	98166
12	Char Law	Charlotte Law	3312 SW 172nd St	98166
13	Risto Heikkinen	RISTO HEIKKINEN	3312 SW 172nd ST	98166
14	PATRICK A. BOYLE	[illegible]	3109 SW 172nd Seattle	98166
15	Lan Bausano	[illegible]	3154 SW 172nd St	98166
16	Allison Tennant	[illegible]	3142 SW 172nd St	98166
17	HUGH TENNANT	[illegible]	3142 SW 172nd ST	98166
18	Michael A Hart	[illegible]	2660 SW 172nd St	98166
19	SHEILA HARTNELL	[illegible]	2455 SW 172nd St	98166
20				

	Printed Name	Signature	Address	Zip
1	Terry Crank	[illegible]	15917 Maplewild Ave SW	98166
2	JOHN ADAMS	John C. Adams	15920 MAPLEWILD SW	98166
3	Keith MacKay	[illegible]	15930 Maplewild Ave SW	98166
4	Pamela Nomura	Pamela Nomura	16039 Maplewild Ave SW	98166
5	Richard Nomura	Richard Nomura	16039 Maplewild Ave	98166
6	Steve Lemons	[illegible]	16215 Maplewild Ave.	98166
7	Barbara Trenary	Barbara Trenary	16215 Maplewild Ave	98166
8	David Woltz	David Woltz	15925 Maplewild	98166
9	Susan Woltz	Susan Woltz	15925 Maplewild	98166
10	MELVIN TAYLOR	[illegible]	7115 SW 174 St	98166
11	Shari Taylor	Shari Taylor	7115 SW 174 St	98166
12	Lorraine Esters	LORRAINE ESTER	16909 MAPLEWILD SW	98166
13	Margaret A. Smith	MARGARET A. Smith	3778 S.W. 171st St.	98166
14	Dawn Peterson	Dawn Peterson	3250 171st St. S.W.	98166
15	Carolyn Rosenfield	Carolyn Rosenfield	3332 SW 172 St	98166
16	Pam Thurston	[illegible]	3304 S.W. 172nd	98166
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	Printed Name	Signature	Address	Zip
1	Kathi Skarbo	Kathi Skarbo	1621 SW 152nd St	98166
2	SUSAN LUTHY	Susan Luthy	1807 SW 152nd St	98166
3	TANYA ENGESET	Tanya Engeset	1449 SW 152	98166
4	Leona Wooding	Leona Wooding	1435 SW 152nd St	98166
5	Lynda Eck	Lynda Eck	PO Box 389 Burbank, 98062	
6	Len Hulsman	Len Hulsman	1255 SW. 152nd	98166
7	Carl Hauke	Carl Hauke	1425 SW 152nd St	98166
8	LeeAnna Betlach-Hauke	LeeAnna Betlach-Hauke	1405 SW 152nd St	98166
9	Kai Skarbo	Kai Skarbo	219 S 156th #312	98148
10	Lynn MAJORS	Lynn Major	1235 SW 152nd St	98166
11	Jim Coury	Jim Coury	1235 SW 152nd St	98166
12	Rodger Parr	Rodger Parr	1215 SW 152nd St	98166
13	RICHARD FARNESS	Richard Farness	1209 SW 152nd St	98166
14	JOHN H. MICHAELS	John H. Michaels	14902 21st Ave SW	98166
15	Barbara L Dierst	Barbara L Dierst	16713 21st SW	98166
16	R.T. Dierst Jr	R.T. Dierst Jr	16713-21st SW	98166
17				
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3/1/10

	Printed Name	Signature	Address	Zip
1	Robert Howell	Robert Howell	15240 20th Ave SW	98166
2	Paul S. McCarron	Paul S McCarron	15252 20TH AVE SW	98166
3	Lisa McCarroll	Lisa McCarroll	15252 20th Ave SW	98166
4	Eldon A. Mount	Eldon A. Mount	15260 20th Ave SW	98166
5	Susan Wiechmann	SUSAN WIECHMANN	15406 20 AVE S.W	98166
6	JOHN UPTHEGROVE	John Upthegrove	1808 SW 156th	98166
7	CYNDI UPTHEGROVE	Cyndi Upthegrove	1808 SW 156th	98166
8	Robert King	Robert King	1626 SW 156th St.	98166
9	Darlene King	Darlene King	1626 SW 158th St	98166
10	CHESTINE EDGAR	C. Edgar	1811 SW 152nd St	98166
11	Robert Edgar	Robert Edgar	12674 Shorewood Dr SW	98146
12	Dorothy Lockett	Dorothy Lockett	1825 S.W 152	98166
13	HOMER E LOCKETT	Homer E Lockett	1825 SW 152nd	98166
14	WINONA DEYMAN	Winona Deyman	1817 SW 152nd	98166
15	Robbie Howell	Robbie Howell	15240 20th S.W.	98166
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	Printed Name	Signature	Address	Zip
1	Rick Nicholson	Rick Nicholson	1228 SW 157th ST	98166
2	Cynthia Nicholson	CR Nicholson	1228 SW. 157th St.	98166
3	Sandy Lievero	Sandy Lievero	1224 S.W. 157th St	98166
4	JOHN LIEVERO	John Lievero	1222 SW 157th ST	98166
5	MIKE LOFGREN	M Lofgren	15605 12th SW	98166
6	MARK BENTLEY	Mark L. Bentley	15714 15th PL. SW.	98166
7	Karen Bentley	Karen Bentley	15714 15th Place SW	98166
8	Jean M Kotlik	Jean M Kotlik	1526 SW 160th St	98166
9	Bruce Ranbaugh	Bruce E Ranbaugh	1526 SW 160th	98166
10	GORDON P. BAKER	Gordon P. Baker	1618 SW. 156th ST SW	98166
11	Pamela M Ball	Pamela M Ball	1602 SW 156 st	98166
12	JOHN S. BALL	John S Ball	1602 SW 156 ST	98166
13	LEONARD G. BOSCARIN	Leonard G. Boscarin	1600 SW 156th ST	98166
14	Linda M. Plein	Linda M. Plein	1600 SW 156th St	98166
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	Printed Name	Signature	Address	Zip
1	SUSANNE EILERS	Susanne Eilers	2333½ SW 172nd	98166
2	Patricia Richard	Patricia Richard	2415 SW 172	98166
3	JOHN RICHARD	John Richard	2415 SW 172	98166
4	Barb Johnson	Barb Johnson	2313 SW 172nd	98166
5	Curt Johnson	[illegible]	2313 SW 172nd	98166
6	Tom C Knobloch	Tom C Knobloch	2400 SW 172nd St	98166
7	Barbara J. Prentice	BARBARA J PRENTICE	2329 S.W. 172nd ST.	98166
8	RAYMOND W PRENTICE	Raymond W Prentice	" "	"
9	JESSICA PARKS	[illegible] Parks	2323 SW 172nd ST	98166
10	Jason Parks	[illegible] Parks	2323 SW 172nd ST	"
11	Sharon Oliger	Sharon Oliger	15801 25TH SW	98166
12	John Oliger	JOHN OLIGER	15801 25TH S.W.	98166
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Petition to the City of Burien for a Timeline Extensio[illegible]r Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	Janet Wisen	JANET WISEN	16703-19th SW	98166
2	Joe Wisen	[illegible]	16703 19th Ave SW	98166
3	Jan Larson	[illegible]	2444 SW 172nd St	98166
4	David Larson	[illegible]	2444 SW 172nd St	98166
5	Roger Neubauer	ROGER NEUBAUER	2649 SW 172nd ST	98166
6	Joyelle Neubauer	Joyelle Neubauer	2649-SW 172 St	98166
7	MARK S. SNYDER	Mark S. Snyder	2816 SW 172nd ST	98166
8	CARMELLA A FRANZ	Carmella A Franz	2821 SW 172nd St	98166
9	Lisa Ebinger	[illegible]	16460 Sylvester Rd SW	98166
10	Mark Ebinger	Mark J. Ebinger	16460 Sylvester Rd SW	98166
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Petition to the City of Burien for a Timeline Extension for Submittal of the SMP to the City Council

	Printed Name	Signature	Address	Zip
1	GARY H. NIEMANN	Gary H. Niemann	2685 SW 172nd ST. BURIEN, WA.	98166
2	Martin Barrett	[illegible]	16903 Maplewild Ave SW	98166
3	Beth Barrett	Beth Barrett	16903 Maplewild Ave SW	98166
4	Holly Moore	Holly S Moore	2438 SW 172nd	98166
5	Elaine Manning	Elaine Manning	2438 SW 172nd	98166
6	D. W. CUSTER	D W Custer	2451 S.W. 172ND	98166
7	LORAINE Custer	Loraine Custer	"	"
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	Printed Name	Signature	Address	Zip
1	CURT BAUER	CA GB	3130 SW 172ND ST	98166
2	Chris Heinis	[illegible]	15802 12TH AVE SW	98166
3	Ron Bauer	[illegible]	15802 12th AVE SW	98166
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	Printed Name	Signature	Address	Zip
1	Rita Galardo	Rita Galardo	16056 - 10th Ave SW	98166
2	Gregory Ross Reynolds	[illegible]	15820 10th Ave SW	98166
3	Vicki Reynolds	Vicki Reynolds	15820 10th Ave SW	98166
4	Brian Thorston	Brian Thorston	3304 SW 172nd	98166
5	George Vermeef	George Vermeef	2745 SW 152nd St	98166
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	Printed Name	Signature	Address	Zip
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The following 105 signatures were obtained from the online version of this petition at:
www.ipetitions.com/petition/smp

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David Johanson

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

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

Thank you for your attention the matter., Julie Dow

From: Julie Dow [mailto:jbd@dowhotelco.com]
Sent: Wednesday, February 24, 2010 4:43 PM
To: 'davidj@burienwa.gov'
Subject: SMP Comment Matrix 49a

Good afternoon David.

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

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

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

Thank you, Julie Dow

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

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

1. Chapter IV, Section 20.30.075, 2. Regulations, c. iii. (Page IV-19)
   Please have the City of Burien Scientist explain the underlined concept of light: *"iii. Minimize adverse effects ...by... incorporating grating to allow light passage or <u>reflective panels to increase light refraction</u>; ..."*

2. Chapter IV, Section 20.30.075, 2. Regulations (Page IV-19)
   The SMP should acknowledge that docks and piers require maintenance and repair. The following wording should be inserted after regulation "*d.*" and the remaining regulations following the insertion should be re-lettered:

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

3. Chapter IV, Section 20.30.075, 2. Regulations, h.
   The 150 square foot maximum surface area for piers, docks and floats appears to be an arbitrary number. For example: since the level of Lake Burien can drop up to 30 inches every year, properties with shallow sloping shore lands must have docks or piers of sufficient length to *"...support the intended water dependent use."* as suggested in Chapter IV, Section 20.30.075, 1. Policies, b. (Page IV-18). The safe use of a dock or pier should not be jeopardized by having a narrow, unsafe width just to compensate for length in order to meet the arbitrary maximum surface area.

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

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

Thank you,
Bob Edgar

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

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

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

   "Special Planning Area 2 includes the existing Ruth Dykeman Children's Center facilities on Lake Burien. While the City encourages and supports the continued operation of the Center, any proposed change in use in the future should be reviewed to ensure that:
   a. Public access to the water is prohibited: and
   b. The development supports the historical link with Old Burien."

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

   "Pol. PA 14 Special Planning Area 2 includes the existing Ruth Dykeman Children's Center facilities on Lake Burien. Any proposed change in use in the future should be reviewed to ensure that:
   a. Public access to the water is prohibited: and
   b. The development supports the historical link with Old Burien."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you,
Bob Edgar

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

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

1. *"Modified"*
   Who fills in the column? Commissioners or Planning staff?
   I would like to suggest an adjacent column entitled "*Incorporated*" that will be completed by the Planning Commissioners after they have read the revised draft to ensure that the modifications have been included before the revised draft is forwarded to the City Council.

2. "*PC Direction*"
   a) Is the Planning Commission giving direction or receiving direction? If the Planning Commission is receiving direction from the Planning staff, how does that differ from the "*Draft Response*" column which also appears to be giving direction from the staff? Additional explanation should be included in the column header.
   b) What does "*NR*" mean? "No response"?, "not required"?, "not relevant"?, "not ready"?

3. Color Highlighting
   What is the significance of words that are highlighted in:
   - Green?
   - Blue?
   - Yellow?
   A legend should be included on the matrix.

Thank you,

Bob Edgar

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

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MAR 09 2010
CITY OF BURIEN

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

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

Missing from the Planning Commission webpage:

1. Cumulative Impacts Analysis
   The Cumulative Impacts Analysis is not electronically accessible
2. Shoreline Inventory Appendix B
   Text in the technical documents frequently refers to numerous Figures that are listed in the Appendix B of Shoreline Inventory, but Appendix B states that all the Figures "*To be included in final*" draft. In order to make sense of the information in the technical documents, Burien citizens need to have access to these figures *before* the final draft is released.

Recommendations:

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

Thank you,

Bob Edgar

RECEIVED
MAR 0 9 2010
CITY OF BURIEN

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

1. In 1981, Lake Burien was classified by King County as a Class 2 wetland and Lake Burien Creek was a Class 2 stream based on the King Co. wetland rating system.

2. In January 2003, the CAO was adopted and Burien adopted its own wetland rating scale and classified Lake Burien as a Class 4 wetland. This document is supposed to be based on best available science (BAS).

3. In December 2003, the Burien Comp. Plan was revised and it stated that Lake Burien was a wetland based on the King Co. wetland rating system. Using that system it was a Class 2. This is document is supposed to be based on BAS.

4. In December 2009, The Burien Comp. Plan was revised and it kept the language from the December 2003 plan about Lake Burien. So in the Comp. Plan of 2009, Lake Burien was a Class 2 wetland. This document is supposed to be based on BAS.

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

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

Chestine Edgar

GordonDerr
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March 9, 2010

RECEIVED
MAR 09 2010
CITY OF BURIEN

VIA HAND DELIVERY

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

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

Dear Members of the Planning Commission:

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

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

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

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

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

Very truly yours,

GORDONDERR LLP

Tadas Kisielius
tkisielius@gordonderr.com

Susan Coles

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

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

400 SW 152nd St
Suite 300
Burien, WA 98166

Greetings,

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

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

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

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

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

20.30.005 Applicability (p IV-2)

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

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

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

20.30.001 Shoreline Permit Matrix (pIV-1)

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

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

Section 20.35.025, Exceptions to Substantial Development Permits
4 Exemptions (pV-7)
This section states exceptions for Substantial Development Permit, but does not state exceptions to Shoreline Conditional Use permits. Bulkheads require CU permits per figure 4 in 20.30.001. How are exceptions for CU permits handled in order to support emergency maintenance / repair? See comments on 20.35.035

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

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

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

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

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

SHORELINE MASTER PROGRAM GUIDELINES

(h) Recognizing and protecting private property rights.
RCW 90.58.020:
"The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;...and, therefore coordinated planning is necessary...while, at the same time, recognizing and protecting private rights consistent with the public interest."

(i) Preferential accommodation of single family uses.
RCW 90.58.020:
"Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures...."

RCW 90.58.100:
"(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance

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

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

RECEIVED
MAR 09 2010
CITY OF BURIEN

March 4, 2010

Members of The Planning Commission:

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

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

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

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

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

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

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

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

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

Thank you for considering this,

Len Boscarine

Linda (Plein) Boscarine

David Johanson

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

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

Thank you for your attention the matter., Julie Dow

From: Julie Dow [mailto:jbd@dowhotelco.com]
Sent: Wednesday, February 24, 2010 4:43 PM
To: 'davidj@burienwa.gov'
Subject: SMP Comment Matrix 49a

Good afternoon David.

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

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

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

Thank you, Julie Dow

Don't misuse eminent domain

March 11, 2010

Recently the city of Burien has contemplated the use of the Shoreline Management Policy in acquiring use of waterfront properties along Lake Burien and the Puget Sound in Burien.

This action is simply a variation of the increased flagrant use of eminent domain, local and nationally, recently exercised in Burien forcing Bartell's and Mealmakers removal for the Burien Town Square project, (In retrospect they could have remained since the project was never finished.)

Historically, eminent domain was just used when the developing nation needed access for a bridge or railroad, but now it has morphed into something more heinous where, if the state deems a property more valuable for i.e. more tax revenue. they in sense seize it thru eminent domain-- Kelo vs. New London.

This runs completely contrary to the once basic constitutional right of private property, where often the land sought for by the state has been owned and maintained well for generations. There hasn't been a "blight," which is another excuse that cities use to confiscate personal property.

The SMP is entirely a property rights issue, and its enactment would have catastrophic implications.

First, the "setbacks" often exceed the size of the property, let's think about that first, That means the entire property and then some is taken.

Amazing, at the very least, it makes a once desirable valuable property unusable, unsellable and essentially worthless. No wonder homeowners are alarmed and skeptical, based on previous actions.

I would be, and this should concern everyone who owns property-- it could be them. The property usually has been maintained, paid property taxes for years, it is often the one sole valuable asset that a family has and frequently left as a legacy for the next generation.

Granted being a long time resident of Burien, I have often wanted access to the lake, especially on a hot day. But I think there is a correct method.

Burien could purchase property when available and go thru the normal methods in getting public access. This should only be considered if there can be some reasonable guarantee that the surrounding property and environment wouldn't be adversely impacted.

Mark Pitzner
Burien

248

Susan Coles

From: Kathi Skarbo [kskarbo@comcast.net]
Sent: Thursday, March 11, 2010 7:48 PM
To: Susan Coles
Cc: Public Council Inbox; Mike Martin; WA State Dept. of Ecology; WA State Dept of Fish & Wildlife; Rep. Dave Upthegrove; Sen. Joe McDermott; Rep. Eileen Cody; Rep. Sharon Nelson
Subject: Shoreline Master Program

To: City of Burien Planning Commission

I want to thank you for your actions at the Planning Commission meeting on Tuesday, March 9th regarding the Shoreline Master Program Update. I was very pleased that you addressed the concern I had communicated to you several times about the public access requirement for lots that are subdivided (item 31A on the table of public comments). The language you approved is very clear even though it differs from the wording in WAC 173-26-221[4.d.iii]. I appreciate your attention to what appeared to be a minor wording mistake but inadvertently changed the intent of the regulation.

During your discussion of this item, the issue of standards to deal with this public access requirement was raised. Although it seemed to be a consensus that these standards are needed, no further action to develop them was suggested. It seems to me that these standards should be incorporated into the Shoreline Master Program Update. Is it your plan to postpone this task until the occasion arises when they are needed? If so, isn't that a bit short-sighted? I don't see how this new regulation can be enforced without any directions on how to apply it.

I am also concerned about the changes to the allowable size of docks and piers in the SMP update. Based on the language the Shoreline Advisory Committee inserted in section 20.30.075.2.c.iii, there seems to be an assumption that shading due to docks is bad for the ecological function of the lake. I wonder if this assumption is correct. Is there any science that supports this theory? In the 27 years I have lived on Lake Burien, I have seen that the fish and other wildlife prefer to be under docks, particularly in the summer. The current Shoreline Management regulations (Title 25.16.140) allow 600 square feet of total surface area for a pier (dock) plus a float, with a maximum of 150 square feet for the float. There are also restrictions on the length – 80 feet or to a water depth of 13 feet, whichever is less. These are reasonable restrictions. The draft SMP allows only 150 square feet for total surface area. If I build a dock that is 10 feet by 15 feet, it will not be safe for people to jump or dive in because it's too shallow. If I build it 5 feet by 30 feet, it will not be safe for people to pass each other. This would severely restrict activity by both children and adults around the lake. Our property taxes are much higher along the shoreline, and we are willing to pay the premium in order to enjoy the lake for recreation. Is it the intention of the SMP to deny homeowners the use of the lake for recreational purposes?

I strongly encourage you to ask whether there is science that supports the theory that docks cause a negative impact to the ecological functions on Lake Burien. If there is none, please make the following changes.

Revise 20.30.075.2.c.iii as follows:
Minimize adverse effects on fish, shellfish, wildlife, water quality and geohydraulic processes by limiting the size of the structure and the use of hazardous materials~~, incorporating grating to allow light passage or reflective panels to increase light refraction; and spaced and oriented to minimize shading and avoid a 'wall' effect that would block or baffle wave patterns, currents, littoral drive, or movement of aquatic life forms~~.

Revise 20.30.075.2.h as follows:
Total surface area of piers, docks, floats and rafts shall not exceed ~~150~~ 600 square feet of surface area and no float shall have more than 150 square feet of surface area.

Thank you for your consideration.

Kathi Skarbo
1621 SW 152nd St
Burien, WA 98166

March 12, 2010

RECEIVED
MAR 12 2010
CITY OF BURIEN

To: Burien Planning Commission
Burien City Council
David Johanson, Senior Planner

From: Carol Jacobson
3324 SW 172nd St.

Re: Response to issues discussed at March 9th Planning Commission meeting regarding Burien's proposed SMP

After watching the proceedings from this meeting on-line, I am compelled to send yet another letter trying to clarify issues that are critically important to shoreline homeowners. These issues continue to be either ignored or glossed over superficially in these discussions. It is obvious from listening to comments and questions at this meeting that members of the Planning Commission do not understand how the language in some of these items will actually affect people living on the shoreline. It is also obvious that city staff is only partially answering questions posed by commissioners and leaving out critical pieces of information that will have a profound effect on shoreline homeowners.

First, regarding the discussion about nonconforming structures and the table of information that was provided by city staff comparing what other cities have done (very helpful information, so thank you for that). The table presents information from 9 different cities. Two of the critical concerns with Burien's proposed language regarding the trigger for initiating the regulations being proposed for nonconforming structures that are destroyed are **% of destruction required** and whether that % is related to **assessed value or replacement cost.** Of the 9 cities reported on in this table, only one other city requires 50%, while 6 require 75%, and it appears that 2 actually allow replacement in kind regardless of % destruction. David tried to justify Burien's 50% by saying that it is consistent with other parts of the city and that if it were different it would be "tricky" to administer, so for "ease of administration" Burien wants to keep 50%.

The goal of the SMA and shoreline master programs is not to make city staff's job "easier". One size does not fit all when it comes to these shoreline issues. What may work for the rest of Burien does not necessarily work for the shoreline areas. In fact, what works for one area of the shoreline does not work for other areas due to individualized differences that must be taken into account when coming up with regulations such as these. If that were true then we wouldn't need to have shoreline management plans in the first place. So just because Burien's zoning code says 50% doesn't mean it is right or that it should be applied to the shoreline areas, especially since it will have potentially devastating effects on up to 80% of homes on the shoreline. Perhaps the rest of Burien's codes need to be changed to 75%, which is recommended by the state and adopted by the vast majority of cities in this survey, if indeed there even needs to be a % specified at all. Please note that all but one city uses replacement value rather than assessed value, which is what Burien should also adopt. Also please note that there are NO VEGETATION REQUIREMENTS

listed as criteria for reconstruction in any of these cities, which is the even bigger issue with Burien's plan.

The real potential danger with this whole nonconforming issue is that once a structure meets whatever trigger is decided upon, the real trouble begins for marine shoreline homeowners. David continues to try to make it sound like its no big deal – homeowners can rebuild in the same foot print and the "only thing that kicks in are the criteria." Thus enter the vegetation requirements, and therein lies the problem for probably 80% of homes on the marine shoreline. Let me use my own as an example:

I live on SW 172nd St. and the road is literally in my front yard about 3 feet outside my front door. The 50 foot buffer plus the 15 foot setback puts that magic line inside my house, therefore I am automatically nonconforming. If my house is destroyed and I have to meet the vegetation requirements set forth in 20.30.040 of the Burien SMP, I will not be allowed to rebuild. My lot is 40 feet wide, so 40 feet times the 50 foot buffer = 2000 sq feet. According to the vegetation requirements 75% of that buffer (in my case 1500 sq ft) would have to be vegetated – which is impossible for me to do because it would require planting in the roadway. Therefore, since we cannot meet the vegetation requirement we would not be allowed to rebuild. This applies to every house on SW 172nd St. and the rest of the houses in the M4 reach as well as to most of the houses in the M3 reach. I don't know about M1 or M2 but I suspect many of them would also be unable to meet this requirement.

Because most of us on the shoreline have a steep hill behind our house which prevents us from becoming "conforming" in terms of buffers and setbacks, I am requesting that Burien change section 20.35.045 (4) to read:

Nonconforming structures that are destroyed, deteriorated, or damaged by fire, explosion, flood, or other casualty may be reconstructed to those configurations existing at the time the structure was damaged provided that the following criteria are met:

a. **The structure must be located landward of the OHWM**
b. **Reconstruction shall result in no net loss of shoreline ecological function**
c. **Reconstruction shall not increase the extent of nonconformity**
d. **An application is filed to reconstruct the structure within 18 months of the date of the damage.**

At a very minimum, if the above language is not adopted, the % destruction needs to be 75% of the replacement cost and the vegetation requirements need to be deleted from the document as they relate to nonconforming structures since they are impossible for most existing houses to meet. In addition, our ability to get insurance, to obtain financing, or to sell our homes would most likely be negatively impacted by constrictions placed on our property by the proposed SMP wording.

Please consider the REAL LIFE IMPLICATIONS of the words you are reading in this document before you decide that they "sound reasonable"!

Thank you for your time and consideration of this request.

Carol Jacobson

Susan Coles

From: Ed Frye [ED@workable-solutions.com]
Sent: Monday, March 15, 2010 3:30 PM
To: Susan Coles
Subject: SMP

Planning Commission,

I am writing to ask you to extend the time needed for further review of the Shoreline plan. It appears that you have not only not heard the concerns of your Burien citizens but have increased the speed of the process. I not sure I understand your motivation except to ignore your constituents and push a plan through. Please slow the process.

Ed Frye
15217 285th Ave. SW,
Burien, WA 98166

Susan Coles

From: Marco Spani [mspani@cpnw.com]
Monday, March 15, 2010 7:24 PM
To: Susan Coles
Subject: Shoreline Master Plan

Dear Susan:
We are waterfront property owner at Three Tree Point. We are very concerned with the proposed changes to the Shoreline Master Plan. The SMP is the subject of considerable discussion among people in this neighborhood and other areas of Burien impacted by the changes proposed in the SMP. There has not been adequate time for the property owners who would be impacted by the SMP to properly evaluate and comment on the proposed changes. Please extend the time for public input and public involvement in the SMP process so that the concerns of the waterfront property owners can be fully heard.

Thank you,

Marco Spani and Julie Burr
3761 SW 171st
Burien, WA 98166

206-650-0852 phone

Susan Coles

From: Tim Greer [tim@mercerbuilders.com]
Tuesday, March 16, 2010 4:38 PM
To: Public Council Inbox
Cc: Susan Coles
Subject: Shoreline Management Plan

Dear council:

Any action which results in state guidelines being ignored will be considered illegal.

Any government body which enacts rules adversely affecting the value of my property will be considered hostile.

Any compensation I demand in exchange for losses due to irresponsible government interference will be collected.

Later. -T

David Johanson

From: Lisa Clausen
Sent: Tuesday, March 16, 2010 4:08 PM
To: David Johanson; Susan Coles
Subject: FW: COncerns the language involving the Shoreline Proposal

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From: Public Council Inbox
Sent: Tuesday, March 16, 2010 4:00 PM
To: 'SHEILA HARTNELL'
Subject: RE: COncerns the language involving the Shoreline Proposal

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

L. Clausen
City Manager's Office

From: SHEILA HARTNELL [mailto:dragonflyden@yahoo.com]
Sent: Monday, March 15, 2010 1:10 PM
To: Public Council Inbox
Subject: COncerns the language involving the Shoreline Proposal

Dear Sir/ Madam;

The people with shoreline property have real concerns with regard to proposed plans that are not in the interest of property owners and indeed pose future situations that will bring about possible/probable damage and loss of value.

We need our voices to be heard and the language of the proposal clarified since in it's present state it is ambiguous and possibly/probably would have a great adverse effect in general.

Please make provision for our voices at Tuesdays 7:00pm meeting.

Sincerely,

S Hartnell

Susan Coles

From:	VICKI MCKINLAY [VMCKINL@Tacoma.K12.Wa.US]
Sent:	Tuesday, March 16, 2010 10:09 AM
To:	Susan Coles
Subject:	FW: shoreline management plan

Vicki McKinlay, Guidance Counselor
Sherman and Jefferson Elementary Schools
571-5442 or 571-3973

From: VICKI MCKINLAY
Sent: Tuesday, March 16, 2010 10:02 AM
To: Council@burienwa.gov; susanc@burinewa.gov
Subject: shoreline management plan

Dear Burien City Council and Planning Commission,

This letter is to formally notify you of my objection to the proposed langauage in the Shoreline Management Plan regarding bulkhead replacement. I am a waterfront home owner in the Three Tree Point area and this letter is a formal request that you actively consider revising the SMP to include a provision for bulkhead replacement by homeowners. Tidal erosion and storm damage can adversely affect value and use of my property and all properties abutting Puget Sound. Maintenace of current bulkheads and replacement of existing bulkheads can protect shorelines. I recognize the need for enhanced fish and wildlife enviroments and appreciate the work done at Seahurst Park, but my 30' of waterfront property at Three Tree Point is my largest financial investment and a devalue of my property could result in significant financial hardship for my family.
[illegible] consider this request. I will be present at the Planning Commission meeting tonight. Thank you.

Sincerely,

Vicki McKinlay
3536 SW 172nd Street
Burien, WA 98166
206 755 1413

David Johanson

From: Lisa Clausen
Sent: Tuesday, March 16, 2010 4:11 PM
To: Susan Coles; David Johanson
Subject: FW: Concerns with the SMP

From: Public Council Inbox
Sent: Tuesday, March 16, 2010 4:05 PM
To: 'McKinlay, Michael (PRT)'
Subject: RE: Concerns with the SMP

Thank you for writing to the Burien City Council. Your message will be included in the Correspondence for the Record for an upcoming Council meeting.

Lisa Clausen
City Manager's Office

From: McKinlay, Michael (PRT) [mailto:mikem@prt.wa.gov]
Sent: Tuesday, March 16, 2010 11:14 AM
To: Public Council Inbox; susanc@burinewa.gov
Subject: Concerns with the SMP

Dear Burien City Council and Planning Commission,

This letter is to formally notify you of my objection to the proposed language in the Shoreline Management Plan regarding bulkhead replacement. I am a waterfront home owner in the Three Tree Point area and this letter is a formal request that you actively consider revising the SMP to include a provision for bulkhead replacement by homeowners. Tidal erosion and storm damage can adversely affect value and use of my property and all properties abutting Puget Sound. Maintenance of current bulkheads and replacement of existing bulkheads can protect shorelines. Additionally, if my bulkhead fails it can have a catastrophic impact on adjoining bulkheads and property
I recognize the need for enhanced fish and wildlife environments and appreciate the work done at Seahurst Park, but my 30' of waterfront property at Three Tree Point is my largest financial investment and a devalue of my property could result in significant financial hardship for my family.
Please consider this request. I will be present at the Planning Commission meeting tonight. Thank you.

Sincerely,

Michael McKinlay

David Johanson

From: Lisa Clausen
Sent: Tuesday, March 16, 2010 4:12 PM
To: David Johanson; Susan Coles
Subject: FW: bulkhead replacement rules

From: Public Council Inbox
Sent: Tuesday, March 16, 2010 4:05 PM
To: 'bpovolny@aol.com'
Subject: RE: bulkhead replacement rules

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

L. Clausen
City Manager's Office

From: bpovolny@aol.com [mailto:bpovolny@aol.com]
Sent: Tuesday, March 16, 2010 12:46 PM
To: Public Council Inbox
Subject: bulkhead replacement rules

Dear Sirs/Madames;

I would like to urge you to adapt language regarding bulkhead replacement that that allows failing bulkheads to be replaced to the same standard they currently exist. Allowing this does not compromise the shoreline and maintains property values. Restricting the replacement of bulkheads is tantamount to condemning property owners to loss of their property over a period of time. This seems grossly unfair and would surely be remembered at the next election.

Sincerely,

Dr Brian Povolny

David Johanson

From: Lisa Clausen
Sent: Tuesday, March 16, 2010 4:12 PM
To: David Johanson; Susan Coles
Subject: FW: shoreline management plan

From: Public Council Inbox
Sent: Tuesday, March 16, 2010 4:07 PM
To: 'bpovolny@aol.com'
Subject: RE: shoreline management plan

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

L. Clausen
City Manager's Office

From: bpovolny@aol.com [mailto:bpovolny@aol.com]
Sent: Tuesday, March 16, 2010 11:58 AM
To: Public Council Inbox
Subject: shoreline management plan

Sirs/Madames;

I urge you to delay finalizing the proposed shoreline management plan for 6 months as requested by our recent petition.

The new 65 foot setback exceeds state guidelines and will have a devastating efffect on shoreline property owners' ability to sell their homes. An inevitable decrease in property values will result less tax revenue to the local municipalities and county as property values fall even further than they already have.

More time is needed to study the impact of the 65 foot setback/non conforming rule, and to study the trade offs, ie less tax revenue in exchange for questionable ecological benefits over state setback guidelines.

Sincerely,

Dr Brian Povolny

Susan Coles

	bpovolny@aol.com
	Tuesday, March 16, 2010 11:56 AM
To:	Susan Coles
Subject:	postpone final shoreline plan

Dear Sirs/Madames;

I urge you to delay finalizing the proposed shoreline management plan for 6 months as requested by our recent petition.

The new 65 foot setback exceeds state guidelines and will have a devastating efffect on shoreline property owners' ability to sell their homes. An inevitable decrease in property values will result with a sife effect that there will be less tax revenue to the local municipalities and county as property values fall even further than they already have.

More time is needed to study the impact of the 65 foot setback/non conforming rule, and to study the trade offs, ie less tax revenue in exchange for questionable ecological benefits over state setback guidelines.

Sincerely,

Dr Brian Povolny

David Johanson

n:	Joan McGilton
:	Tuesday, March 16, 2010 3:04 PM
To:	David Johanson
Subject:	FW: Shoreline Management
Importance:	High

David: please add this correspondence to your file. Joan

From: Terry Haigh [terryhaigh@mercedesbenzoflynnwood.com]
Sent: Monday, March 15, 2010 5:39 PM
To: Joan McGilton
Subject: Shoreline Management

Dear Mayor McGilton,

I want to urge you to consider postponing the vote on the Shoreline Master Plan.

I feel that more consideration to the voters who signed a petition to post-pone the vote should be reviewed. These are some of the people who elected the current administration and the fact that over 400 people have question at this point is enough to ask you to reconsider.

Thank you for listening

Terry Haigh
SW 172nd
Burien, WA 98166

Susan Coles

[illegible]:	Tim Greer [tim@mercerbuilders.com]
[illegible]	Tuesday, March 16, 2010 4:38 PM
To:	Public Council Inbox
Cc:	Susan Coles
Subject:	Shoreline Management Plan

Dear council:

Any action which results in state guidelines being ignored will be considered illegal.

Any government body which enacts rules adversely affecting the value of my property will be considered hostile.

Any compensation I demand in exchange for losses due to irresponsible government interference will be collected.

Later. -T

Andrew Ryan
16525 Maplewild Ave SW
Burien, WA 98166
206-248-1822

15 March 2010

RECEIVED
MAR 16 2010
CITY OF BURIEN

The Burien Planning Commission
Burien City Council
c/o Susan Coles, Community Development Department Assistant
The City of Burien
400 SW 152nd Street
Burien, WA 98166

To the Burien City Council and Burien Planning Commission,

I would like to comment on the Shoreline Management Plan that the Planning Commission is currently working. After watching last weeks commission meeting, I am pleased to see recognition of some of shoreline property owners inputs in the discussions and I appreciate their efforts. Given that however, I am concerned that commission is still intent on completing the Burien SMP by the end of March, especially with no plan to have additional public input. This appears to be in total disregard to the 400 plus property owners, the ones most impacted by the outcome, who signed a petition to the city council requesting additional time and input. I believe there are many issues, which require time and energy, to still be addressed.

- Although one of the goals of the SMP Update is simply promoted as "no net loss" of shoreline ecological functions, specific regulations directed at new and the repair and replacement of existing bulkheads go far beyond that goal. It holds shoreline property owners with existing structures primarily responsible for meeting that goal..

It fails to recognize what those of us that have lived here for many years understand, such as the seasonal wave activity, vessel wake impacts, typical conditions and winters storms and the importance of hard shoreline armoring for protecting our properties. The current SMP position does not consider the value or reasonable use that the bulkheads provide.

None of this should infer that we are not ecologically inclined, we are probably more attuned, and motivated, than anyone to the health of our shorelines, but the language in the SMP puts our properties and significant financial assets at risk.

My intent in this letter is to focus on SMP **Section 20.30.070 Bulkheads**. Outlined below are pertinent paragraphs from the SMP (bolded) that I am concerned about followed by my comments.

1. Policies

a. **New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.** Replacement bulkheads have been defined as "new" thereby requiring these structures to meet the same standards as those which never existed. The goal of "no net loss" of shoreline ecological functions fails to acknowledge that an existing bulkhead or hard shoreline armoring can be replaced with a similar but more environmentally friendly hard structure and still improve on the "no net loss" requirement. Repair, as opposed to "new" or "replacement" does not appear to be addressed anywhere in the SMP which I believe is an oversight. Perhaps language similar to the primary structure repair vs replace language could be incorporated. (i.e. – Catastrophic damages resulting in less than 75% of replacement value can be repaired in existing location and configuration)

b. **"Bulkheads should be designed to blend in w/ natural surroundings....."**

This is a "policy" statement, not one of the regulations, but not very practical and no guidance is provided. I've never seen a big cement wall that blends in w/ anything, and could put unreasonable financial constraints on the property owner. Nor have I seen any municipalities that own the numerous ports and marinas in Puget Sound do anything to comply with this. The city of Burien set precedence and demonstrated this when property owners along the 16500 block of Maplewild requested that some sort of visual improvements, etc be incorporated into the "great wall" built during the Nisqually earthquake road repair. The City's response was that it was too expensive but apparently sees no problem levying similar cost on the private sector.

e. **"Where feasible, any failing, harmful. unnecessary, or ineffectual structural shoreline armoring should be removed....."**

Dept of Ecology (DOE) has encouraged local governments to use the "best available science" contained in reports and studies that are inconclusive and are primarily aimed at the restricting of residential piers and removal of residential bulkheads. The Grette Associates Shoreline Analysis and Characterization report, that was also DOE funded, is used as documenting support for the Burien SMP. This report maintains the DOE party line that all armoring is harmful thereby starting w/ the blanket assumption that all of our bulkheads should be removed. No mention is made as to who pays for this removal.

No mention is made in the Grette document regarding a large body of conflicting scientific data, that refutes a number of allegations identified in the City's version of "best available science"., I've included the link one

such document and can provide references to several others if desired.

harm-from-nearshor
e-development-almos

Additionally, no attempt has been made to address the errors and sweeping generalization in the Grette document, such as "shoreline is hardened with ...private bulkheads...that affect littoral drift....during MOST TIDAL STAGES" (page 12, Hydrolic Function). Since the majority of bulkheads are "near" the Ordinary High Water Mark (OWHM), anything below a high tide level should not be relevant. Additionally the sweeping generalizations such as "armoring can intensify the flooding", or "can increase the nutrient load", "can increase the "probability of landslides". These are all true statements of potential issues but they are not sufficient justification for the enormous impacts to the private property owners being identified in the SMP.

The Grette document also addresses flooding w/ the comment "armoring of the shoreline can hinder flow of floodwaters to and from the shoreline". This is contrary to CITY OF BURIEN Technical Report entitled COASTAL FLOOD HAZARD ZONE DELINEATION dated June 29, 2007. which states "This Technical Report documents the flooding hazard study and map production for updating the City of Burien's coastal BFE. The full Burien shoreline was not studied, but only that part that is more intensely developed and is *exposed to potentially damaging waves*. FEMA standards were applied to the data processing, hydraulic analysis methodology, and mapping of *calculated wave runup and overtopping results*".

The flooding scenario FEMA identifies is about storm surge creating *wave heights in the 2 -3 meter range* (ref pages 15 and 16 of the above reference Coastal Flood document), but Grette document uses the flood plain determination to allege that bulkheads create flood scenarios from the land side. It states "Twenty-six percent of Reach M3, and forty-eight percent of Reach M4, is mapped as 100-year floodplain (Figure 8D). Grette further states "As discussed previously, armoring can reduce the ability of the shoreline to accommodate floodwater". (Reference pages 13 & 14, and others of the City of Burien Shoreline Master Program update, Shoreline Analysis and Characterization document)This so called "scientific report" uses the FEMA data to support a totally contrary position and further demonstrates why little dependence should be on placed on this document for the purposes of creating such far reaching regulations. Besides the misinterpretation of the FEMA flood designation, the majority of the areas under consideration for SMP applicability are also deemed as Critical Areas due to the steepness of the hillside arising from the

shoreline. Can someone please explain to me how a flood occurs on a 30 to 40 degree slope?

•

2. Regulations

A. "Non-structural shoreline stabilization...shall be used....unless project proponent demonstrates that a non-structural solution is not feasible and there would be no net loss of shoreline ecological functions":

Replacement of existing structure does not constitute a "loss of shoreline ecological functions. It would maintain the status quo. Replacement in existing locations using current bulkhead design criteria will actually improve the ecological function and still provide necessary protection of the private property. Need to include some language on "repairs" as opposed to replacement also. Reference response to Section 1(a) above.

B. "construction of bulkheads... are only permitted when non-structural methods...are not feasible to protect a residence or other primary structure or essential public facilities"

The above language excludes appurtenant structures such as boat houses, garages etc that are common on a significant number of our properties. State RCW 90.58, entitled Shoreline Management Act of 1971, (excerpts provided below) includes protection of appurtenances, the city version eliminates that protection. This is unacceptable and significantly impacts the value of our properties

Suggested wording would be: ....are not feasible to protect a residence, ~~or~~ other primary structure, *appurtenance*, or essential public facilities

Excerpts from RCW 90.58

RCW 90.58.100 Programs as constituting use regulations — Duties when preparing programs and amendments thereto — Program contents. *(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. .... The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion.*

RCW 90.58.290 Restrictions as affecting fair market value of property. *The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property*

Incidentally, RCW 90.58.290 addresses regulations affecting fair market value of property and property tax implications. Washington State Attorney General Rob

McKenna also addresses this in his Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property.

C. New structural stabilization measures shall not be allowed except when the necessity to protect primary structures is demonstrated.....

Reference comments to item B above.

Suggested revision : ....to protect primary structure *and appurtenances*

D. An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

i: ....protect the primary structure

Language needs to be revised *to include appurtenant structures* and add *or where there is a need to protect established uses or structures from erosion caused by currents, tidal action, or waves.* (this language is taken from the DOE guidelines

ii: Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark (OHWM).....unless the residence was occupied prior to Jan 1, 1992

Definition of OHWM Section VI-3, 20.40.100, states that OHWM means the mark on lakes, streams and tidal waters that approximate the line of mean high water as commonly evidenced by a mark upon the soil a character distinct from that of abutting upland with respect to vegetation.

OHWM currently is about 4' up my bulkhead, but if the bulkhead failed under storm conditions, vessel waves, or whatever, subsequent erosion would take about 15 - 20 feet of my property and the new OHWM, as "evidenced by a mark on the soil", would be in a significantly different location, and diminish up to a quarter of my current dryland property. Loss of this property re-establishes the measuring point for the 65' building setback requirements, seriously impacting the impact other SMP property restrictions. The majority of my neighbors have similar situations. The majority of these bulkheads, or their replacements, have been in place for 30 to 50 years or more. Many of the bulkheads are waterwards of the "natural" OHWM and back-filled at that time to create a raised level surface adjacent to the shoreline. These areas are used for multiple water oriented purposes related to shoreline recreation, water equipment related storage, and along SW 172nd, for parking and parking structures. Loss of these bulkheads in their current location is a serious detriment and financial impact to the property owners.

Recommend this language be revised to say:

ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure *unless the structure to be*

replaced currently exists in that location. unless the residence was occupied prior to January 1, 1992, ...

F. Bulkheads shall be located and constructed in a manner which will not result in adverse effects on littoral drift and adjacent properties.

Reference response to (d) above, plus:

"Best science" as provided in the consultant report that city is using pre-supposes that bulkheads are detrimental to littoral drift which by inference means all bulkheads as currently located have adverse effects whether demonstrated or not. Therefore any replacement bulkhead could not be replaced in it's current location. To base regulating on implications and inconclusive data by saying that bulkheads **can or could** threaten the ecosystem without solid substantiation with the significant impacts to the affected property owners is untenable. The words **"can "or "could"** are the same as saying "might". "Might" is not the result of sufficient science when discussing changes that will greatly affect our property values and the city's subsequent revenue for other more important things.

Regarding the "adjacent properties" portion of the clause, potentially if a bulkhead fails, all neighboring bulkheads are at risk due to possible storm surge, wave action around or behind the newly exposed ends. Replacement bulkheads need to be built in such a manner that also allows protection to neighboring bulkheads.

Note: City of SeaTac has some reasonable regulations relative to this regarding replacement bulkhead alignment. Draft Cumulative Impacts Analysis Component for City of SeaTacs Shoreline: Angle Lake, page 29 states: *Shoreline stabilization solutions developed to replace existing shoreline stabilization shall be placed along the same alignment as, or landward of, the shoreline stabilization being replaced...*

G. Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead.

Many of the existing bulkheads did create additional land when they were built decades ago. Replacing them in their current location should not constitute "creation of additional" land, nor would it contribute to additional loss of shoreline ecological functions. Replacement bulkheads should be able to be rebuilt in the same footprint w/ the required amount of fill required to get back to their previous configuration. In addition, reference the response to D (ii) above.
Suggested revised language for this item would be as follows:

Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead, except where *a structure is being replaced with a similar structure and fill is part of the original construction. In this case, no additional fill shall be added beyond what is needed to repair the structure to its original form and capacity*

H. The size & quantity of material utilized for the bulkhead shall be the minimum necessary....

Who would want to fly on an aircraft, or drive a car, designed to "minimum" standards? Five years ago a 60' bulkhead in our area cost ~$70,000 and this regulation expects to build it to "minimal" standards. Any property owner w/ that kind of investment deserves to have the best, not the minimal, structure available,. Who is liable when this minimal design fails? Will this be another case where the property owner is left holding the bag?

How is damage from a non-minimal design demonstrated to have negative impacts on shoreline ecological functions? If the "extra" material (i.e – "factor of safety" such as bulkhead wall thickness) is placed on the landward of OHWM? What about "wings" on the ends that project landward protecting the property from end erosion, are these defined as over and above "minimum" requirements? Unfortunately, since setback measurements are taken from the inside face of the bulkhead, additional wall thickness results in additional setback distances contributing to another property owner issue.

This requirement combined with requirement "i" below, virtually guarantees there will be future bulkhead failures resulting in substantial additional cost and burdens to the shoreline property owners.

Suggested language could be: The size and quantity of material utilized for the bulkhead shall be the minimum necessary *(including acceptable engineering factors of safety)* to protect the structure (*and adjoining properties if applicable)* from the estimated energy intensity of the shoreline hydraulic system

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

OHWM is a relative position along significant portions of Reach's 3 and 4. Since the bulkheads were built waterward of what the "natural" OHWM would have been given no human intervention, references to current OHWM have different set of implications than "a mark along the soil".

As such, this appears to be a case of ignorance on the part of the drafters of this document. In conjunction with a high tide, four foot is woefully inadequate to protect our properties from either storm surge or vessel wake. Four to five foot vessel wakes are extremely common. Winter storm surge, a regular event, prompted FEMA to designate portions of Reach 3 and 4 as "flood plain". The City of Burien's flood plain study (referenced in my response to Section1. Policies (e) above) validated the projected storm surge elevations, of 2 -3 meters. In 1990, a large quantity (~ 20) of bulkheads in Reach 3 were destroyed from strong northerly developed storm surge. In 2003, I was living in a house on SW 172nd that had ~4 feet of bulkhead above OHWM and a storm sent waves and driftwood into the front yard and basement, undermining part of my and my neighbor's bulkheads from the landward side. This is not an uncommon occurrence. **This is a guaranteed bulkhead failure scenario that would include destruction of some primary structures and umerous appurtenances.**

I would recommend this clause be rewritten as follows: *The maximum height of a bulkhead on the marine shoreline shall be no greater than four (4) vertical feet above the OHWM or in the case of a replacement structure, the new structure height shall be no greater than the original height of the structure to be replaced*

Section VI-3, 20.40.095 Normal Protective Bulkhead means a bulkhead, common to single family residences, constructed at or near the ordinary high water mark to protect an existing single family residence, the sole purpose of which to protect land from erosion, not for the purpose of creating new land.

While not part of Section 20.30.070. This regulation needs to be reworded to recognize existing bulkheads that do have fill and be consistent w/ recommended wording for items B and G above.

The subject of bulkheads is obviously extremely important to those of us living along the Burien shoreline. Because of our geographical location, with such severe wave action, the existing bulkheads, in their existing locations, provide an extremely important function for the protection and utility of our properties. Our shoreline experiences more extreme environmental impacts than many of the other communities (i.e – Lake Washington) who are currently going through this process, and needs to be tailored to recognize those factors.

I respectfully request you give consideration to the many points I have raised above.

Thank you
Andrew Ryan

Harm from nearshore development almost zero.

Published September 26, 2009 Best Available Science , Real Science 2 Comments

Environmental Insight With a Touch of Real Science
by Don Flora (a real scientist and Bainbridge shoreline homeowner)

Editor's note: For the last dozen or so years, shoreline protection and restoration activists have worked feverishly to prove that Puget Sound has been "destroyed" by armoring and other human activities. As Dr. Flora has shown, their own data disproves their hypothesis. Unfortunately, few planners at the state or local level have scientific credentials. They believe what they want to believe and we pay the price.

> A well-known Northwest contract-research firm has shown that a broad array of man-caused features along tidewater shores have no meaningful impact on "ecosystem functions". Despite an obviously vigorous and fairly complex effort, a relationship between human-installed "stressors" and habitat factors was not found.
>
> Statistical analyses of the studies' data show that little of the variation in ecosystem (habitat) functions can be explained by a large basket of stressors. The correlation of multiple stressors with the welfare of nearshore habitats is not significantly different from zero (Bainbridge Island) or extremely low (East Kitsap County).
>
> The link beyond habitats to nearshore-dependent creatures was not explored because, the analysts explained, science is not available to do so. Overall, then, no significant correlation was found between human-caused nearshore features and marine life on Puget Sound.
>
> These results are consistent with other research that is summarized here. The results are damaging for notions of the need for nearshore restoration and its prioritization.
>
> These are results of nearshore assessments of Bainbridge Island and easterly Kitsap county. Some 700 shore segments were analyzed. More than 20 human-imposed "stressors" were rated, from buoys to bulkheads, from paths to piling, for each shore segment. Also rated were estimates of habitat extent and welfare, based on 3 to 16 factors.

You can read Don Flora's complete analysis of the Battelle report using the Scribd reader below or download a copy here. If you like, you can download a copy of the Battelle report from the COBI website.

http://bainbridgeshorelinehomeowners.wordpress.com

October 2009

EVIDENCE OF NEAR-ZERO HABITAT HARM FROM NEARSHORE DEVELOPMENT

D. F. FLORA, PhD

A well-known Northwest contract-research firm has shown that a broad array of man-caused features along tidewater shores have no meaningful impact on "ecosystem functions".

Despite an obviously vigorous and fairly complex effort, a relationship between human-installed "stressors" and habitat factors was not found. Statistical analyses of the studies' data show that little of the variation in ecosystem (habitat) functions can be explained by a large basket of stressors. The correlation of multiple stressors with the welfare of nearshore habitats is not significantly different from zero (Bainbridge Island) or extremely low (East Kitsap County).

The link beyond habitats to nearshore-dependent creatures was not explored because, the analysts explained, science is not available to do so. Overall, then, no significant correlation was found between human-caused nearshore features and marine life on Puget Sound.

These results are consistent with other research that is summarized here.

The results are quite damaging for notions of the need for nearshore restoration and its prioritization.

These are results of nearshore assessments of Bainbridge Island[1] and

Donald F. Flora, Ph.D.
BS from University of Washington in Forestry and Geology. MS and PhD from Yale in Forestry. 40-years research experience in the natural sciences. Researcher-in-Charge of several forestry research laboratories in Northwest, Oregon and Alaska. Former technical editor, Journal of Forestry. Former head of National Fire Danger Rating System Research. Former head, National Timber Harvest Issues Program. Former affiliate professor, University of Washington. Former Director of Keep Washington Green Association (forest fire prevention), and 80-year family history and experience of Puget Sound shoreline ownership and stewardship. Current area of study involves the review of 3,500+ research papers on buffers, riparian zones, beach functions, and fisheries.

Rate This Post

2 Responses to "Harm from nearshore development almost zero."

1 **Albert Greiner** October 13, 2009 at 9:57 pm

It would be interesting to compare untouched Blake Island's shoreline "processes" and biota with comparable, but built upon & bulkheaded areas of Bainbridge.

0 0 Rate This

Reply

2 **rkenneth** October 20, 2009 at 3:42 pm

Indeed it would, but I can't find any research on Blake Island's nearshore environment. The island is technically in Kitsap County, but it is a State Park. Since development of this island isn't anticipated, it may be that county-sponsored research is not required. However, it would be an interesting "control" for other studies if it is in fact un-armored.

Ken Sethney

0 0 Rate This

Reply

RECEIVED
MAR 16 2010
CITY OF BURIEN

To: The Burien Planning Commission
Subject: Shoreline Master Plan Document- Public Process & Alignment with City Policies
Date: March 15, 2010

The process used by the Planning Department to include public involvement needs to be more inclusive. The current format moves participants into confrontational positions. Specific ploys such as

1. suspending public comments,
2. squeezing in additional meetings to meet an arbitrary dead line, and
3. only accepting public written comments but then not providing an advanced copy of the Summary of Public Comments

appear to be designed to discourage public involvement which, in turn, increases confrontation.

When a citizens review the Summary of Public Comments that is available at the beginning of Planning Commission Meeting and find that their comments have not been included, their opportunity to publicly inform the commissioners is already not allowed and is an opportunity lost, especially if the information is relevant to an agenda topic.

This is all compounded by conflicting information between the Burien Comprehensive Plan and the Burien Critical Areas Ordinance, and conflicting information within the Burien Comprehensive Plan itself. Burien citizens continue to raise these conflicts but the Planning Department is reluctant to address them and would rather perpetuation the conflicts, or so it seems.

For example, part of the process has been to hire specialists Reid Middleton and Grette to prepare technical documents and the Shoreline Master Program. The conflicting information between the Burien Comprehensive Plan and the Burien Critical Areas Ordinance may have created a moral dilemma for Reid Middleton. I feel that, to some degree, Reid Middleton's reputation has been compromised either because they assumed that they were getting correct information from Planning Department or because they were told which Burien document and information to reference. Whatever the reason, the result is that the technical documents are not aligned with the City documents.

When citizens provide oral and written comments that this conflicting information needs to be addressed, the Planning Department has used the following responses:

1. These documents were "vetted" by the Department of Ecology, implying that the documents cannot be changed.
2. The concern was already discussed by the Shoreline Advisory committee, implying that the concern has already been addressed.
3. The wording needs to be in alignment with the Burien Comprehensive Plan, implying that the concern cannot be addressed.
4. The wording needs to be in alignment with the Burien Critical Areas language, implying that the concern cannot be addressed.
5. "It will be handled in the permitting process"

So far the process

1. perpetuates the use conflicting information
2. attempts to decrease public involvement
3. reduces any accountability to create an accurate document
4. places the consultants in a difficult position

The Planning Commission is caught in the middle and asked to move more quickly.

Bob Edgar

To The Burien Planning Commission
To The Burien City Council
From-Chestine Edgar
Re-SMP-Errors in the 4 Technical Documents/Appendices-Errors in the Comprehensive Plan, Conflict with the Zoning Ordinance
March 15, 2010

I have presented to you on the errors in the four technical documents that make up the baseline for the Shoreline Master Plan (SMP). I have requested on a number of occasions that these documents be corrected and reworked so that the Burien SMP can reflect the Best Available Science or at least current, accurate science about Lake Burien. As of this writing date, this still has not been done. Each time I review the City Planning Department matrix about my SMP concerns, I barely can figure out which comments were mine, whether the Planning Commission is going to even be allowed to consider them, and if they are going to be considered or how the wording will be corrected.

Below is another example of inconsistencies between: the SMP technical documents and the Comprehensive Plan, and between the Comprehensive Plan and parts of itself-policies and map. These need correction.

The Shoreline Inventory and the **Shoreline Analysis and Characterization** documents correctly identify Lake Burien as a Low Density Residential Zone/Area which are based on pages 2-8, 2-9, 2-10 of the Comprehensive Plan. The **Cumulative Impacts Analysis** identifies Lake Burien as a Moderate Density Residential Zone based on the map shown in the Comprehensive Plan. *However, the Comprehensive Plan appears to be in conflict with itself.* The Comprehensive Plan Policies, starting on page 2-1, state that Lake Burien can have development at the Low Density Residential level. The map contained in the Plan implies that development can occur at the level of Moderate Density. Moderate Density development is incorrect for Lake Burien because it is a sensitive/critical area. The map needs to be corrected now for Lake Burien and at a later time the issue of lot size and zoning code for Lake Burien needs to be revisited by the Planning Commission.

However, the **Cumulative Impact Analysis** needs to show that Lake Burien is Low Density Residential Area and a Class 2 Wetland in the body of the document. In some way Grette/ Reid Middleton needs to attempt to do an analysis of how the lot size for Moderate Density Residential zoning development area will affect an area that is really a Low Density Residential zoning area. The impact is significant to a critical area like Lake Burien which is both a wetland and aquifer recharge area. Please remember, that I presented both the Planning Commission and The City Council with tables about lot size and allowable impervious surface permitted under city codes. Those tables numerically represent what could be the future potential impact on Lake Burien by allowing moderate density development on what is now a very, low density, critical area. It is a significant environmental impact and will cause net loss to Lake Burien. The SMP is supposed keep that from happening.

Additionally, the error in the wetland classification for Lake Burien needs to be addressed by Grette/Reid Middleton. They need to make a recommendation for a different buffer than currently appears in the flawed analysis in the Cumulative Impacts Analysis.

Until the sections on Lake Burien are corrected in all four of the Technical Documents and the analysis on Lake Burien is redone, nothing regarding Lake Burien in the SMP should be considered to be valid or applicable.

P.S. It is important to note that the Zoning Ordinance is also in conflict with the policies of the Comprehensive Plan. The Zoning Ordinance allows Moderate Density Residential development (due to lot size) on Low Density Residential critical area lands.

Susan Coles

:	Gary Christianson [garychr@msn.com]
:	Tuesday, March 16, 2010 10:13 AM
To:	Susan Coles
Subject:	Shoreline Stabilization

March 15, 2010

To the Planning Commission:

First, sincere thanks for your work on the SMP draft. It's difficult work and you would probably like to see it done but please don't rush it, it's important. I want to call to your attention a couple of things about shoreline stabilization - or bulkheads.

There is little, if any, reference in the draft to the REPAIR of bulkheads. The DOE guidelines refer to replacement as being akin to new construction with the expected restrictions. Many bulkheads near Maplewild Avenue have been there for decades and the property values are dependent on those bulkheads remaining there, whether they physically hold up the primary residences or not. Owners protect their property by maintaining their bulkheads, and if the structures crack or are damaged by an earthquake or storm, it seems owners have the right to repair them. The city of Marysville put a simple sentence into their SMP that I believe should be in Burien's: "Repair of existing shoreline stabilization measures is allowed." (period) I have no quarrel with the prohibitions on extending the structure water-ward or increasing its size.

The other thing is the language in the draft that says the "maximum height of a bulkhead on the marine shoreline shall greater than 4 vertical feet above the Ordinary High Water Mark." Dozens of bulkheads on the Burien shoreline are higher than that. Does that make them illegal or non-conforming? Does that mean they can't be replaced or repaired? Storms have sent powerful waves well over walls higher than 5 or 6 feet above the OHWM. History has shown how high bulkheads need to be. The storm in the '90's clearly proved some of the previous heights to be dangerously low. It would be more appropriate for the SMP to limit the height to that of existing structures than to an arbitrary and illogical 4-foot limit.

Thanks for your consideration of these points and for your hard work for our city.

Gary Christianson
15625 Maplewild Ave. SW

David Johanson

n: Terry Haigh [terryhaigh@mercedesbenzoflynnwood.com]
nt: Monday, March 15, 2010 5:58 PM
To: David Johanson
Subject: Shoreline Plan

Importance: High

Dear Mr. Johanson,

I have enjoyed your impartial and informative testimony at the Shoreline Management meetings that I have been able to attend.

I would hope that you could let the SMP Commission know how important it is to be fair and answer all the questions that still remain. As one member said last week "this is a long term document". It certainly will be and if they get it wrong it is wrong for a long time. Please let them know that over 400 people in just a few days asked or a postponement so that all the questions can be addressed. They are probably tired of this thankless task but it is just too darn important to rush into at this time. It can be continued.

Thank you for listening,

Terry Haigh
3512 SW 172nd St
Burien, WA 98166

To: Mike Martin, City Manager (email: mikem@burienwa.gov)
City of Burien

cc: David Johanson, Senior Planner (email: davidj@burienwa.gov)
City of Burien

cc: Dave Upthegrove, Chair, Parks & Natural Resources
(email: Upthegrove.dave@leg.wa.gov)
Washington State House of Representatives

cc: Ted Sturdevant, Director (email: ted.sturdevant@ecy.wa.gov)
Department of Ecology

From: John Upthegrove
1808 SW 156th St., Burien, WA 98166 (email: cyndiu@comcast.net)

Re: Draft Shoreline Management Plan

Gentlemen,

At the Tuesday, March 9th Planning Commission meeting it was apparent that the Shoreline Management Plan language comes primarily from the City of Burien Comprehensive Plan. However, you seem to have overlooked an item in the Comprehensive Plan that belongs in the Shoreline Management Plan.

In chapter 2 page 23 (2-23) of the Comprehensive Plan, under Special Planning Area 2, the following text states:

Pol. SE 1.3

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

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

While the Ruth Dykeman Children's Center continues to operate a children's center on the site, residential, office and accessory uses associated with the center should be allowed. Minor expansion and modification of the children's center uses and structures should be allowed, if consistent with a City-approved Master Plan for the property.

In order to maintain consistency, this language should be inserted in the Shoreline Management Plan. It obviously applies, and without it one gets the impression that the city is "cherry-picking" for the new Shoreline Management Plan. Please make this letter and request a part of the public record.

Peter J. Eglick
eglick@ekwlaw.com

March 17, 2010

Via Facsimile (205) 248-5539
Email and U.S. Mail

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

Re: Additional Comments by the Lake Burien Shore Club and Expert Report by Herrera Environmental Consultants Concerning SMP Amendments

Dear Planning Commission:

This letter and the attached report supplement earlier comments submitted by this office on behalf of our client, Lake Burien Shore Club (Shore Club), concerning provisions in the City's proposed SMP Amendments that would open up Lake Burien to public access.

As discussed below, the City's record lacks information and analysis to support adoption in their current form of the proposed amendments affecting Lake Burien. Further, when that gap is filled with necessary information providing available science, including that gathered by the Shore Club and outside consulting scientists, the proposed amendments are still unsupported. Instead, based on the attached limnology report, and the analysis provided in our earlier comments and below, the Commission should protect Lake Burien's ecological health by modifying the SMP draft language to preclude establishment of public access. To accomplish that goal, we have included at the end of this comment letter specific proposals for modifications to the SMP amendments that should be moved and adopted by the Commission.

The Shoreline Management Act (SMA) requires local governments, in preparing their Master Programs, to:

- consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;
- conduct or support such further research, studies, surveys, and interviews as are deemed necessary; and

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- utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data…

RCW 90.58.100. The guidelines promulgated by the DOE for updating SMPs provide that, to comply with these requirements and further the SMA mandate for "no net loss of ecological functions necessary to sustain shoreline natural resources," local governments must "identify and assemble the most current, accurate and complete scientific and technical information available that is applicable to the shoreline issues of concern." WAC 173-26-201(2)(a). This information includes, "at a minimum… all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science," including from other agencies and private parties. Id. The SMP guidelines then reiterate that proposed SMP provisions are required to be based on a complete "analysis" incorporating this information. Id.

The DOE SMP guidelines further provide that this analysis must be performed "before establishing specific SMP provisions" and must be sufficient to "[i]dentify specific measures necessary to protect and/or restore the ecological functions" identified with respect to each shoreline reach inventoried. WAC 173-26-201(3)(d) (emphasis added). In other words, local governments must fight the urge to defer such "no net loss" analysis to future application of the SMP provisions by staff on a project-specific basis.

Among the specific shoreline ecological functions that require identification, study and analysis prior to adoption of SMP provisions, are water quality and habitat functions. WAC 173-26-201(3)(d)(i)(C). As noted in our January 26, 2010 comments submitted to the Commission, DOE has compiled extensive technical information as well as helpful tools for implementing the SMP guidelines and collecting data as part of Shoreline Inventory, Characterization and Analysis. http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/ Chapter7.pdf. King County has for many years also collected scientific data on Lake Burien that is essential to a meaningful analysis of sensitivity to uses and activities implicated by the proposed SMP provisions. In addition, the Shore Club has for the past three decades gathered data and monitored Lake Burien's water quality, as well as maintained the weir integral to its health. All of this data, much of which was collected under the auspices of the King County Lake Stewardship program was available for the asking. Unfortunately, the SMP Amendments record, based largely on the work of the City consultant, does not include or address the bulk of this information.

In light of the obvious gaps in the City's record, the Shore Club retained aquatic scientist Rob Zisette of Herrera Environmental Consultants to visit the lake, review the available data, and prepare a limnology report. Mr. Zisette's initial report is attached, along with his resume. Mr. Zisette's report draws on existing data and information (which he describes as "readily available") from the State, County and LBSC, as well as his own research and recent field reconnaissance. The report notes that the excellent condition of Lake Burien's aquatic plant community and its superior water quality (e.g., the absence of toxic bluegreen algae blooms) is not common for other lakes located within fully developed basins in King County, but that the

lake is also very susceptible to changes in trophic state as well as incursion by invasive non-native plants. It concludes that opening Lake Burien to public access could have grave impacts on its ecological health in terms of the introduction of invasive, non-native plant and animal species, and the resultant diminution in valuable wildlife habitat and the potential for water quality degradation, particularly from toxic algae blooms.

Mr. Zisette's report, in compiling and expertly analyzing the relevant existing data from the State, County and property owners around Lake Burien, provides the type of scientific inquiry and data that, although required, has been missing from the record before the Commission. It is a telling admonition against complacency in adopting the SMP Amendments as currently written. Yes, largely as a result of the Shore Club's sound stewardship practices, Lake Burien's current water quality and habitat functions are good. But, the report suggests that increase in human access – particularly on an, practically speaking, uncontrolled basis – will tip what is a delicate balance, leading to degradation of these ecological functions.

The Shoreline Management Act encourages public access to shorelines, but only where appropriate. As DOE's Bob Fritzen explained at the Planning Commission's March 9, 2010 meeting, each public access provision in the guidelines is accompanied by a list of qualifiers. Factors limiting the appropriateness of public access include its compatibility with existing uses and protection of the shoreline environment, as well as maintaining public safety and respecting private property rights. WAC 173-26-221(4). Where activities encompassed by such public access would likely harm that water body's ecological functions in addition to interfering with pre-existing residential uses and jeopardizing public safety, attempts to impose public access in the shoreline are no longer appropriate and should be avoided.

In light of the record now before the Commission, including the analysis above and Mr. Zisette's conclusions regarding harm to the lake's water quality and aquatic habitat functions and the SMA's mandate for "no net loss" of shoreline ecological functions, the Planning Commission should move and adopt the following revisions to the SMP draft policies and regulations concerning public access:

A. Revise proposed 20.20.015 to read: "The City should seek opportunities to develop new public access areas throughout the shoreline except for the Lake Burien reach because it cannot support the additional impact that public access would create."

and

B. Add to proposed 20.30.035(2)(g): "For any freshwater reach without existing public access, public access shall not be permitted unless it has been demonstrated that such use or access is consistent with the policies of this Plan and will not jeopardize the environment of the reach in question nor interfere with pre-existing shoreline uses."

In the absence of such modifications, the SMP amendments will be set on a collision course with legal requirements for their adoption and with the record and scientific analysis now available to the Commission.

Respectfully,

EGLICK KIKER WHITED PLLC

Peter J. Eglick
Jane S. Kiker
Attorneys for Lake Burien Shore Club

cc: Client

Attachments:

- Data Analysis Report – Lake Burien, Washington, Herrera Environmental Consultants
- Curriculum Vita, Robert Zisette, Aquatic Science Principal Herrera Environmental Consultants

DATA ANALYSIS REPORT

Lake Burien, Washington

Prepared for

Lake Burien Shore Club
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March 16, 2010

Note:
Some pages in this document have been purposefully skipped or blank pages inserted so that this document will copy correctly when duplexed.

Contents

Figures

Introduction

The Lake Burien Shore Club has for many decades taken an active role in protecting water quality and ecological functions of Lake Burien. The Draft Shoreline Master Program (Reid Middleton 2009) currently before the Burien Planning Commission includes policy and regulation provisions for establishment of public access to Lake Burien. However, it did not identify existing lake conditions or address potential impacts to those conditions from physical access to the lake by the general public.

The Lake Burien Shore Club (Shore Club) requested that Rob Zisette of Herrera Environmental Consultants (Herrera) summarize existing information on conditions of the lake and identify potential impacts to those conditions as a result of public access to the lake. This report summarizes the existing physical, water quality, aquatic plant, and fish and wildlife conditions in Lake Burien. Based on these conditions, potential impacts to the lake from establishing public access are then addressed.

Information presented in this report is based on review of readily available data and reports. Additional information was obtained by Rob Zisette during a site visit on March 13, 2010. This report was prepared by Rob Zisette, who is a limnologist with 30 years of lake research experience.

Per the detailed discussion below, Lake Burien presents several contraindications for adding public access to the burdens it must carry. One is the increased potential for the introduction and facilitation through public access of non-native, invasive aquatic plants and animals, which could severely impair habitat, water quality, aesthetics, and recreational activities in the lake. Another is the presence of the bluegreen algae *Anabaena* and *Aphanizomenon,* which account for the vast majority of bluegreen blooms in Washington lakes, and can produce the toxins microcystin and anatoxin-a.

Physical Characteristics

According to historical reports by King County (2010), Lake Burien is 44 acres in size with a mean depth of 13 feet (4.0 meters) and a maximum depth of 29 feet (8.8 meters). Features listed for Lake Burien in Lakes of Washington (Wolcott 1973) include an area of 43.7 acres, a maximum depth of 33 feet (10.0 meters), and a lake surface elevation of 320 feet mean sea level. Bathymetric (water depth) contours are shown in Figure 1 (Messick 2010).

The lake watershed is approximately 250 acres in size (King County 2010) as shown in Figure 2 (Messick 2010). The watershed boundary shown as the yellow line in Figure 2 reasonably agrees with the storm drain maps prepared by the City of Burien (Burien 2010). Thus, the watershed area is approximately six times the lake area. The watershed consists entirely of urban land use and no streams currently drain into the lake. The City of Burien (2010) has located 11 stormwater outfalls in the lake (see Figure 7E in Grette 2008).

Lake Burien drains to an outlet channel located at the northeast corner of the lake (see blue line in Figure 2). Lake water flows from this short channel over a weir that was installed in the 1960s to reduce the lake level drawdown during the dry summer months (Warren 2010). Flow from the weir enters a culvert that drains southeast to Miller Creek. Recent observations indicate that there has been no surface outflow from the lake from approximately late April to early November (Warren 2010).

The lake level typically decreases approximately 2 feet during the summer. During the wet winter months, the lake level is generally maintained within 0.2 feet of the weir elevation, which is approximately equivalent to the ordinary high water mark. No flooding of shoreline properties has been observed (Warren 2010). Based on 1 year of lake level data from October 1994 through September 1995 (King County 2010), the lake level increased from to a minimum elevation of 69 centimeters (2.3 feet) below the weir in October 1994 to a maximum elevation of 5 centimeters (0.2 feet) above weir in January 1995, and then decreased to a minimum elevation of 58 centimeters (1.9 feet) below the weir by the end of September 1995.

Lake Burien is located in an aquifer recharge area (Burien 2009). The lake may not receive much groundwater inflow because of the shallow surrounding topography. It is likely that stormwater drainage is the primary hydrologic input to Lake Burien, with additional input from direct precipitation.

Water Quality

Eutrophication and Phosphorus Cycling

The principal water quality concern for lakes is eutrophication. Eutrophication is a process of nutrient enrichment and increased productivity that can occur naturally, and is commonly accelerated in urban lakes. Phosphorus is the primary nutrient controlling eutrophication of lakes because it is typically the nutrient that limits algae growth, since large pools of carbon and nitrogen are available in the atmosphere. Stormwater runoff is the primary source of phosphorus in most urban lakes, including Lake Burien. Other external sources of phosphorus in Lake Burien include direct precipitation and shallow ground water, which enters the lake via storm drain outfalls and may also enter the lake via seeps in the nearshore zone of the lake. An additional external source of phosphorus is waterfowl feces, which can be a significant source for small shallow lakes.

Internal loading is also a common source of phosphorus to urban lakes. Internal loading refers to processes inside the lake that contribute phosphorus to the water and includes various components in the lake phosphorus cycle. Typically, the primary source of internal loading is the release of iron-bound phosphorus from anoxic (i.e., low or no oxygen) sediments. Anoxic sediment release of phosphorus typically occurs in deep portions of the lake where oxygen is consumed by decomposing microorganisms, but can also occur in shallow sediments that are highly enriched with organic matter or located under aquatic plant canopies. Other sources of internal phosphorus loading include shallow (oxygenated) sediment release during algae blooms

that create high pH conditions (greater than 9), vertical migration of bluegreen algae (cyanobacteria) from the sediments up into the water column, and decay of algae and aquatic plants in the water column.

In the Puget Sound lowlands, most of the external phosphorus loading to lakes occurs during the wet winter months. Most of that external load settles to the lake bottom and then recycles back into the water column as internal loading during the dry summer months when lakes are thermally stratified. Lakes of sufficient depth, such as Lake Burien, become thermally stratified in the late spring when the surface waters warm and become less dense than the cooler deep waters. As water temperature and density differences increase in the water column during the summer, a thermocline becomes established that separates the epilimnion (surface layer) and hypolimnion (bottom layer). A strong thermocline (high thermal gradient) dramatically reduces the transport of phosphorus from deep sediments in the hypolimnion to algae growing in the epilimnion. A weak thermocline can temporarily degrade during cool, windy periods of the summer, causing the movement of the phosphorus-rich hypolimnion waters into the epilimnion. Ultimately, the thermocline breaks down in the fall when the lake temperature cools, and the lake becomes completely mixed in November. Many lakes experience rapid growth (blooms) of algae in the fall in response to both internal (mixing) and external (stormwater) phosphorus sources.

Insufficient amounts of temperature profile data are available from King County (2010) to evaluate the location or strength of the thermocline in Lake Burien. Temperature was measured in the surface (1 meter depth) and the bottom (8 meter depth) water samples on two occasions per year during the summer of 2000 through 2004. Surface water temperatures ranged from 16 to 23°C and bottom water temperatures ranged from 10 to 18°C, and there was typically a 5°C difference between the surface and bottom water sample. Based on these data, it is unknown whether the 5°C change is abrupt or gradual and represents a strong or weak thermocline, respectively.

Trophic State

Lakes are classified into the following three categories of trophic state that represent increasing amounts of eutrophication:

- Oligotrophic (not enriched)
- Mesotrophic (moderately enriched)
- Eutrophic (highly enriched)

Trophic state is determined using summer (June through September) mean values of three parameters:

- Total phosphorus concentration in the epilimnion (surface layer)
- Chlorophyll *a* concentration in the epilimnion (phytoplankton pigment in the surface layer)

- Secchi depth (water transparency measured by lowering an 8-inch Secchi disk in the water until it disappears from view)

A trophic state index (TSI) is calculated for each of these parameters where values less than 40 represent an oligotrophic lake, values between 40 and 50 represent a mesotrophic lake, and values greater than 50 represent a eutrophic lake.

Trophic state parameters were measured in Lake Burien during the summers of 1998, 2000, 2001, 2002, 2003, and 2004 as part of the King County Lake Stewardship Program. Water samples were collected by lake stewards (residents) and analyzed by the King County Environmental Laboratory. Data quality is reviewed and posted on the stewardship program website (King County 2010). The Lake Burien data are presented for surface (1 meter) total phosphorus concentration in Figure 3, surface (1 meter) chlorophyll *a* concentration in Figure 4, Secchi depth in Figure 5, and trophic state index (TSI) in Figure 6.

Total Phosphorus

Surface (1-meter depth) phosphorus concentrations in Lake Burien typically ranged from 10 to 15 micrograms per liter (ug/L) in April through July, and typically increased to a range of 15 to 20 ug/L in September and October (see Figure 3). A minimum concentration of 7 ug/L was observed in May 2002 and a maximum concentration of 29 ug/L observed in October 2001.

Bottom (8-meter depth) water samples were also analyzed for total phosphorus on two occasions each year and exhibited a much higher mean concentration (33 ug/L) than the surface water samples (14 ug/L) collected concurrently. Higher concentrations of phosphorus are typically observed in bottom water samples due to the decay of settled organic matter. Much higher total phosphorus concentrations likely would have been observed in bottom water samples if the hypolimnion had become anoxic during the summer. In addition, mean total phosphorus concentrations were the same (33 ug/L) for bottom water samples collected in May and June compared to those collected in August and September. These results suggest that internal loading from anoxic sediment release may not have been a significant source of phosphorus in Lake Burien.

Cholorophyll a

Chlorophyll *a* is the primary photosynthetic pigment present in all species of algae. Concentrations of chlorophyll *a* are used as a measure of phytoplankton (free-floating algae) biomass. Surface (1-meter depth) chlorophyll *a* concentrations in Lake Burien typically ranged from 2 to 4 micrograms per liter (ug/L) in May through August, and typically increased to a range of 4 to 8 ug/L in September and October (see Figure 4). Surface chlorophyll *a* concentrations exceeded 8 ug/L on one occasion in October 2000 (12.8 ug/L) and October 2003 (12.2 ug/L).

Bottom (8-meter depth) water samples were also analyzed for chlorophyll *a* on two occasions in each of 3 years (2002-2004). The mean summer (August/September) chlorophyll *a*

concentrations were much higher in the bottom water samples (18.5 ug/L) than in the surface water samples (3.4 ug/L) collected concurrently. Higher concentrations of chlorophyll *a* may be observed in bottom water samples due to settling of phytoplankton, but this large of a difference suggests that phytoplankton may have been growing at the low light levels and high phosphorus concentrations near the bottom of the lake.

Phytoplankton

Water samples were also analyzed for phytoplankton composition by King County. Phytoplankton analysis results are presented in reports but not in the online database (King County 2010). A list of observed phytoplankton species has been compiled by lake resident Christine Edgar (Edgar 2010). Phytoplankton identified in Lake Burien include common genera in the following groups:

- Diatoms: *Fragilaria, Asterionella, Cyclotella*
- Chlorophytes (greens): *Botryococcus, Crucigenia*
- Cryptophytes: *Cryptomonas*
- Dinoflagellates: *Peridineum, Ceratium*
- Chrysophytes: *Dinobryon*
- Bluegreens (cyanobacteria): *Anabaena, Aphanizomenon, Aphanothece, Anacystis*

Phytoplankton succession in Lake Burien appears to generally follow the following pattern of dominance common to mesotrophic lakes: diatoms in the spring, dinoflagellates and greens in the summer, and bluegreens in the fall. There have been no reports of bluegreen algae blooms in Lake Burien.

Observations of the bluegreens *Anabaena* and *Aphanizomenon* in Lake Burien are of particular interest. These two genera (along with *Microcystis*, which has not been reported in Lake Burien) account for the vast majority of bluegreen blooms in Washington lakes, and both genera can produce the toxins microcystin and anatoxin-a (Ecology 2010b). Toxic algae blooms have been documented at an increasing rate in Washington lakes over the past 25 years and are an emerging public health issue. Although most blooms are not toxic, pets and wildlife have died after exposure to toxic bluegreens in Washington lakes, and people have become ill after swimming in lakes with blooms of toxic bluegreens (Ecology 2010b).

Secchi Depth

Secchi depth is a measure of water transparency or clarity that is primarily affected by phytoplankton concentrations, but it can also be affected by water color (tannins), bacteria, inorganic colloidal matter, and suspended fines (silt and clay). Typically, Secchi depth decreases as chlorophyll *a* increases when water transparency is primarily affected by phytoplankton, but the effects of phytoplankton biomass on Secchi depth can vary widely depending on the size the dominant phytoplankton cells or colonies.

Secchi depths in Lake Burien are shown on an inverse scale in Figure 5 for comparison with temporal patterns in total phosphorus and chlorophyll *a*. Secchi depths showed a general pattern of decreasing from 4 to 6 meters in May to 2 to 3 meters in October. However, the temporal pattern in Secchi depth is not as consistent as it is for total phosphorus and chlorophyll *a*. Unusual observations include a particularly low Secchi depth of 2.0 meters in May 2000 and a particularly high Secchi depth of 6.0 meters in October 2004.

Trophic State Index

Trophic state indices (TSIs) are presented for total phosphorus, chlorophyll *a*, Secchi depth, and the mean value for these three TSIs in Figure 6. Trophic state indices ranged from 39 to 43, which is in the lower range of mesotrophic status (40 to 50). Overall, the mean summer TSI did not exhibit a substantial increasing or decreasing trend between 1998 and 2004. The lower mesotrophic status of Lake Burien is rather unusual considering it is located in a totally developed basin within King County.

King County (2001) evaluated the trophic status and water quality trends in 49 small lakes that participated in volunteer lake monitoring activities. Ratings included 14 oligotrophic lakes, 20 mesotrophic lakes (including Lake Burien), 13 eutrophic lakes, and 2 hypereutrophic lakes (TSI greater than 60). Trend analysis of data for 1996 through 2000 identified a statistically significant increase in the mean TSI for four lakes and a significant decrease for one lake. Although more than 5 years of data may be needed to detect a change in the TSI, mesotrophic lakes such as Lake Burien are much more susceptible to changes in trophic state than are eutrophic lakes.

Aquatic Plants

Aquatic plants are an important component of lakes because they provide habitat for invertebrates and fish, supply food for waterfowl, and can affect the phosphorus cycle and algae growth in lakes. Excessive growth of aquatic plants can severely impair habitat, water quality, aesthetics, and recreational activities. For example, many lakes in King County and throughout Washington have been infested with the non-native, invasive plant Eurasian watermilfoil (*Myriophyllum spicatum*), which typically grows in large monotypic (single species) stands that form a dense canopy. In addition, another non-native plant Brazilian elodea (*Egeria densa*) has more recently invaded local lakes where jurisdictions have undertaken a substantial effort at eradication. Information on invasive plant species identification, occurrence, impacts, and control methods are provided on websites maintained by King County (2010) and the Washington Department of Ecology (2010a).

King County (1999) conducted an aquatic plant survey of Lake Burien on August 12, 1999. The aquatic plant map is presented in Figure 7. Eighteen plant species were identified including 5 submergent types, 2 floating-leaved types, and 10 emergent types. The submergent types included a dwarf spike rush (*Eleocharis*), one pondweed species (*Potamogeton pusillus*), common waterweed (*Elodea canadensis*), and two genera of macroalgae (*Nitella* and *Chara*).

These native submergent plants were present to a maximum depth of 6 meters and covered a total of 30.8 acres, representing 70 percent of the lake area. Although the number of submergent plant species was relatively low, the high coverage of submergent plants and absence of a non-native species are indicative of high habitat quality.

The floating leaved types included a native water lily (*Nuphar lutea*) and the non-native white water lily (*Nymphaea odorata*) covering a total of only 0.3 acres. The low coverage of white water lily indicates that this non-native species does not impair habitat or recreational activities in the lake.

Three non-native plants designated as noxious weeds were observed among the emergent types. Purple loosestrife (*Lythrum salicaria*) and garden loosestrife (*Lysimachia vulgaris*) were observed along much of the north and south shores (see Figure 7). Reed canarygrass (*Phalaris arundinacea*) was also observed at one location on the north shore and one location on the east shore. Lake Burien residents have recently been working with Katie Messick of King County to map and control these noxious weeds. A map of the most recent survey conducted in July and September 2009 by King County is presented in Figure 8 (Messick 2010). The number of observed plants was similar, but many plant locations have changed since the 1999 survey.

Overall, the aquatic plant community in Lake Burien provides excellent habitat for fish and wildlife, and does not appear to impair aesthetic or recreational benefits of the lake. The excellent condition of this community is not common for other lakes located within developed basins within King County. The principal reason for its excellent condition is that an invasive submergent plant such as milfoil has not become established in the lake. To prevent and address potential introductions of invasive plants, the Shore Club should continue to educate residents and survey the lake for the presence of invasive species.

Fish and Wildlife

Lake Burien provides habitat for numerous fish and wildlife. An inventory of fish and wildlife observed in the immediate vicinity of Lake Burien has been recently compiled by lake resident Christine Edgar (Edgar 2010). This information is briefly summarized here and is currently being evaluated by Dr. Sarah Cooke, a senior wetland biologist with Cooke Scientific Services located in Seattle, Washington.

Fish species observed in Lake Burien by lake residents include the following types of warm water fish: largemouth bass, perch, crappie, pumpkinseed sunfish, and catfish (Edgar 2010). A bass inventory conducted approximately 12 years ago by R.L. Steater identified only healthy largemouth bass weighing 3 to 8 pounds each. In addition, small numbers of lake trout have been planted on occasion by lake residents (Warren 2010).

Numerous aquatic animals have been observed in the lake, including turtles, frogs, crayfish, otter, waterfowl, and water-dependent birds. Two species of note include the western painted

turtle, which is an endangered species in Washington, and the bull frog, which is a non-native species that impacts native amphibian populations.

Public Access Impacts

Lake Burien is surrounded by private property and currently there is no public property for physical access to the lake by the general public. As noted in the Introduction, the Draft Shoreline Master Program (Reid Middleton 2009) currently before the Burien Planning Commission includes policy and regulation provisions for establishment of public access to Lake Burien. Although public access could increase recreational benefits of the lake, it would threaten the existing habitat for aquatic organisms in the lake.

The primary threat of public access to aquatic habitat would be the increased opportunity for introductions of non-native, nuisance species to the lake. Of primary concern would be the introduction of Eurasian watermilfoil (milfoil). Milfoil is very abundant in nearby lakes and small fragments of this invasive plant are commonly present on watercraft and readily transported to other lakes where viable fragments are released to establish a new population. Introductions of milfoil or other aquatic nuisance species do not occur solely through motorized watercraft or large crowds; it is now recognized that less intensive uses can result in the introduction of harmful species, with harmful results to the water body. As noted above, information about milfoil and other invasive plant species is provided on websites maintained by King County (2010) and the Washington Department of Ecology (2010a).

If milfoil or other invasive plant species became established in the lake it would likely have significant, direct impacts on aquatic habitat and indirect impacts on water quality in Lake Burien. Milfoil can grow to a depth of at least 6 meters and would likely occupy most of the lake area within a relatively short period of time (e.g., less than 10 years). The aquatic plant biomass would likely increase in the lake to an excessive amount that could dramatically increase internal phosphorus loading, and ultimately fuel nuisance growths of filamentous algae and blooms of toxic bluegreen algae.

Public access would also increase the potential for introductions of aquatic invertebrates that can have devastating effects on aquatic habitat and water quality. Washington lakes are currently threatened by introductions of the quagga mussel, zebra mussel, New Zealand mudsnail, rusty crayfish, spiny water flea, and others (WDFW 2010). There is no reason to assume that Lake Burien would be immune from effects of these organisms and, due to its relatively small size, it may have less capacity to accommodate them.

A study of aquatic invasive species transport by small-craft boats and trailers was recently conducted in northern Wisconsin and the Upper Peninsula of Michigan (Rothlisberger et al. 2010). This research confirmed the widespread understanding that boats are an important vector in the spread of aquatic invasive species. A total of 13 aquatic plant species and 51 taxa of small-bodied organisms were observed on the tested boats.

In summary, any public access scenario for Lake Burien would entail significant risk of degradation to the lake's ecological functions as described above. And once set in motion the processes resulting in such degradation are not easily reversed.

References

City of Burien. 2009. The Comprehensive Plan for the City of Burien, Washington. City of Burien, Washington. December 2009. <http://www.burienwa.gov/index.aspx?NID=147>.

City of Burien. 2010. City of Burien Map Collection website accessed on March 10, 2010: <http://burienwa.gov/index.aspx?nid=717>.

Ecology. 2010. Washington Department of Ecology Aquatic Plants, Algae, and Lakes website accessed on March 14, 2010: <http://www.ecy.wa.gov/programs/wq/links/plants.html>.

Ecology. 2010b. Blue-green Algae Toxins in Washington Lakes: Screening Fish Tissues for Microcytins and Anatoxin-a. Washington Department of Ecology, Olympia, Washington. Publication No. 10-03-011. March 2010.

Edgar, Chestine. Personal communication (email messages and facsimiles to Rob Zisette, Herrera Environmental Consultants, Inc., Seattle, Washington, regarding citizen concerns about Lake Burien). Lake Burien Steward, City of Burien, Washington. March 8-12, 2010.

Grette. 2008. City of Burien Shoreline Master Program Update, Shoreline Analysis and Characterization. Prepared for the City of Burien, Washington by Grette Associates, LLC, Tacoma, Washington. Revised October 23, 2008.

King County. 1999. Noxious Weed Survey for Five King County Lakes. King County Department of Natural Resources, Water and Land Resources Division, Seattle, Washington. December 1999.

King County. 2010. King County Lake Services and Information website accessed on March 10, 2010: <http://www.kingcounty.gov/environment/waterandland/lakes.aspx>.

Messick, Katie. 2010. Personal communication (email message to Rob Zisette, Herrera Environmental Consultants, Inc., Seattle, Washington, providing Lake Burien watershed and aquatic plant maps). Aquatic Weed Specialist, King County Department of Natural Resources and Parks, Seattle, Washington. March 9, 2010.

Reid Middleton. 2009. City of Burien Shoreline Master Program, SMA Grant No. G0800116. Shoreline Advisory Committee Draft prepared by Reid Middleton, Everett, Washington. November 2009. <http://www.burienwa.gov/index.aspx?NID=851>.

Rothlisberger, J.D., W.L. Chadderton, J. McNulty, and D.M. Lodge. 2010. Aquatic Invasive Species Transport Via Trailored Boats: What Is Being Moved, Who Is Moving It, and What Can Be Done. Fisheries 31(3):121-132.

Warren, Don. Personal communication (email messages to Rob Zisette, Herrera Environmental Consultants, Inc., Seattle, Washington, regarding citizen concerns about Lake Burien). Lake Burien Steward, City of Burien, Washington. March 5-11, 2010.

WDFW. 2010. Washington Department of Fish and Wildlife Aquatic Nuisance Species website accessed on March 14, 2010: <http://wdfw.wa.gov/fish/ans/>.

Wolcott, E.E. 1973. Lakes of Washington, Volume 1 – Western Washington. Third Edition. Washington Department of Ecology, Olympia, Washington.

Figures

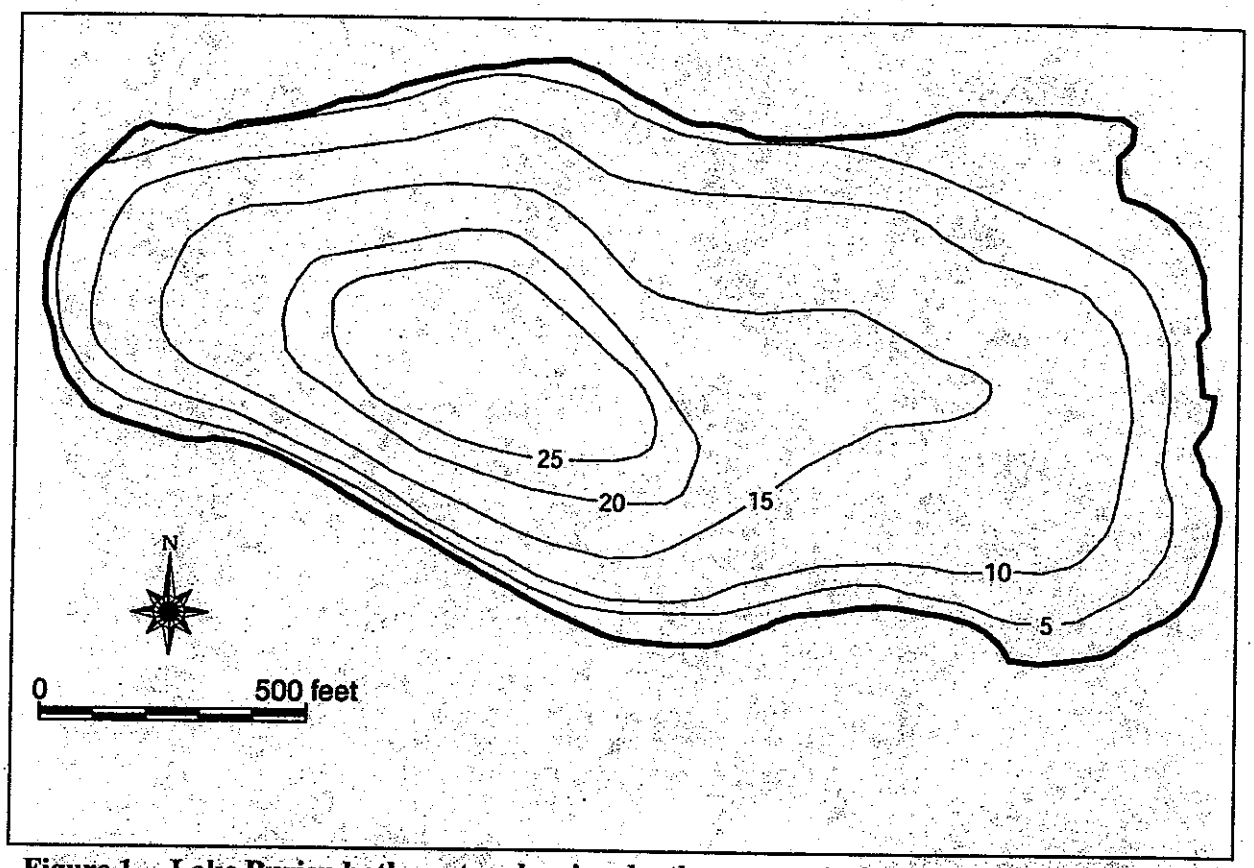

Figure 1. Lake Burien bathymetry showing depth contours in feet (source: Messick 2010).

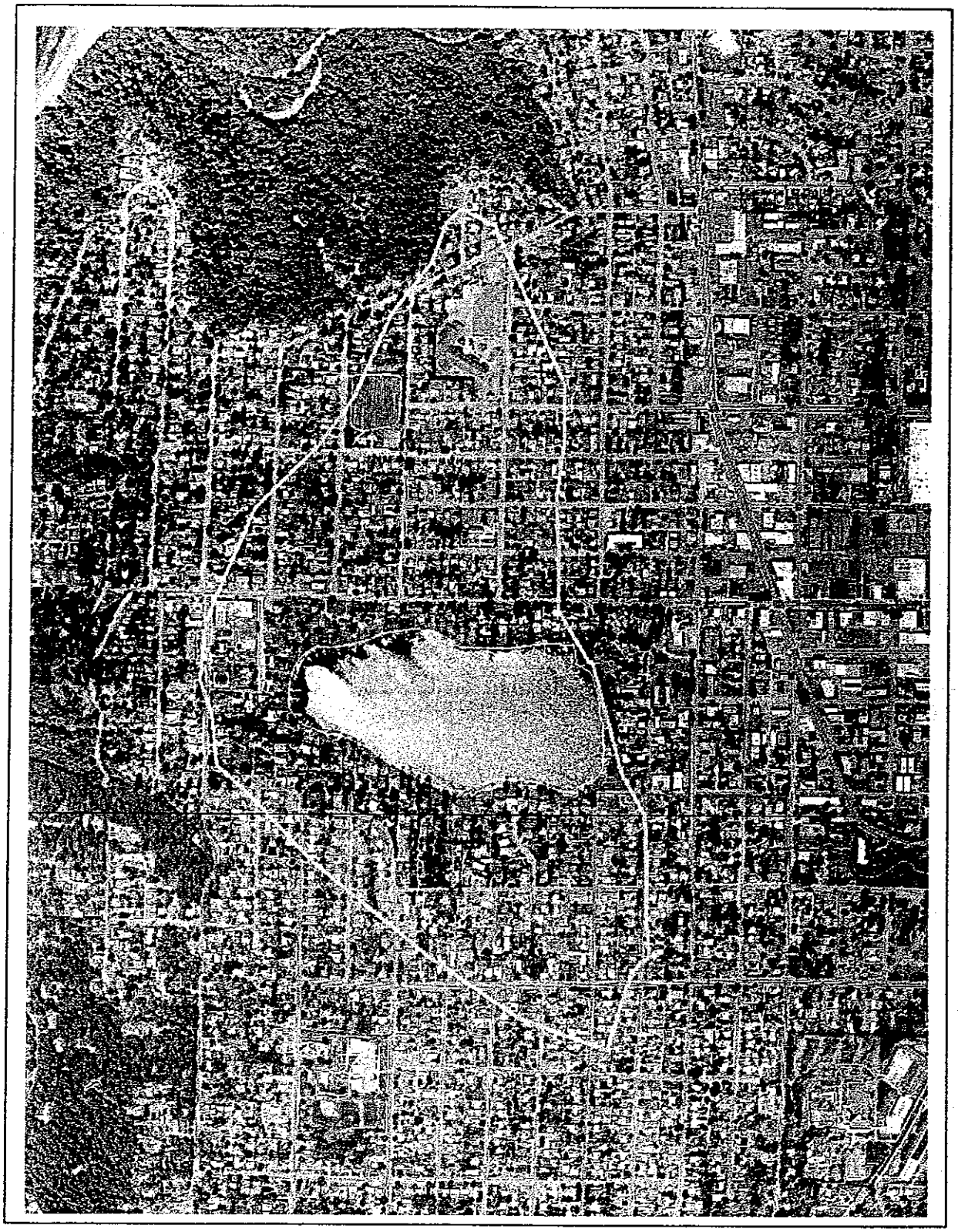

Figure 2. Lake Burien watershed (source: Messick 2010).

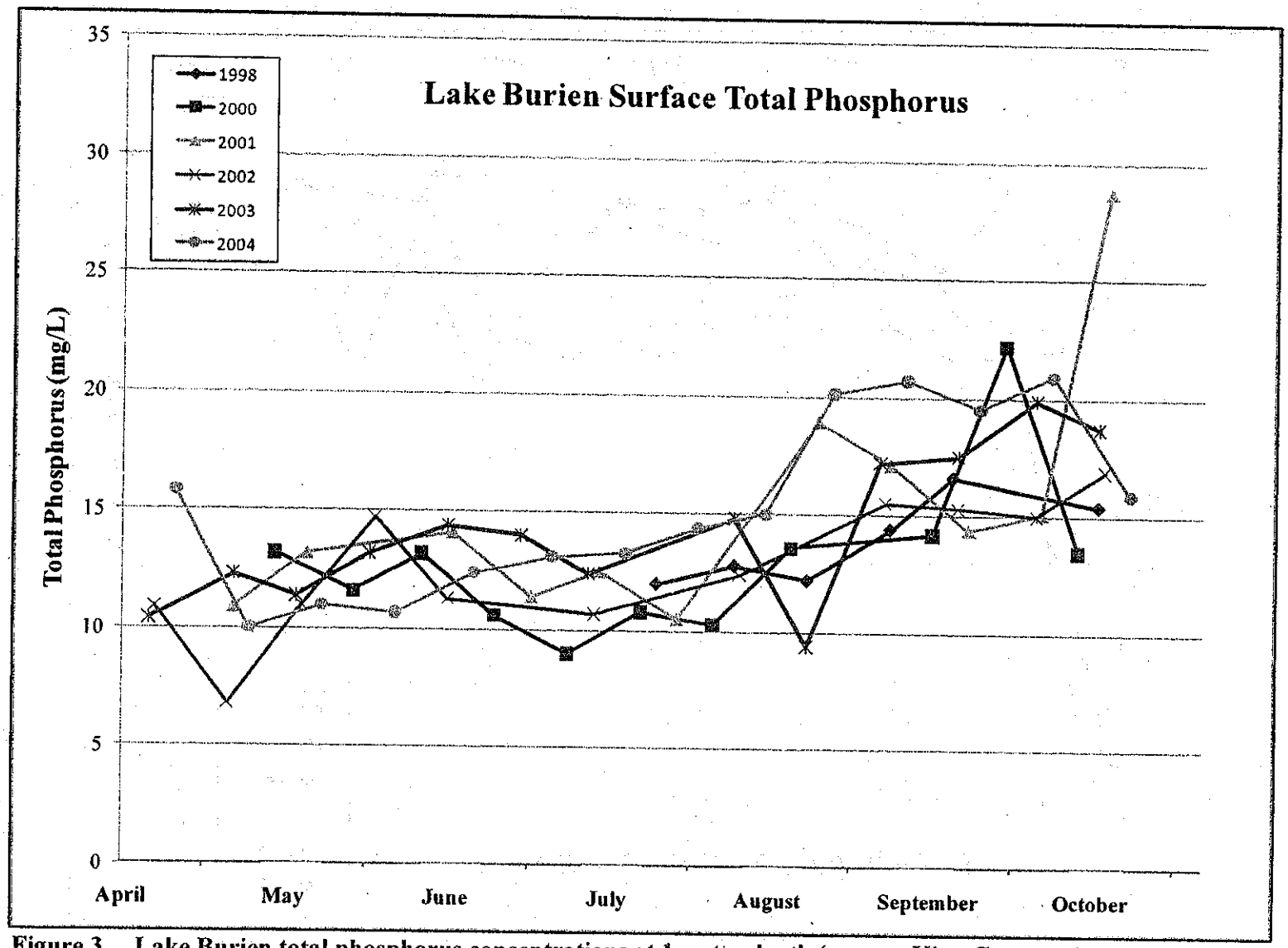

Figure 3. Lake Burien total phosphorus concentrations at 1 meter depth (source: King County 2010).

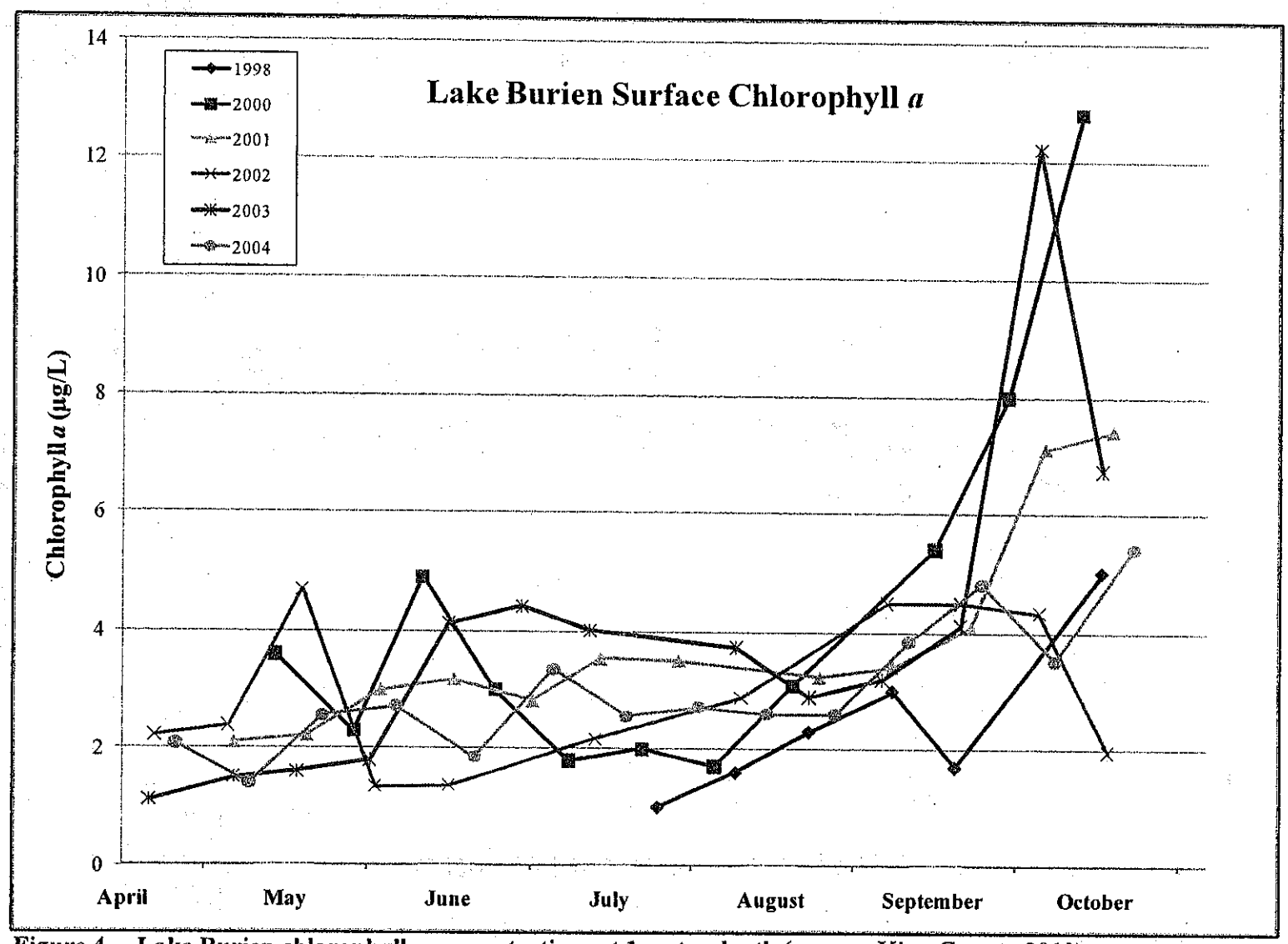

Figure 4. Lake Burien chlorophyll *a* concentrations at 1 meter depth (source: King County 2010).

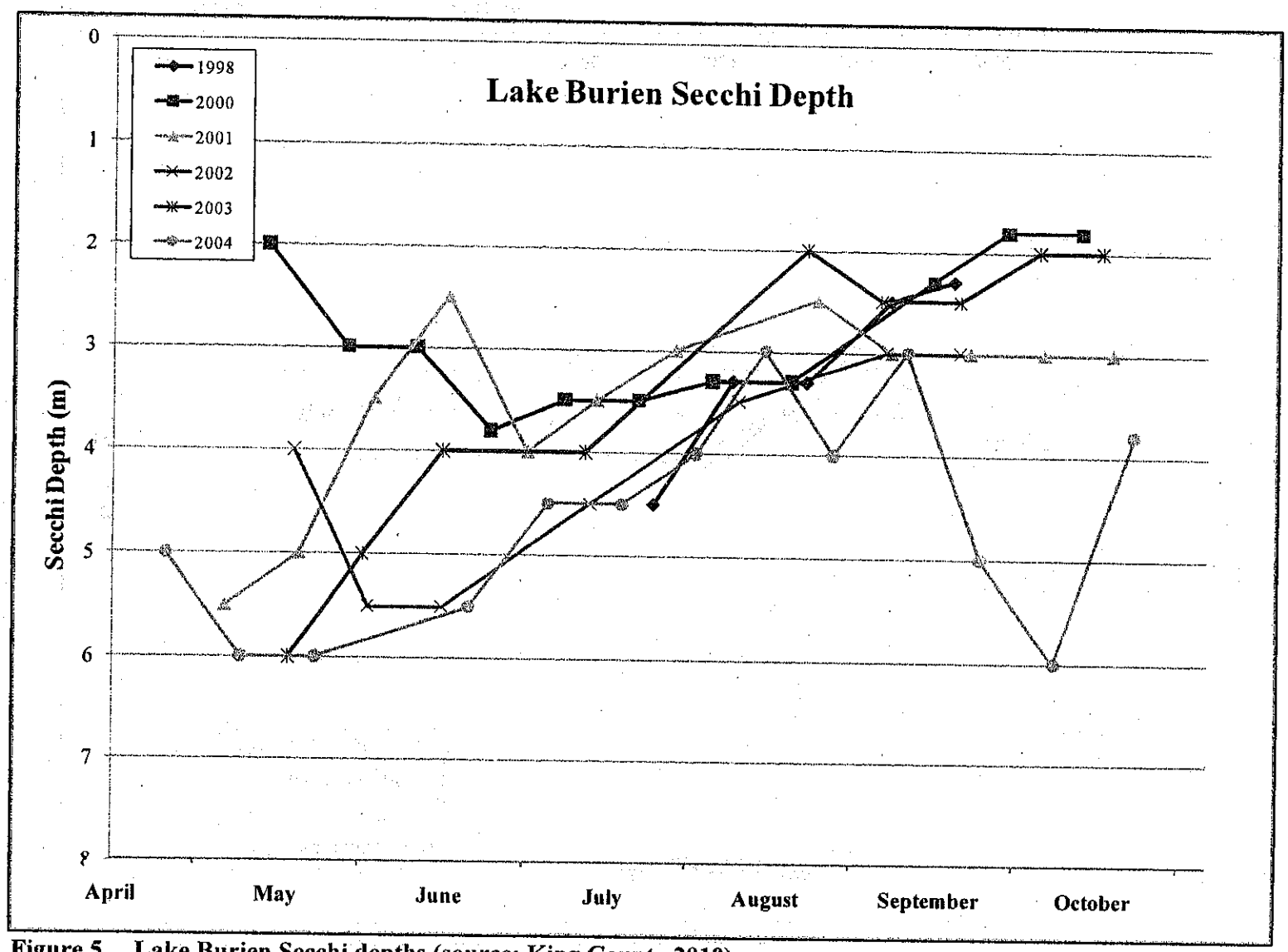

Figure 5. Lake Burien Secchi depths (source: King County 2010).

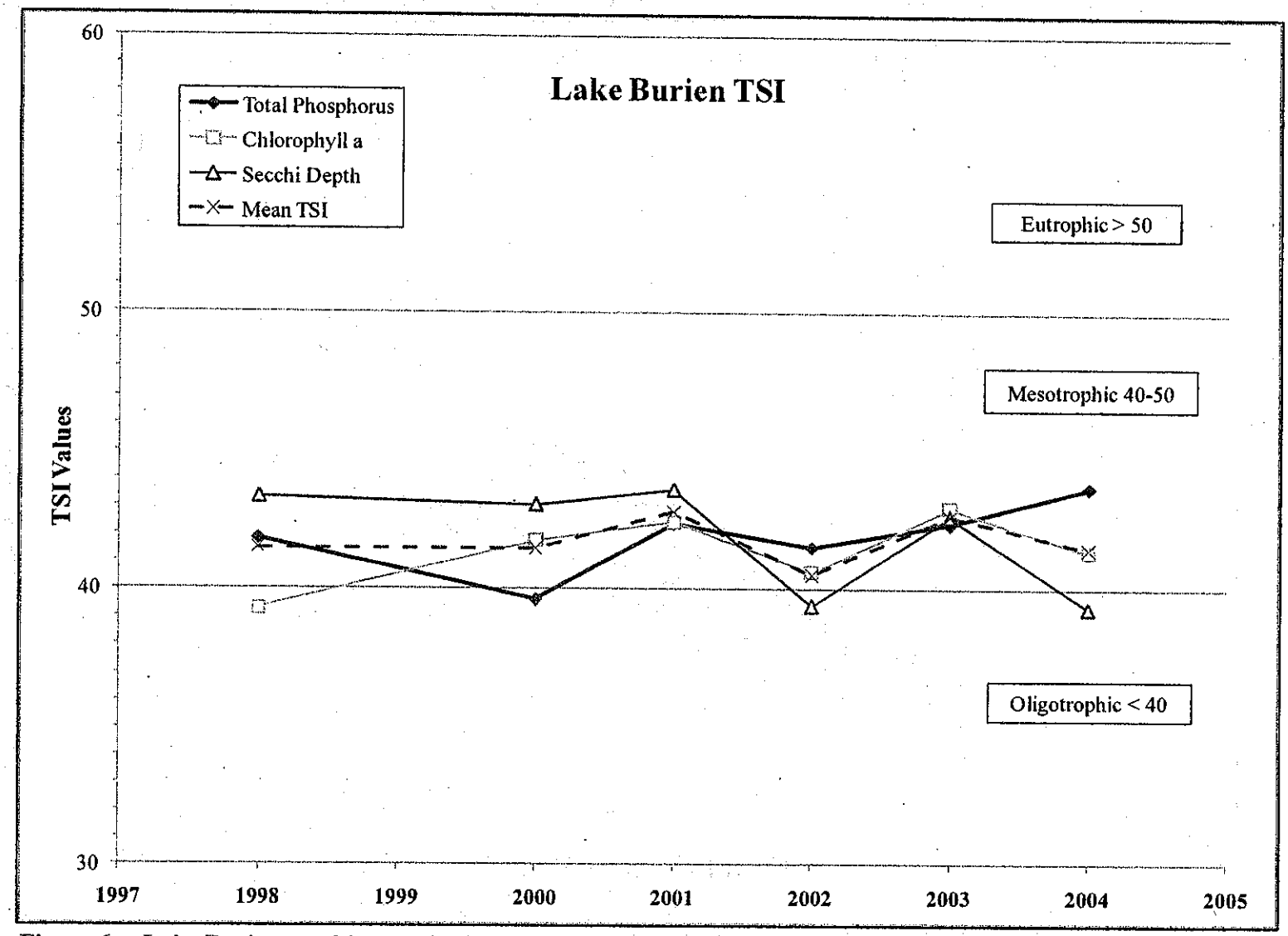

Figure 6. Lake Burien trophic state indices.

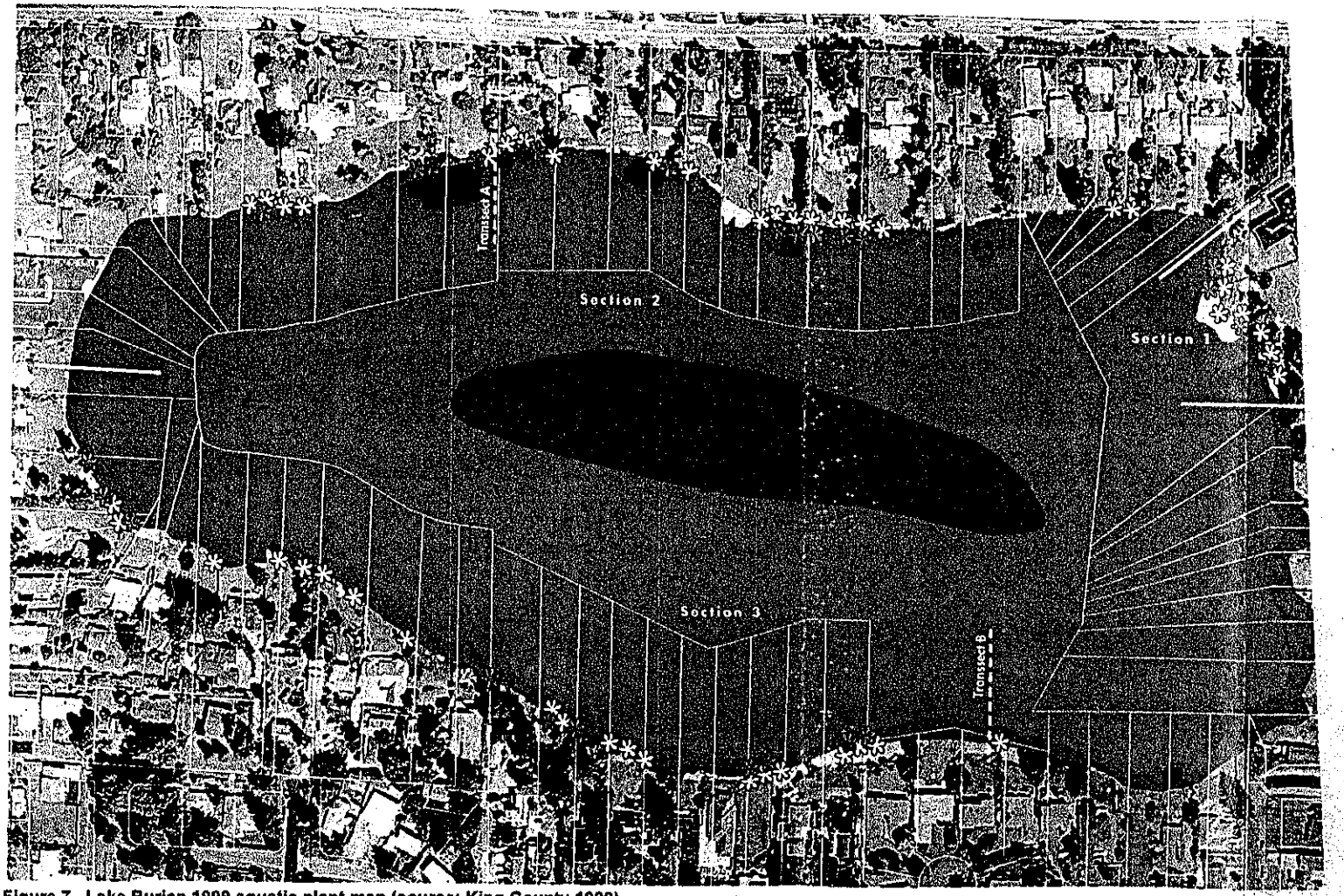

Figure 7. Lake Burien 1999 aquatic plant map (source: King County 1999).

Figure 3

Lake Burien

Weed Location Map

LEGEND

- *Lythrum salicaria* (Purple Loosestrife)
- *Lysimachia vulgaris* (Garden Loosestrife)
- *Phalaris arundinacea* (Reed Canary Grass)
- Stream
- Section boundary
- Transsect line
- Floating
- Emergent
- Submergent
- No plants or sparse
- No plants—deep
- Parcel boundary

N

0 100 200 300 Feet

October 1999

Produced by:
GIS/Visual Communications Unit, WLR
King County Department of Natural Resources

File Name: 9910 Burien AquaPlantMap.eps

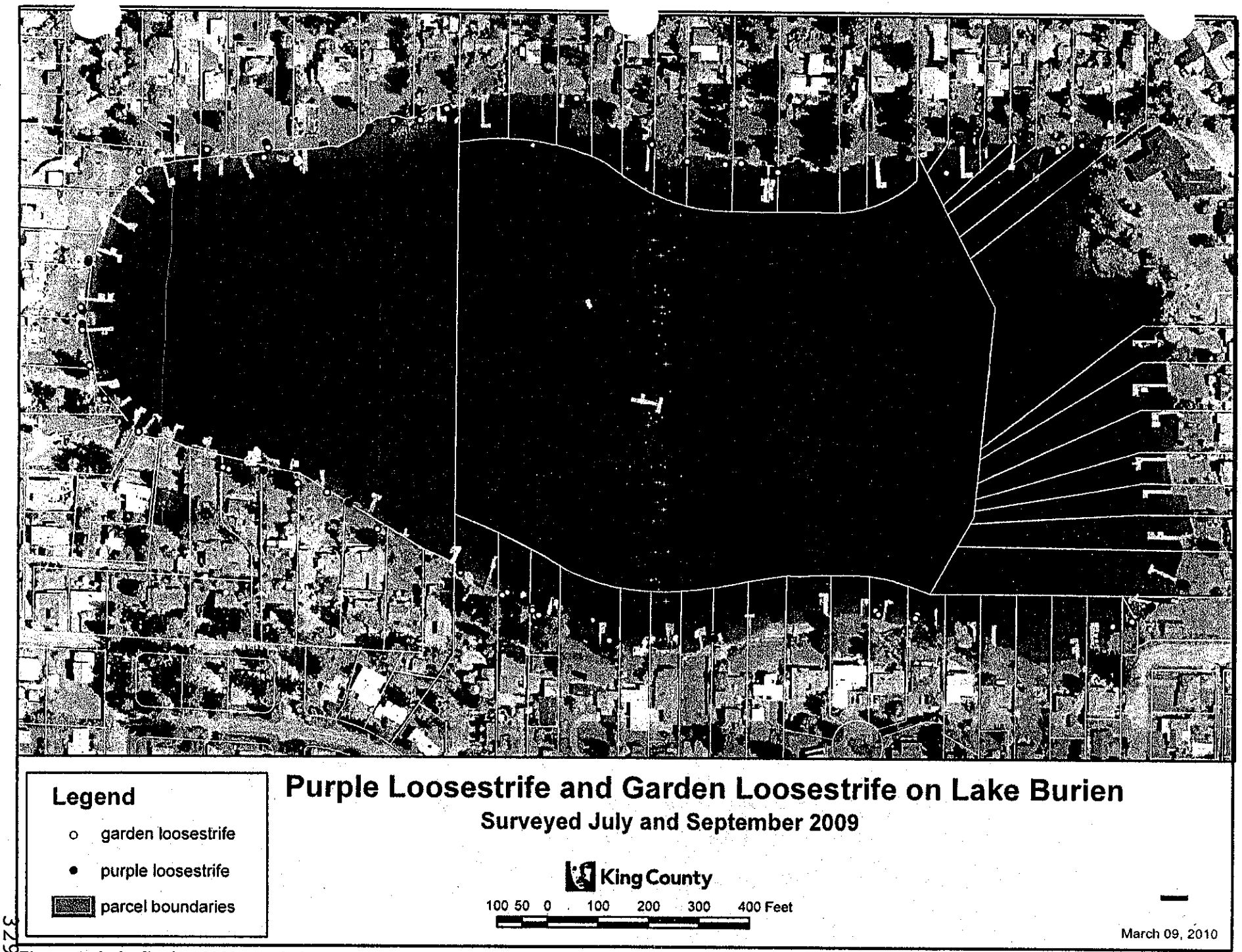

Figure 8. Lake Burien 2009 purple loosestrife and garden loosestrife locations (source: Messick 2010).

HERRERA
ENVIRONMENTAL CONSULTANTS

Rob Zisette

Aquatic Science Principal

Rob Zisette, an aquatic science principal, has 28 years of professional experience specializing in surface water management, including lake restoration projects, aquatic plant management studies, stormwater management plans, and environmental impact statements. He has developed and implemented monitoring and quality assurance project plans for various freshwater and marine and water and sediment quality investigations. Mr. Zisette has mapped aquatic plants, evaluated aquatic plant management techniques, developed aquatic nuisance prevention plans, assessed plankton communities, identified nutrient sources, and evaluated lake restoration techniques in lakes and reservoirs. He has assessed benthic invertebrate populations, fish habitat, and riparian conditions in lakes and streams. He has evaluated nonpoint source pollution and the effects of best management practices (BMPs) in urban drainage basins. Additional experience includes water quality impact analysis for solid and hazardous waste management projects, sediment quality characterization and dredge disposal analysis for marine sediment management projects, laboratory analysis of water samples for various chemical and biological parameters, and quality assurance review of field and laboratory data.

Years with HEC: 20

Credentials

M.S. in Water Resource Management, University of Washington, 1980

B.S. in Environmental Biology, University of Calgary, 1978

WSDOT Construction Site Erosion and Spill Control Certification Course, 2001

OSHA 40-Hour Health and Safety Training for Hazardous Waste Sites, since 1988

Scuba Diving Certification, 1979

Specialties

Lake management

Water quality

Stormwater management plans

Marine and freshwater sediment

Monitoring and quality assurance plans

Example Lake Projects:

Vancouver Lake Research Plan and Management Alternatives
Vancouver Lake Watershed Partnership, Vancouver, WA

Mr. Zisette provided technical input to the development of a 5-year research plan for Vancouver Lake that included research on water dynamics, nutrients, sediment, food web interactions, toxic contaminants, and fish and wildlife habitat. He also provided technical review of a summary of management action alternatives for the control of cyanobacteria in Vancouver lake.

Lake Steilacoom Calcium Oxide Treatment Study
City of Lakewood, WA

Mr. Zisette developed a quality assurance project plan to monitor a series of calcium oxide treatments in Lake Steilacoom for the City of Lakewood. Mr. Zisette coordinated water quality monitoring conducted twice a month at seven lake stations, and provided technical review of a report that evaluated treatment impacts and effectiveness. He is currently conducting a feasibility study of treating the lake with aluminum sulfate.

Lake Youngs Reservoir Limnological Studies
City of Seattle, WA

Mr. Zisette evaluated the feasibility of techniques for controlling off-flavors produced by periphytic blue-green algae (cyanobacteria) in Lake Youngs Reservoir for Seattle Public Utilities. He presented feasibility findings and a study approach to a workshop comprised of limnologists and stakeholders for the selection of preferred alternatives. Mr. Zisette designed in-reservoir tests and prepared a monitoring and quality assurance project plan for evaluating the effectiveness of four preferred alternatives: chlorine tabs, granulated copper algaecide, aluminum sulfate, and sediment capping. He used scuba diving to treat two sets of test plots (shallow and deep) and collect periphyton, water, and sediment samples. He designed a long-term periphyton monitoring program, and conducted 18 periphyton surveys that included underwater videotaping and the collection of replicate periphyton samples along survey transects. Mr. Zisette coordinated the testing of geosmin and MIB production by odor-producing algae cultures, and he prepared a

taste and odor management plan based on results of the study. He also designed a comprehensive, long-term monitoring program for tracking changes in water quality and enhancing current knowledge of ecological relationships in the reservoir. Mr. Zisette assisted with the development of a water and phosphorus budget for this drinking water reservoir to quantify effects of drawdown from changes in ground water inflow and internal phosphorus cycling. He prepared a monitoring plan for evaluating effects of an air diffusion mixing system that was designed to reduce the short-circuiting of inflow through Lake Youngs. He designed and implemented special studies for evaluating the cycling of phosphorus, organic carbon, and copper between sediments and waters in shallow regions of the reservoir. Mr. Zisette prepared an aquatic plant management plan, installed bottom barriers, and successfully employed a hand-pulling technique to eradicate an early infestation of Eurasian watermilfoil. He conducted three aquatic plant surveys using sonar, visual, and sampling techniques for mapping the distribution, density, and biomass of aquatic plant species. Mr. Zisette co-authored an exotic aquatic species prevention program that included fact sheets and equipment decontamination procedures for the control of zebra mussels and invasive plants.

Lake Youngs Limnology Expert Panel Workshop
City of Seattle, WA

Mr. Zisette participated in a workshop with other limnology experts to evaluate observed trends in drinking water quality primarily associated with algae growth in Lake Youngs for Seattle Public Utilities. Mr. Zisette evaluated spatial and temporal trends in key hydrologic and water quality parameters using graphical and statistical analysis of a comprehensive set of limnological data collected over a 15-year period at eight monitoring sites located in Lake Youngs and the Cedar River Watershed. He prepared a report that summarized the observed trends, presented the data analysis findings to the expert panel, participated in discussions among experts at a workshop, and provided recommendations for future data collection and analysis to address water quality concerns.

Union River Reservoir Monitoring and Operation Evaluation
City of Bremerton, WA

Mr. Zisette developed a comprehensive monitoring program for the Union River Reservoir, which is impounded by Casad Dam and is the primary source of the unfiltered, 8-mgd drinking water system operated by the City of Bremerton. Existing monitoring procedures and historical data were reviewed to provide recommendations for changes in sampling station locations/depths, sampling frequency, and sample analysis parameters and methods. Mr. Zisette assisted the City with monitoring levels of cyanobacteria (blue-green algae) and microcystin for comparison to human toxicity criteria established by the World Health Organization. Mr. Zisette investigated the cause of excessive periphyton (attached filamentous algae) growth in the reservoir outlet (Union River) that resulted in filter clogging complaints from customers during the summer of 2002. He established appropriate monitoring procedures for tracking periphyton growth and developed reservoir operating guidelines to prevent nuisance levels of periphyton growth in the future. Mr. Zisette provided action levels for various monitoring parameters, develop outlet gate selection criteria to optimize water quality for various reservoir surface elevations, and provided training of City staff on limnological principles and methods for collecting periphyton samples.

Green Lake Alum Treatment and Integrated Phosphorus Management Plan
Seattle Parks and Recreation, WA

Mr. Zisette managed a project providing planning, engineering, and monitoring services to Seattle Parks and Recreation for the treatment of Green Lake with aluminum sulfate (alum) during the spring of 2004 to reduce the internal loading of phosphorus and resulting toxic algae blooms. He conducted a comprehensive study to determine the optimum approach to treating Green Lake with alum. Mr. Zisette prepared an integrated phosphorus management plan (IPMP) to obtain coverage under the Washington Department of Ecology's aquatic nuisance plant and algae control National Pollutant Discharge Elimination System (NPDES) general permit. He coordinated engineering and monitoring services for the 14-day alum treatment of Green Lake in the spring of 2004 that included preparation of the treatment specifications, drawings, and engineering cost estimate; contractor bid review and selection; and monitoring to assess pre-treatment, treatment, and post treatment water quality conditions. He prepared the alum treatment monitoring report presenting construction oversight and water quality monitoring results, and comparing those results to the project

objectives. Mr. Zisette also conducted stormwater monitoring and evaluated pollutant sources and treatment methods for controlling inputs of phosphorus and fecal coliform bacteria to the lake. He collected and analyzed sediment cores using divers to evaluate the presence of alum in lake sediments, and conducted underwater video surveys of the treated lake bottom to document disturbance by common carp and other benthic fish. He also developed a carp bioturbation model that predicts effects of sediment disturbance by common carp on lake phosphorus concentrations and loadings. Mr. Zisette prepared the post-treatment monitoring report presenting results of water quality monitoring, sediment monitoring, and carp bioturbation modeling. He also mapped aquatic plants in Green Lake using sonar and GPS, and recommended methods for control of Eurasian watermilfoil.

City of Portland Roslyn Lake Alternatives Analysis
City of Portland, OR

Mr. Zisette prepared a water quality modeling report for the City of Portland Water Bureau that evaluated future conditions of Roslyn Lake in Sandy, Oregon resulting from the decommissioning of a power plant on this storage reservoir. He reviewed of a previous water quality modeling effort and gathered background hydrology and water quality data. Mr. Zisette developed lake morphometry and hydrology alternatives that were based on protection of beneficial uses, a new source of inflow, and dramatic reduction of inflow rates. Mr. Zisette selected PHOSMOD as an appropriate model and used it to estimate the seasonal and long term water quality effects of the chosen alternatives. He presented modeling and sensitivity analysis results at a lake management conference.

Capitol Lake Water Quality Studies
Washington Department of General Administration, Olympia, WA

Mr. Zisette prepared a monitoring plan and coordinated field activities for evaluating impacts on water quality, benthic invertebrates, and fish from the drawdown of Capitol Lake in Olympia, Washington. He monitored water quality in Capitol Lake and Budd Inlet before, during, and after lake drawdown.

Capitol Lake Adaptive Management Plan
Washington Department of General Administration, Olympia, WA

Mr. Zisette evaluated sediment quality and dredge disposal options to assist the Washington Department of General Administration with the development of a sediment management strategy for Capitol Lake in Olympia, Washington. He reviewed historical sediment characterization studies and identified additional testing requirements for disposal of dredged sediments at either an upland or open-water disposal site. Mr. Zisette prepared a sediment sampling and analysis plan for review by PSDDA agencies. He collected replicate sediment cores from four locations in a proposed dredging site, validated data according to PSDDA procedures, and compared results to criteria established by PSDDA, MTCA, Thurston County, and surface water quality standards. Mr. Zisette identified locations of potential upland disposal sites, evaluated truck and rail transportation alternatives, summarized permitting requirements, and recommended the most cost-effective method for the handling and disposal of dredged lake sediments.

Boundary Reservoir Water Quality Assessment
Seattle City Light, WA

Mr. Zisette assisted with the development and implementation of a water quality monitoring program for evaluating trophic conditions and potential bull trout habitat in a 12-mile long impoundment of the Pend Oreille River. He evaluated spatial and temporal variability of trophic state indicators (secchi depth, total phosphorus, and chlorophyll a) and plankton populations in the reservoir based on data collected for the monitoring program and previous studies.

Green Lake Phase IIC Restoration Project
Seattle Parks and Recreation, WA

Mr. Zisette coordinated monitoring of water quality in Green Lake, Seattle, Washington, for evaluating the effects of alum treatment. Mr. Zisette prepared specifications for the purchase of an aquatic plant harvester and assisted in developing a harvesting plan for the control of Eurasian watermilfoil in the lake. Mr. Zisette prepared and implemented the stormwater quality monitoring plan for sampling five storm events per year at

17 locations. He evaluated the potential for internal phosphorus loading from results of diurnal studies. Mr. Zisette coordinated development of the lake's water budget and stormwater phosphorus budget.

Silver Lake Phase II Restoration Project
Cowlitz County, WA

Mr. Zisette coordinated and participated in monitoring water quality and discharge during five storm events at the two largest inflow streams and the outlet of Silver Lake in Cowlitz County, Washington for evaluating the effects of grass carp introduction. He was responsible for development of the lake's water budget over a two-year period, which included compilation of precipitation, evaporation, and lake level data and modeling stream inflow.

Horseshoe Lake Phase II Restoration Project
City of Woodland, WA

Mr. Zisette coordinated monthly water quality sampling and annual benthic invertebrate sampling at Horseshoe Lake in Woodland, Washington for evaluating the effects of lake flushing and alum treatment.

Lake Sacajawea Phase II Restoration Project
City of Longview, WA

Mr. Zisette analyzed water samples for various constituents and evaluated the effects of lake flushing upon plankton communities for the restoration analysis of Lake Sacajawea for the City of Longview.

Lake Ballinger Phase II Restoration Project
City of Mountlake Terrace, WA

Mr. Zisette mapped the distribution and density of aquatic plant species using a combination of sonar, visual, and sampling techniques in Lake Ballinger for the City of Mountlake Terrace. He analyzed water samples and reported on nutrient and plankton interactions in the lake.

Phantom Lake Phase I and II Restoration Projects
City of Bellevue, WA

Mr. Zisette collected water samples from monitoring wells, seepage meters, and lake inlets for the restoration analysis of Phantom Lake for the City of Bellevue. He coordinated development of the lake's water budget and calculation of stormwater nutrient loads using a spreadsheet model.

Lake Lawrence Phase I Restoration Project
Thurston County, WA

Mr. Zisette monitored well points and domestic wells on a quarterly basis for the diagnostic study of Lake Lawrence for Thurston County. He evaluated impacts of existing and future land use on water quality and recreational use of the lake. Mr. Zisette assessed chemical results of lake sediment cores for impacts of historical practices in the watershed on the lake's trophic condition.

Martha Lake Phase I Restoration Project
Snohomish County, WA

Mr. Zisette coordinated the stormwater monitoring program for the diagnostic study of Martha Lake for Snohomish County. He collected water samples and flow measurements on an hourly basis at three stations for four storm events.

Pine Lake Phase I Restoration Project
King County, WA

Mr. Zisette monitored and reported on the lake nutrient budget and trophic state for the diagnostic study of Pine Lake for King County. He identified a wetland as the major external source of phosphorus and primary cause of excessive algal growth in the lake.

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www.GordonDerr.com

COPY

March 18, 2010

RECEIVED
MAR 19 2010
CITY OF BURIEN

VIA EMAIL AND U.S. MAIL

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

Re: Comments on the Draft Shoreline Master Program

Dear Members of the Planning Commission:

We represent the Burien Marine Homeowners Association (BMHA), a group of Burien residents whose property is in the regulated shoreline along the Puget Sound. BMHA is very concerned with several of the proposed requirements being considered as part of the new Burien Shoreline Master Program (SMP). As we have previously described in written and oral testimony, the City has failed to adequately engage shoreline property owners, the portion of the community that will be most affected by these regulations. Accordingly, we have asked for more time to engage the City in an honest dialogue leading to changes in the SMP to address these concerns. With a dialogue, we believe that Burien can adopt regulations that meet requirements of state law but are sensitive to the concerns of the BMHA and other citizens. To facilitate your review and take the first step towards this dialogue, we have prepared and enclosed a redline of various chapters to identify areas of concern and propose detailed revisions that may address BMHA's concerns.

In general, BMHA is concerned that many of the specific requirements being recommended by staff for the SMP go far beyond the requirements of the Washington Department of Ecology's Shoreline Master Program Guidelines, Chapter 173-26 WAC (the "Guidelines") and do not adequately consider several fundamental provisions of Washington's Shoreline Management Act, Chapter 90.58 RCW (the "SMA"). The SMA establishes several key principles, including protection of shoreline ecology, preservation of public access to shorelines and prioritization of residential uses along the shoreline. The City's approach favors protection of shoreline ecology and public access to the shoreline, but does not adequately recognize the priority the SMA gives to single family residences nor does it adequately protect residents' investment in their property. The appropriate balance seems to have been lost in the current draft.

The City's approach of favoring shoreline ecology to the detriment of residential shoreline uses is inconsistent with the SMA. The Act recognized that single family residences are a "preferred use" along shorelines. "[A]lterations of the natural conditions of the shorelines . . . shall be given priority for single family residences and their appurtenant structures . . . ." RCW 90.58.020. The Act expressly requires master programs to include provisions for the "protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion." RCW 90.58.100. Single family residences are so much a preferred use that their construction is exempt from obtaining a Shoreline Substantial Development Permit. RCW 90.58.030.(3)(e)(iv).

Similarly, property rights are to be protected in all SMPs. For example, the "Governing principles of the Guidelines" note that local governments should assure that "proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights." WAC 173-26-186 (5). Local governments are directed to "design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property." WAC 173-26-186 (8)(b)(i). Ecology has expressly acknowledged that any approach to implementing the "no net loss" requirements "must honor the requirements established in case law concerning nexus and proportionality of requirements imposed on development . . . ." What Does No Net Loss Mean in the 2003 SMA Guidelines, Draft Publication 04-06-020, June 2004, Department of Ecology.

We encourage Burien to adopt revisions to strike a better balance that protects shoreline ecology, promotes public access, while simultaneously prioritizing and protecting residential shoreline uses and property rights of shoreline owners. The Guidelines expressly recognize that "local governments have reasonable discretion to balance the various policy goals of this chapter, in light of other relevant local, state, and federal regulatory and nonregulatory programs, and to modify master programs to reflect changing circumstances." WAC 173-26-186(9).

In particular and as further detailed in the attached redline, BMHA requests that the planning commission revisit its policies and regulations governing four specific subjects: (1) setbacks; (2) shoreline armoring provisions; (3) restrictions on shoreline property to protect public access; and (4) nonconforming use provisions.

First, the 65 foot setbacks proposed in the current draft are excessive and do not adequately recognize existing residential development. In our review of the City's inventory, we were unable to find any detailed evaluation of existing marine shoreline buffers or the proximity of existing development to the shoreline in the City's various reaches, beyond vague characterizations. This detailed evaluation of existing conditions is critical. Many marine shoreline property owners have houses that would fall within the proposed 65 foot setback. Indeed, many lots are as short as 85 feet deep, such that a 65 foot setback would render most of the property undevelopable or nonconforming. This nonconforming status will have a significant impact on property values and on ability to refinance and to sell properties. Moreover, the basis and justification for these setbacks is also not clear from the publically available material. The City needs to examine existing marine shoreline buffers and benefits of buffers in areas that have already been altered for an urban environment. Unless and until the City has scientific evidence that significant additional setbacks are needed on properties that have already been developed to an urban level, it is improper to include additional setbacks

requirements in the SMP under the guise of being needed to avoid loss of ecological function. In light of these concerns, BMHA proposes changes to the draft regulations to recognize existing development and the altered marine shoreline. With the proposed changes, the City could impose the city's 65 foot buffer on undeveloped lots, but would preserve the existing 20 foot buffer on developed residential lots. These changes would protect shoreline ecology to an appropriate degree for a developed urban area while avoiding creation of nonconforming single family homes on a broad scale.

Second, BMHA is concerned that the City's provisions governing shoreline stabilization methods do not adequately recognize or allow property owners to maintain, repair and replace their existing infrastructure as necessary to protect their property. The City's stated preference in the current regulations for non-structural stabilization methods in the name of protection of shoreline ecology may be appropriate for new development. However, it is not appropriate to force owners of already developed properties that are protected by structural shoreline stabilization methods to implement the City's policy preference. Restoration from existing urban conditions may be encouraged but it should not be forced upon property owners at great cost and risk of damage to their property including their primary residential structures. To the contrary, the SMA expressly requires master programs to include provisions for the "protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion." RCW 90.58.100. BMHA proposes changes to the regulations governing shoreline stabilization that will implement the City's policy with respect to development of new shoreline stabilization infrastructure but will allow residential owners to reasonably maintain, repair and replace existing shoreline stabilization infrastructure.

Third, BMHA has concerns with the City's efforts to increase visual and physical shoreline access to the detriment of private property rights and existing residential development. In several instances the City seeks to improve or enhance shoreline views from public parks and streets in excess of what the SMA allows. Notably, the only portion of the SMA that expressly protects views does so for existing residential views and protects only against new shoreline development in excess of 35 feet. *See* RCW 90.58.320. The general policies in RCW 90.58.020 offer limited protection of views from public parks and streets, but the City's provisions far exceed that limited policy. Similarly, BMHA has significant concernts regarding the City's vague but significant policy effort to create new pocket parks and street end parks that could have significant potential adverse impacts to the neighboring property owners and communities. To address both these concerns the BMHA proposes changes that better acknowledge and protect private residences consistent with the SMA and other legal authority. At the very least, the City's environmental review for this non-project action must take into consideration impacts of this policy on neighboring communities.

Finally, BMHA is concerned that the City's nonconforming use provisions are overly restrictive. Because the City has increased restrictions on existing shoreline development, the City should simultaneously allow some more flexibility to existing development and uses that were legally established under existing or prior codes. Instead, the City appears to have adopted an approach that is even more restrictive than Ecology's default nonconforming use provisions in WAC 173-27-080. Accordingly, BMHA requests changes that afford existing uses more flexibility to reasonably repair and remodel.

We request that the Planning Commission take the time necessary to review and consider all reasonable comments, especially those of the regulated community most affected by the City's proposed changes. Even if it is necessary to delay the Planning Commission's recommendation to the Council until such time as the comments can be addressed, the City still has time to complete the SMP update within the timeframe required by statute.

BMHA proposes that during this additional time period, BMHA and other stakeholders be engaged in further dialogue with the City in order to ensure that the adopted SMP both complies with the applicable Guidelines and addresses the needs and concerns of affected property owners. If given the opportunity, we look forward to working with the Planning Commission to address BMHA's substantive issues.

Very truly yours,

GORDONDERR LLP

Tadas Kisielius
tkisielius@gordonderr.com

Chapter II. General Goals and Policies

20.20.001 Purpose

The Shoreline Master Program goals and policies of this chapter reflect the aspirations and concerns that Burien citizens and stakeholders expressed about the City's shorelines during community and Shoreline Advisory Committee meetings. These goal and policy statements, along with the shoreline land use map, are the foundation for specific guidelines concerning how to regulate and manage activities occurring within the City's shoreline jurisdiction.

The goals and policies of this element apply to all water bodies and shorelands that meet the definitions set forth in RCW 90.58.030 unless otherwise specifically stated in the goal or policy. Burien's shorelines includes those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters. Water bodies in Burien that meet the applicable definitions include Puget Sound waterward to mid channel and Lake Burien.

20.20.005 General Goals and Policies

Goal ALL

Develop, implement, and maintain a Shoreline Master Program that results in no net loss of shoreline ecological functions and processes, balances public and private interests in the shoreline, protects private property rights, prioritizes single family residential uses among authorized alterations, and considers other relevant programs.

Pol. ALL 1 The Shoreline Master Program shall result in no net loss of shoreline ecological functions and processes.

Pol. ALL 2 Regulation and management of Burien's shorelines should be guided by ongoing and comprehensive science.

Pol. ALL 3 The City should be proactive in managing activities within the shoreline jurisdiction.

Pol. ALL 4 Implement an adaptive management approach to respond to changes and to ensure continued effectiveness.

Pol. ALL 5 The Shoreline Master Program should balance private use and enjoyment of tidelands and adjacent lands with the benefit to the greater public ~~benefit~~ that shorelines provide, while recognizing the rights of individuals to use and develop private property in a manner consistent with City and other applicable regulations.

Pol. ALL 6 When Shoreline Master Program regulations are developed and applied, they should consider site-specific characteristics.

Pol. ALL 7 Regulation and management of the City's shorelines should be coordinated with relevant local, state, federal, and other programs. Such programs include, but are not limited to, those administered by: City of Seattle, City of Normandy Park, City of SeaTac, King County, Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, Puget Sound Partnership, United States Army Corps of Engineers, Muckleshoot Tribe, Puyallup Tribe, and Water Resource Inventory Area 9.

Pol. ALL 8 Consider an incentive base system to encourage redevelopment projects to comply with accepted shoreline best management practices and standards.

20.20.010 Economic Development Element

Goal ED

Insure healthy, orderly economic growth by allowing those economic activities which will be an asset to the local economy and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

Pol. ED 1 Protect the beauty and function of the natural environment to maintain a community where workers want to live and work.

Pol. ED 2 Promote actions ensuring a clean and attractive community.

Pol. ED 3 Encourage and protect residents' investments in and improvements to their private property because they are beneficial to the local economy and property values and help create a clean and attractive community.

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20.20.015 Shoreline Public Access Element

Goal PA

Increase and enhance public access to shoreline areas, consistent with the natural shoreline character, private property rights, and public safety.

Pol. PA 1 ~~D~~New d~~d~~evelopments, new uses, and activities on or near the shoreline should not impair or detract from the public's access to the water.

Pol. PA 2 Publicly owned shorelines should be limited to water dependent or public recreational uses, otherwise such shorelines should remain protected open space.

Pol. PA 3 Where provided, Ppublic access to the City's shorelines should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.

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Pol. PA 4 ~~P~~Where provided, public access should be ~~provided~~ as close as possible to the water's edge without adversely affecting a sensitive environment or private property rights and personal privacy, and should be designed for handicapped and physically impaired persons.

Pol. PA 5 Prior to development of new public access areas, ~~T~~the City should establish and implement a planning process to identify ~~seek~~potential opportunities to develop new public access areas ~~in locations dispersed throughout the shoreline~~. Through the planning process the City shall inventory available opportunities and factors that will help evaluate the sites, including: the character of the surrounding neighborhood, proximity to surrounding private properties, ability of the area and surrounding community to support the demands associated with new public access, impacts on the surrounding community, and other safety and risk management considerations. During the planning process, the City shall seek input from the general public and residents in the immediate vicinity of the identified public access opportunities. Through this planning process the City should prioritize ~~Highest priority should be placed on~~ reaches without existing public access if feasible. Only after the city has identified potential public access areas through this planning process, the City may consider ~~M~~the following mechanisms to obtain access to the shoreline ~~include~~:

a. Tax-title properties;
b. Donations of land and waterfront areas; and
c. Acquisition using grants and bonds.

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Pol. PA 6 The vacation or sale of street ends, other public right of ways and tax title properties that abut shoreline areas shall be prohibited. The City should protect these areas for public access and public viewpoints.

Pol. PA 7 Development of new street end parks requires proper planning to: inventory and evaluate new sites; seek public input; identify and mitigate impacts on the neighboring community and residences, including parking; ensure public safety; and ensure that street ends are limited to an appropriate scale in relation to the surrounding neighborhood. Only with proper planning, ~~W~~waterfront street ends ~~should~~ can be ~~recognized as~~:

a. A~~n~~ ~~important~~ potential community resource that can provide~~s~~ visual and physical access to the Puget Sound;

b. Special use parks which can serve the community, yet fit and support the character of the surrounding neighborhoods;

c. ~~A destination resource, where~~ Provide limited facilities and enhancements ~~are provided~~ that are carefully tailored to avoid impacts on the character of the surrounding community and neighboring private properties.

Pol. PA 8 The City should manage and develop waterfront street ends by:

a. Supporting their use by residents city-wide, yet ensuring that the street ends and their supporting facilities are developed at a limited level, scale ~~or~~ and capacity ~~which~~ that are appropriate to the neighborhood character, protect private property and personal privacy, promotes safety, and ~~is~~ consistent with City risk management practices;

b. Ensuring that: the parks are located only in areas where there re adequate parking opportunities to meet new parking demands; that the parks are an appropriate scale to avoid parking impacts on the surrounding communities; that adequate public parking is available;~~,~~ and that any new parking that is developed would be harmonious with the surrounding neighborhood;

c. Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area;

d. Installing signs that indicate the limits of the public's right of access and encourage appropriate use;

e. Installing limited trail improvements and enhancements to allow access to the water, only if: the surrounding community can support the demands associated with new trail improvements and enhancements; the City can ensure the safety of the public and local residents; and new trail improvements and enhancements do not adversely impact private property rights and personal privacy;

f. Minimizing the potential impacts associated with their use on adjacent private property, personal privacy, and public safety including required mitigation measures such as: fencing, adequate visual buffers, restricted hours of public access, site design that ensures separation of public and private uses, and posting signs that inform the public of the limits of the public access; and

g. Developing a street ends plan that promotes waterfront access.

Pol. PA 9 Waterfront street ends or other shoreline access should be planned in conjunction with the affected neighborhoods. However, the broader community should be notified during the public notification process.

Pol. PA 10 The City should disseminate information that identifies all locations for public access to the shorelines.

Pol. PA 11 ~~The public's visual access to the City's shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced.~~

Pol. PA 12 ~~Public views from the shoreline upland areas should be enhanced and conserved, while recognizing that enhancement of views should not be necessarily construed to mean removal of vegetation.~~

Comment [A1]: These provisions, as written, extends SMA provisions significantly to the detriment of priority residential shoreline uses. The only provision of the SMA expressly governing view is RCW 90.58.320, which protects views from nearby residences and only protects those views from structures higher than 35 feet. The SHB has also interpreted RCW 90.58.020 to require (in the context of project review) limited protections of public views from roads and parks. The City should strike these provisions or significantly reduce their reach.

Pol. PA 13 Promote a coordinated system of connected pathways, sidewalks, passageways between public buildings, beach walks on public beaches, and shoreline public access points that increase the amount and diversity of opportunities for walking and chances for personal discoveries.

20.20.020 Recreation Element

Goal REC

Develop a well-maintained, interconnected system of multi-functional parks, recreation facilities, and open spaces that: is attractive, safe, and accessible for all geographic regions and population segments within the City; supports the community's well-established neighborhoods and small town atmosphere; ~~and~~ does not adversely impact shoreline ecological functions and processes; and does not adversely impact nearby residential uses .

Pol. REC 1 The City should seek to ensure recreational boating and fishing opportunities in Puget Sound.

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Pol. Rec 2 Recreation facilities in the shoreline area should be restricted to those dependent upon a shoreline location, or those benefiting from a shoreline or in-water location that are in the public interest.

Pol. REC ~~2~~3 Recreational developments should be located, designed and

operated to be compatible with, and minimize adverse impacts on, environmental quality and valuable natural features as well as on adjacent surrounding land and water uses. Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and which leave natural areas undisturbed and protected.

Pol. REC ~~43~~ Public information and education programs should be developed and implemented to help ensure that the public is aware of park regulations and private property rights, and to prevent the abuse of the shoreline and its natural ecological system.

Pol. REC 54 The City shall plan to provide, in coordination with other agencies and the public, a range of park facilities that serve a variety of recreational and open space purposes. Through the planning process the City shall inventory available opportunities and factors that will help evaluate the sites, including: the character of the surrounding neighborhood, proximity to surrounding private properties, ability of the area and surrounding community to support the demands associated with new public recreation areas, impacts on the surrounding community, and other safety and risk management considerations. During the planning process, the City shall seek input from the general public and residents in the immediate vicinity of the identified public recreation areas. Such planning should use the following designations and guidelines to provide such diversity:

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1. Mini or Pocket Park

Use Description: Passive recreation or specialized facilities that *may* serve a concentrated or limited population such as children or senior citizens.

Service area: Approximately 1/3 of a mile radius.

Size: No minimum to approximately one acre.

Desirable Characteristics: These parks should be in close proximity to dwellings and or other centers of activity. Mini parks should be designed for limited ~~intensive~~ use, consistent with the surrounding community, and ~~should be~~ accessible and visible from surrounding area.

Examples: In Burien these types of parks are primarily private parks consisting of beach access for adjacent subdivisions, view appreciation areas (bench or platform), picnic tables and trees in a small area,

children's play area, game tables, or planted areas.

Other Considerations: Since maintenance costs of these smaller parks are high relative to their service areas, few jurisdictions are able to meet the desired quantity. This type of park is most suitable to provide unique local needs, such as shore access, or as a consideration in the design of new development. The City should seek a variety of means for financing and maintaining mini-parks, including considering opportunities for community stewardship and grant or private funding.

2. Regional Parks

Use Description: Areas of natural or ornamental quality for outdoor recreation such as picnicking, boating, beach activities, swimming, and trails. Such parks may contain special amenities, facilities or features that attract people from throughout the surrounding region. Such facilities require extensive on-site parking and good access by automobile.

Service area: Approximately 1/2 to 1 hour driving time.

Size: Approximately 90 acres.

Desirable Characteristics: Contiguous to or encompassing significant natural resources.

Examples: Seahurst Park.

3. Special Use Park

Use Description: Specialized or single-purpose recreational activities such as walking and bicycle trails, street ends, or areas that preserve buildings, sites or features of historical significance.

Service area: Variable.

Size: Depends on nature of facility.

Desirable Characteristics: Compatibility with adjacent facilities and uses.

Examples: Examples within Burien shoreline consist primarily of designated view points and historical markers, and waterfront street ends (including those at SW 170th Pl., SW 163rd Pl., and at the intersection of Maplewild Ave. SW and SW 172nd St.).

4. Conservancy Park

Use Description: Conservancy parks are formally designated public resource areas. In such parks the primary management objectives are protection and management of historical, cultural and natural resources, including fish and wildlife habitat areas and may include appropriate passive recreational activities.

Service area: None.

Size: As appropriate for the resource.

Desirable Characteristics: As appropriate for the resource.

Examples: Currently Salmon Creek Ravine is most appropriately classified in this category although its feasibility for including other types of park activities consistent with its character should be evaluated. This category would also apply to any significant formally designated land, protected wetlands or steep slope areas by private or public means.

Pol. REC 6 When planning new parks and recreational facilities, the City shall require or provide measures sufficient to mitigate impacts to nearby private properties. Appropriate mitigation measures may include: adequate visual buffers; fencing; restricted hours of public access; site design that ensures separation of public and private uses; posting signs that inform the public of the limits of the public access; and allocation of adequate resources and provisions for public safety. Additionally, the City will review for and require mitigation of parking impacts associated with the public access amenities on the surrounding neighborhood.

Pol. REC ~~57~~ Access for motorized vessels should be discouraged at Seahurst Park. Access for non-motorized craft should be considered if access for such craft can be provided in an environmentally-sensitive manner.

Pol. REC ~~68~~ Where appropriate, recreational developments should make adequate provisions for:

a. Vehicular and pedestrian access, both on-site and off-site;
b. Proper water supply and sewage waste disposal methods;
c. Security and fire protection;

d. The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and

e. Buffering of such development from adjacent private property or natural area.

Pol. REC 9~~7~~ Trails and pathways on steep shoreline bluffs should be located, designed and maintained to protect bank stability without the need for shoreline armoring.

Pol. REC 10~~8~~ Mooring buoys, in general, are beneficial in enabling increased recreational opportunities. However, the City should ensure that their possible negative effects on physical and visual environments are avoided.

Pol. REC 11~~9~~ Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity and in consultation with the Department of Fisheries.

Pol. REC 12~~0~~ The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and /or scenic drives, should be encouraged.

Pol. REC 13~~1~~ Development of recreational facility along City shorelines should implement Low Impact Development techniques whenever feasible.

20.20.025 Circulation Element

Goal CI

Provide safe, reasonable, and adequate circulation systems in the shoreline area that will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.

Pol. CI 1 Minimize impacts to the topography and other natural characteristics of the shoreline by appropriately locating transportation routes. New roadways for vehicle circulation should be located outside of or minimized within the shoreline area.

Pol. CI 2 Cross Puget Sound bridges should be prohibited within the Burien shoreline jurisdiction.

Pol. CI 3 ~~Provide~~Maintain and/or ~~enhance~~provide physical and visual public access to the degree required by RCW 90.58.020 along shoreline public roads and trails when appropriate given topography, views, natural features, and surrounding land uses.

Pol. CI 4 Public transit systems should provide service to designated shoreline public access points.

Pol. CI 5 Wherever practicable, safe pedestrian and bicycle movement on and off roadways in the shoreline area should be encouraged as a means of personal transportation and recreation.

Pol. CI 6 Parking in shoreline areas should directly serve a permitted shoreline use.

Pol. CI 7 Parking facilities should be located and designed to minimize adverse impacts, including those related to: stormwater runoff; water quality; visual qualities; public access; ~~and~~ vegetation and habitat maintenance; and compatibility with surrounding uses.

Pol. CI 8 Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use.

Pol. CI 9 Utilities are necessary to serve shoreline uses and shall be properly installed so as to protect the shoreline and water from contamination and degradation.

Pol. CI 10 Utility facilities and right-of-ways should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground.

Pol. CI 11 Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology and minimizes conflicts with present and planned land uses.

Pol. CI 12 Parking for new non-residential non water dependent uses should be located as far away as feasible from shorelines.

20.20.030 Land Use Element

Goal USE

Provide functional and attractive shoreline uses that are appropriate in scale, configuration, and location, and are sensitive to and do not degrade habitat and ecological systems and other shoreline resources.

Pol. USE 1 The Shoreline Master Program shall govern the development of all designated shorelines of the City. Lands adjacent to these areas shall be managed in a manner consistent with the Shoreline Master Program.

Pol. USE 2 The City will strive to ensure that basic community values are reflected in the City's land use and decision making processes, while recognizing the rights of individuals to use and develop private property in a manner consistent with City regulations.

Pol. USE 3 Ensure the appropriate location, design, and operation of all activities, development, and redevelopment in the shoreline.

Pol. USE 4 Incentives should be available to encourage the removal and/or reduction of non-conformances.

Pol. USE 5 If feasible, septic systems should be connected to the sanitary sewer system where connections are available.

Pol. USE 6 ~~Any existing single-family lot that was legally subdivided or legally created prior to enactment of subdivision statutes prior to incorporation or annexation shall be considered a legally conforming lot for building purposes, providing the size of the lot was not reduced by more than 50 percent through acquisition for public purposes, and on such lots new homes may be built and existing houses may be expanded and remodeled, provided that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met.~~

Comment [A2]: This is a substantive regulation and not a policy. BMHA proposes incorporating the provision, along with some revisions, into the nonconforming use provisions.

Pol. USE 7 When determining buildable lot size for residential development, the area of a lot covered by water (including but not limited to lakes or the Puget Sound) shall not be included in the calculation.

Pol. USE 8 The planned densities for single-family development should encourage a lower development potential in areas with development constraints.

Pol. USE 9 The Low Density Residential Neighborhood designation will provide for low-density residential development. Development within this designation includes existing neighborhoods that are zoned for four units per acre or less.

Allowed Uses and Description: The Low Density Residential Neighborhood designation allows single family residential uses and their accessory uses at a density of 4 units per acre or less, due to the constraints posed by critical areas. This policy may be implemented by more than one zoning category, based on the ability of the land and public facilities to support development. Development standards, for such items as impervious surfaces, streetscapes, sidewalks and stormwater drainage, may vary within each zoning category based on the existing character of the area.

Designation Criteria: Properties designated Low Density Residential Neighborhood should reflect the following criteria:

1. The area is already generally characterized by single-family residential development at four units per acre or less; and
2. Relative to other residential areas within the City, the area is characterized by lower intensity development as shown on Map LU-2.

3. The land is designated as a potential landslide hazard area, steep slope area, or wetland on the City of Burien's Critical Areas Map,
4. The existing and planned public facilities for the area cannot adequately support a higher density.
5. The area is subject to existing impacts from high levels of airport-related noise.

Pol. USE 10 Clustering of housing units may be allowed on lots designated for residential development that contains steep slopes and are located adjacent to an urban environment.

Pol. USE 11 As slope increases, development intensity, site coverage, and vegetation removal should decrease and thereby minimize the potential for drainage problems, soil erosion, siltation and landslides. ~~Slopes of 40 percent or greater should be retained in a natural state, free of structures and other land surface modifications.~~

~~1. Single-family homes and detached single-family garages on existing legally established lots are exempted from this restriction, provided that:~~

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~~a. The application of this restriction would deny any appropriate use of this property;~~

~~b. There is no other appropriate economic use with less impact;~~

~~c. The proposed development does not pose a threat to public health, safety or welfare on or off the development site;~~

~~d. Any alterations permitted to the critical area shall be the minimum necessary to allow for economic use of the property;~~

~~e. An analysis of soils, footings and foundations, and drainage be prepared by qualified professionals, certifying that the proposed activity is safe and will not adversely affect the steep slope hazard area or buffer, and~~

~~f. There are adequate plans, as determined by the City, for stormwater and vegetation management.~~

~~g. Short plats or other divisions of an existing legal lot shall only be approved if all resulting lots are buildable under this restriction.~~

~~h. It is the applicant's responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.~~

~~2. Short plats or other divisions of an existing legal lot shall only be approved if all~~

~~resulting lots are buildable under this restriction.~~

~~3. It is the applicant's responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.~~

Comment [A3]: These are substantive regulations, not policies.

Pol. USE 12 | The City should ~~prohibit~~ restrict new development on areas prone to erosion and landslide hazards. Further, the City should restrict development on potentially unstable land to ensure public safety and conformity with existing natural constraints, unless the risks and adverse impacts associated with such development can be appropriately mitigated.

Pol. USE 13 Land uses on steep slopes should be designed to prevent property damage and environmental degradation, and to enhance open space and wildlife habitat.

Pol. USE 14 Where there is a high probability of erosion, grading should be kept to a minimum and disturbed vegetation should be restored as soon as feasible. In all cases, the City shall require appropriate site design and construction measures to control erosion and sedimentation.

Pol. USE 15 City should have development standards that promote the siting of new structures such that they will not require shoreline stabilization and protective measures in the future.

Pol. USE 16 Shoreline stabilization and protective measures should be limited in number and extent. The use of "soft" stabilization and protective measures, such as vegetation, is preferred over the use of "hard" measures, such as concrete bulkheads.

Pol. USE 17 Encourage joint-use activities in proposed shoreline developments.

Pol. USE 18 Wakes generated by vessels operating in the shoreline area should be minimized in order to reduce adverse impacts on the shoreline environment.

Pol. USE 19 Limit use of pesticides and herbicides within shoreline jurisdiction.

Pol. USE 20 | Development should be designed to minimize impacts to both views of the shoreline and views from the water consistent with RCW 90.58.320 and RCW 90.58.020. Building orientation, height and the creation of view corridors shall be considered in site and structure design.

20.20.035 Conservation Element

Goal CON

Preserve and enhance shoreline natural resources in order to: protect public health, safety, and welfare; maintain the integrity of the natural environment; and preserve the quality of life in Burien.

Pol. CON 1 Protect ~~critical areas and~~ shoreline ecological processes and functions through regulatory and non-regulatory means. Protection may include acquisition of key properties, regulation of development, and incentives to encourage ecologically sound design.

Pol. CON 2 The City shall ensure that uses and development in shoreline areas is compatible with the shoreline environments designated in this Shoreline Master Program. Adherence to these designations will ensure that sensitive habitat, ecological systems, and other shoreline resources are protected.

Pol. CON 3 ~~The City of Burien's Critical Areas Map shall be used as a reference for identifying the City's critical areas. Other unmapped critical areas do exist throughout the City. Any site containing critical areas are subject to the special development regulations and conditions found in the City's Critical Areas Ordinance.~~

~~Pol. CON 4 Development should be directed toward areas where their adverse impacts on critical areas can be minimized.~~

Pol. CON 5 ~~New development or redevelopment should avoid or mitigate additional loss of shoreline ecological functions. Developments should be encouraged to improve ecological functions and restore riparian buffers.~~

Pol. CON 6 ~~The City shall maintain a system of development regulations and a permitting system to prevent the destruction of critical areas. Development regulations should at a minimum address wetland protection, aquifer recharge areas important for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas~~

Pol. CON 7 ~~The City shall require permit review approval before any activity or construction is allowed to occur in, adjacent to, or impact a critical area.~~

Pol. CON 8 ~~The City shall develop land use regulations to buffer critical areas from the impacts of adjacent land uses.~~

Pol. CON 9 ~~The City requires the use of Best Available Science for protecting critical areas within the community pursuant to the Growth Management Act RCW 36.70A.172(1).~~

Comment [A4]: The City's SMP should be independent of the City's CAO. It is inappropriate to simply incorporate parts of the CAO by reference. There are different standards under the GMA for critical areas than under the SMA. Combining the two would confuse these standards and lead to potentially inadvertent consequences.

Pol. CON 10 The City should provide education and technical assistance on low-impact development techniques.

Pol. CON 11 Provide public outreach and education about shoreline ecological functions and processes, and engage the public in stewardship and enhancement activities.

Pol. CON 12 Encourage minimizing the amount of impervious surfaces in new development through the use of appropriate low-impact development techniques and removing paved areas or using retrofit options in existing developments, where applicable, to minimize runoff.

Pol. CON 13 The City shall consider the impacts of new development on water quality as part of its environmental review process and require where appropriate any mitigation measures.

Pol. CON 14 Educate the public on water quality issues and impacts of stormwater flow.

Pol. CON 15 Educate individuals and households about different ways to reduce pollution.

Pol. CON 16 ~~If no feasible alternative exists, a limited amount of development may occur on wetlands and floodplains. In these instances, a broad range of site planning techniques should be explored to minimize impacts on these critical areas.~~

Pol. CON 17 ~~All wetland functions should be considered in evaluating wetland mitigation proposals, including fish and wildlife habitat, flood storage, water quality, recreation, educational opportunities, and aesthetics.~~

Pol. CON 18 ~~The City will protect wetlands by maximizing infiltration opportunities and promoting the conservation of forest cover and native vegetation.~~

Pol. CON 19 ~~Mitigation for any adverse impacts on wetlands shall be provided in the same basin within which the impacts occur.~~

Comment [A5]: While these policies may be appropriate in the context of a critical areas regulation, they are inappropriate in the SMP, which is more limited in scope and uses different standards.

Pol. CON 20 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.

Pol. CON 21 The City shall encourage an increase in tree canopies through the addition and the preservation of existing vegetation and use of landscaping as an integral part of development plans.

Pol. CON 22 The City ~~should require~~ encourages ~~development proposals to include~~ use of non structural measures to stabilize soils, hillsides, bluffs and ravine sidewalls and to promote wildlife habitat by removing invasive vegetation and retaining ~~or restoring~~ native vegetation.

Pol. CON 23 The City should consider developing policies that balance the removal of vegetation to preserve and enhance views with the need to retain vegetation to promote slope stability and open space.

Pol. CON 24 Enhance riparian vegetation to improve shoreline ecological functions and processes where possible.

Pol. CON 25 ~~The City should maintain and enhance existing species and habitat diversity including fish and wildlife habitat that supports the greatest diversity of native species.~~

Pol. CON 26 ~~All development activities shall be located, designed, constructed and managed to avoid disturbance of adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.~~

Pol. CON 27 ~~Fish and wildlife habitat should be protected, conserved and enhanced, including:~~

~~a. Habitats for species which have been identified as endangered, threatened, or sensitive by the state or federal government;~~
~~b. Priority species and habitats listed in the Adopted King County Comprehensive Plan, November 1994;~~
~~c. Shellfish areas;~~
~~d. Kelp and eel grass beds;~~
~~e. Herring and smelt spawning areas; and~~
~~f. Wildlife habitat networks designated by the City.~~

Pol. CON 28 ~~Fish and wildlife should be maintained through conservation and enhancement of terrestrial, air and aquatic habitats.~~

Pol. CON 29 ~~The City should ensure that habitat networks throughout the City are designated and mapped. The network should be of sufficient width to protect habitat and dispersal zones for small mammals, amphibians, reptiles, and birds. These networks should be protected through incentives, regulation and other appropriate mechanisms. Site planning should be coordinated during development review to ensure that connections are made or maintained amongst segments of the network.~~

Comment [A6]: While these policies may be appropriate in the context of a critical areas regulation, they are inappropriate in the SMP, which is more limited in scope and uses different standards.

Pol. CON 30 Native plant communities and wildlife habitats shall be integrated with other land uses where possible. Development shall protect wildlife habitat through site design and landscaping. Landscaping, screening, or vegetated buffers required during development review shall retain, salvage and/or reestablish native vegetation whenever feasible. Development within or adjacent to wildlife habitat networks shall incorporate design techniques that protect and enhance wildlife habitat values.

Pol. CON 31 ~~In order to minimize adverse impacts related to noise, unless prohibited by federal or state law, fish and wildlife habitat conservation areas within the City should be protected from exterior noise levels which exceed 55 dBA Ldn.~~

Comment [A7]: This is an overly restrictive policy that may have unintended consequences on recreational boating and fishing in the Puget Sound.

Pol. CON 32 The City shall promote voluntary wildlife enhancement projects which buffer and expand existing wildlife habitat, through educational and incentive programs for individuals and businesses.

Pol. CON 33 The City shall seek to retain as open space, those areas that provide essential habitat for any rare, threatened or endangered plant or wildlife species.

Pol. CON 34 The City should maintain, protect and enhance greenbelts riparian corridors and wildlife habit corridors so that the extent and intensity of the built environment is balanced by these natural features.

Pol. CON 35 The City shall work with property owners to encourage non-purchase options such as conservation easements, current use easements, and development covenants to preserve open space and greenbelts within the city's neighborhoods. The City should also accept donations of properties where public access is anticipated or planned.

20.20.040 Historic, Cultural, Scientific, and Educational Element

Goal HCSE

Identify, protect, preserve, and restore buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value for educational purposes, scientific endeavors, and enjoyment by the general public.

Pol. HCSE 1 The City should protect buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value through designation, acquisition by purchase or gift, and incentives for preservation.

Pol. HCSE 2 Ensure that properties having historic, cultural, scientific, or educational value are protected from undue adverse impacts associated with public or private uses and activities.

Pol. HCSE 3 The City should consider developing and implementing measures which preserve trees of historical significance.

Pol. HCSE 4 Encourage educational projects and programs, including signage, that foster a greater appreciation of the importance of buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value, as well as of shoreline management and environmental conservation.

20.20.045 Flood Prevention and Minimization Element

Goal FLD

Prevent and minimize flood damage to public and private property by locating development away from flood-prone areas and by protecting and restoring shoreline ecological functions and processes.

Pol. FLD 1 Discourage new development in shoreline areas that would be harmed by flood conditions, or which would create or intensify flood hazard impacts on other properties.

Pol. FLD 2 The capacity of natural drainage courses shall not be diminished by development or other activities.

Pol. FLD 3 New structural flood hazard reduction measures shall only be allowed where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished. New structural flood reduction measures shall be located landward of associated wetlands and wetland buffer areas, except where no alternative exists as documented in a geotechnical analysis.

Pol. FLD 4 ~~Monitor sea level rise and accordingly adjust development standards such building setbacks to minimize flooding potential.~~

Comment [A8]: This is a major policy that could have significant unintended consequences on existing residential development.

20.20.050 Restoration Element

Goal REST

Restore areas which are ecologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.

Pol. REST 1 Promote restoration actions that are doable, practical, and effective.

Pol. REST 2 The City shall be a good steward of public lands and should integrate restoration and/or enhancement of fish and wildlife habitats into capital improvement projects whenever feasible.

Pol. REST 3 Establish incentives that provide opportunities for new development or redevelopment activities in the shoreline to restore impaired ecological functions and processes. Incentives might include, but are not limited to: flexible development standards (e.g. setbacks, height limits, lot coverage), reduced or waiver of permits fees, and tax relief.

Pol. REST 4 The City shall promote voluntary shoreline enhancement projects through educational and incentive programs for individuals and organizations.

Pol. REST 5 The City should implement the restoration plan associated with this Shoreline Master Program.

Pol. REST 6 In the urban conservancy environment, improve natural stream and shoreline conditions to an environmental quality level that supports the return and continuation of salmon runs and eliminates fish blockages.

Comment [A9]: These policies are inappropriate in an altered urban shoreline environment.

Pol. REST 7 ~~Stream banks and stream channels should be maintained or restored to their natural condition wherever such conditions or opportunities exist.~~

Pol. REST 8 In the urban conservancy environment, increase availability of large woody debris and opportunities for recruitment in the nearshore zone.

Comment [A10]: These policies are inappropriate in an altered urban shoreline environment.

Pol. REST 9 Restore degraded shoreline areas with native species.

Pol. REST 10 The City should investigate partnerships with local environmental groups, city, state or county agencies, or tribes to implement projects and conduct follow-up monitoring and reporting.

Chapter IV. Shoreline Uses and Modifications Policies and Regulations

Table of Contents

20.30.001 Figure 4 Shoreline Permit Matrix

Type of Shoreline Permit Required for Shoreline Uses and Modifications*			
	Shoreline Residential	Aquatic	Urban Conservancy
Aquaculture	X	CU[1]	X
Boat Mooring Buoy	N/A	CU	N/A
Boat Ramp	X	X	X
Boat House (covered moorage)	X	X	X
Breakwater & other in-water structures	N/A	X	N/A
Bulkheads	~~CU~~SDP	CU	~~CU~~SDP
Cell towers	CU	N/A	X
Community Beach	CU	CU	X
Docks, Piers and Floats	CU	CU	CU
Dredging	N/A	X	N/A
Fill[2]	X	X	X
Floating home	N/A	X	N/A
Flood protection	SDP	SDP	SDP
Forestry (clearing)	CU	N/A	CU
Grading	CU	N/A	CU
Habitat Enhancement or Restoration	SDP	SDP	SDP
Industrial & Ports	X	X	X
Jetty	X	X	X
Mining	X	X	X
Parks	CU	N/A	CU
Recreation	~~SDP~~CU	~~SDP~~CU	~~SDP~~CU
Residential Single family**	SDP	N/A	SDP
Residential Multi family	SDP	N/A	CU
Schools	CU	N/A	CU
Transportation Facilities	SDP	X	SDP
~~Utilities~~	~~SDP~~	~~CU~~	~~SDP~~

SDP Shoreline substantial development permit
CU Shoreline conditional use permit
X Prohibited
N/A Not applicable
1 Prohibited in critical saltwater habitats and Lake Burien
2 Allowed if necessary to construct a permitted use
* ** Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit.
Exempt from shoreline substantial development permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-27-040(g), as amended.

20.30.005 Applicability

The following provisions shall apply to all uses and activities that are not otherwise exempt within the City of Burien's shoreline jurisdiction. These regulations are based on general goals and policies without regard to shoreline designation based upon elements of the shoreline detailed in Chapter II of this shoreline master program consistent with RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186 and WAC 173-26-221.

x Land Use
x Archaeological and Historic Resources
x Critical Areas
x Flood Hazard Reduction
x Public Access
x Shoreline Vegetation Conservation
x Water Quality, Storm Water, and Nonpoint Pollution

20.30.010 Impact Mitigation

1. Policy

a. Impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 1-2, 12-15 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

a. All shoreline development and uses shall occur in a manner that results in no net loss of shoreline ecological functions to the greatest extent *feasible*, through the location and design of all allowed development and uses. In cases where impacts to shoreline ecological functions from allowed development and uses are unavoidable, those impacts shall be mitigated according to the provisions of this section.

b. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), RCW chapter 43.21C, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (BMC Chapter 14 and WAC 197-11).

c. Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.
   i. Avoiding the impact altogether by not taking a certain action or parts of an action;

ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
iv. Reducing or eliminating the impact over time by preservation maintenance;
v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
vi. Monitoring the impact and the compensation projects and taking the appropriate corrective measures.

d. In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

e. Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.

f. When requiring compensatory measures or appropriate corrective measures pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

20.30.015 Land Use

The following provisions apply to all development and uses regardless of whether a shoreline substantial development permit is required.

1. Policies

a. Preference for shoreline permitted uses shall first be given to *water dependent uses,* then to *water related* and *water enjoyment uses.*

b. The city should be proactive in enforcing shoreline regulations and provide sufficient resources to ensure enforcement occurs.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 8-11 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

a. The application of master program policies and regulations to all uses and related modifications shall assure no net loss of ecological functions necessary to sustain shoreline natural resources.

b. *Water dependent uses* shall only be allowed overwater if the overwater location is necessary for the operation of the water dependent use. Uses which are not water dependent shall not be permitted overwater unless specifically stated otherwise in the regulations for the applicable shoreline environment.

20.30.020 Archaeological and Historic Resources

According to the state shoreline management guidelines, if archaeological or historic resources have been identified in shoreline jurisdiction, the local government is required to collect information about these resources and contact the state historic preservation office and local affected Indian Tribes. The county and the state maintain inventories of both archaeological and historic resources. These sites and artifacts are protected by several state provisions:

RCW Chapter 27.53— Archaeological Sites and Resources
This state law makes it illegal to knowingly disturb an archaeological site on public or private lands without a state-issued permit.

RCW Chapter 27.44— Indian Graves and Records
This state law makes it illegal to knowingly disturb Native American cairns, petroglyphs and graves on public or private lands without a state-issued permit. Selling any Native American Indian artifacts or remains removed from a cairn or grave is also illegal.

WAC 25-48—Archaeological Excavation and Removal Permit
This provision establishes procedures for application for and issuance of state permits for excavation and/or removal of archaeological sites and resources.

1. Policy

The City should ensure conservation of significant archeological and historic amenities in the shoreline areas and include on the inventory of registered sites maintained by the Washington State Office of Archaeology and Historic Preservation, and tribally identified sites.
(For additional policies refer to Chapter II General Goals and Policies, pg. 15.)

2. Regulations

a. Archaeological sites located in shoreline jurisdiction are subject to state and federal regulations as well as to the City of Burien Shoreline Master Program.

b. The City shall notify the relevant Native American tribe(s) when an application for work in the shoreline area is filed.

c. All shoreline permits shall contain the requirement to stop work immediately and notify the City, affected tribes and the Washington State Office of Archaeology and Historic Preservation if an artifact is discovered. The property owner will be required to provide for a site inspection and evaluation by a professional archaeologist for review by the relevant tribes and agencies prior to proceeding with the development or activity.

d. Archaeological excavations may be permitted subject to the provisions of this shoreline program.

20.30.025 Critical Areas

Critical areas include the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Critical saltwater and critical freshwater habitats are also types of critical areas within shoreline jurisdiction.

1. Policies

a. In assessing the potential for net loss of ecological functions or processes, project specific ~~and cumulative~~ impacts should be considered.

b. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Shoreline Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 12-15 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

a. BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with ~~the~~ two exceptions: (1) buffers from marine shorelines are governed by BMC 20.30.050; (2) claims that regulations deprive an owner of ~~of the~~ reasonable use are addressed in shoreline variance provisions, and the reasonable use provisions contained in BMC 19.40.070 (4) do not apply.

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Comment [A1]: The City's SMP should be independent of the City's CAO. It is inappropriate to simply incorporate parts of the CAO by reference. There are different standards under the GMA for critical areas than under the SMA. Combining the two would confuse these standards and lead to potentially inadvertent consequences. At the very least, revisions proposed are necessary to make clear that buffers from marine shorelines are governed by the SMP, and NOT the CAO.

b. Development proposals shall adhere to the applicable submittal requirements (a critical area report specific to the critical area) as specified in the Critical Areas Ordinance.

c. Development shall not intrude into, over, or within 10 feet from *critical saltwater habitats (e.g.,* eelgrass) except when an alternative alignment or location is not *feasible* and the development would result in no net loss of *critical saltwater habitat.*

d. When this Master Program requires mitigation, the mitigation sequence described in section BMC 20.30.0 10 shall be followed.

20.30.030 Flood Hazard Reduction

The following provisions apply to actions taken to reduce flood damage or hazard, as well as to uses, development and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, biotechnical measures, and storm water management. Flood hazard reduction measures may also include structural measures such as the weir at Lake Burien, floodwalls, dikes and elevation of structures consistent with the National Flood Insurance Program.

1. Policies

a. ~~All n~~New shoreline development ~~and uses~~ shall be located and designed to ~~prevent~~ avoid the need for future shoreline stabilization and structural flood hazard reduction measures ~~for the life of the development~~to the extent feasible.

Comment [A2]: For consistency with shoreline stabilization provisions

b. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.

c. New and expanded public flood protection measures may be permitted subject to City of Burien review and approval of a critical area study and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.

d. New structural flood protection measures ~~should only be~~ are allowed when necessary to protect new and existing development (including nonconforming structures) or to facilitate restoration projects.

e. When emergency repair of flood protection structures are necessary, permits for the work including mitigation, should be obtained upon abatement of the emergency or the structure must be removed.

f. Maintain the outlet weir at Lake Burien to provide a relatively constant lake level to minimize the potential for flooding.

(For additional policies refer to Chapter II General Goals and Policies, pg. 16.)

2. Regulations

a. Non-structural flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a non-structural solution is not feasible and there would be no net loss of shoreline ecological functions.

b. All flood protection measures, including repair and maintenance, shall conform to standards set forth in approved floodplain management plans, when available.

c. Flood protection shall not have adverse impacts on the property of others.

d. Flood control methods must be consistent with BMC 15.55-Flood Damage Prevention and BMC 19.40-Critical Areas.

e. Subdivision proposals shall be consistent with the need to minimize flood damage by conforming to the adopted Base Flood Elevation regulations.

20.30.035 Public Access

Public access can includes *physical access* or *visual access*. Physical access is ~~or~~ the ability of the general public to reach, touch, and enjoy the water's edge, to view the water and the shoreline from adjacent locations and/or to travel on the waters of the state~~, and to view the water and the shoreline from adjacent locations~~. Access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline is considered *visual access*.

1. Policies

a. When provided, ~~P~~public access to shoreline areas should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.

b. When provided, ~~P~~public access should be ~~provided~~ as close as possible to the water's edge without adversely affecting a critical area such as a wetland or adversely affecting private property and individual privacy.

c. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction.

(For additional policies refer to Chapter II General Goals and Policies, pg. 2-4 and Chapter III Management Policies, pg. 2-4.)

2. Regulations

a. Prior to development of new public access areas, the City should establish and implement a planning process to identify potential opportunities for new public access areas. Through the planning process the City shall inventory available opportunities and factors that will help evaluate the sites, including: the character of the surrounding neighborhood, proximity to surrounding private properties, ability of the area and surrounding community to support the demands associated with new public access, impacts on the surrounding community, and other safety and risk management considerations. During the planning process, the City shall seek input from the general public and residents in the immediate vicinity of the identified public access opportunities.

~~a.~~b. ~~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~~

Comment [A3]: It is unclear what is meant by this provision as written. The SHB has interpreted RCW 90.58.020 to require limited protections of public views from roads and parks, but this provision, as written, extends that beyond what is required.

~~b.~~c. The City encourages ~~V~~visual access to outstanding scenic areas ~~shall be provided with the provision of~~through enhancement of roadside pullovers or broadening of road shoulders.

~~c.~~d. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.

~~d.~~e. Unless it is not feasible, ~~P~~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.,

f. 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.

~~e.~~g. When the City or an applicant creates public access opportunities pursuant to these regulations, the City shall also require or provide measures sufficient to mitigate impacts from the public access on nearby private properties. Appropriate mitigation measures may include adequate visual buffers, fencing, restricted hours of public access, site design that ensures separation of public and private uses, and posting signs that inform the public of the limits of the public access. Additionally, the City will review for and require mitigation of parking impacts associated with the public access amenities on the surrounding neighborhood.

~~f.~~h. 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.~~i. Public access improvements shall not result in a net loss of shoreline ecological functions.

~~h.~~j. 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.~~k. Public access easements and permit conditions, when required, 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~~prior to construction or occupancy.

~~j.~~l. Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

Comment [A4]: The timing proposed in the original language does not work. For example, a project proponent should not be required to record an easement as a condition of a permit before appeal periods have lapsed or appeals are resolved.

20.30.040 Shoreline Vegetation Conservation

Vegetation along the shoreline plays a number of important roles including providing bank stability, habitat and wildlife corridors, shade and cover, wood and organic debris recruitment. By slowing erosion and retaining sediments, riparian vegetation reduces pollutants including nitrogen, phosphorus, hydrocarbons, PCBs, metals, and pesticides. Shoreline vegetation also prevents excessive turbidity by slowing down and filtering surface water runoff and associated sediments. This section should be used in conjunction with BMC section 20.30.050.

1. Policies

a. Native plant communities within shoreline jurisdiction including, but not limited to, wetlands, lakes, streams and bluffs should be protected and maintained to minimize damage to the Ecology and environment of the shoreline area.

b. Restoration and mitigation of shorelines degraded due to natural or manmade causes should, wherever feasible, use bioengineering techniques to arrest the processes of erosion and sedimentation, to improve water quality and to provide for properly functioning conditions.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 10-15.)

2. Regulations

a. ~~*Alterations* to vegetation~~New shoreline substantial development projects~~within shoreline jurisdiction~~ shall result in no net loss of shoreline ecological value or function of existing shoreline vegetation.

b. ~~*Alterations*~~ New shoreline substantial development within the shoreline vegetation conservation buffer shall only be allowed through approval of a vegetation management plan. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40.

c. Within a shoreline riparian buffer as set forth in BMC 20.30.050 ~~*alterations*~~ new shoreline substantial development project proposals 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 vegetated; and~~

~~iii.~~ii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and

~~iv.~~iii. Vegetation shall consist of mix of native trees, shrubs and ground cover; and

Comment [A5]: Ecology's shoreline vegetation conservation provisions apply to *new development*. *See* WAC 173-26-201(3)(d)(viii) ("new development"); WAC 173-26-221(5)(a) ("vegetation conservation standards do not apply retroactively to existing uses and structures")

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Comment [A6]: This inflexible standard does not take into consideration those project sites where the vegetation conservation buffer is not fully vegetated (e.g., single family residences with lawns). Subsection iv, below, is adequate to address City concerns by ensuring that new development does not result in loss of more vegetative buffer.

~~v.~~iv. When ~~*alterations*~~ new substantial development is~~are~~ proposed within a buffer, the end result shall be no loss of vegetated areas; and

vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and

vii. New substantial development projects may not include ~~L~~lawns ~~is a prohibited vegetation~~ in the shoreline vegetation buffer due to ~~its~~ their limited functional benefits and need for chemical and fertilizer application; and

viii. New substantial development projects should ~~I~~include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality.

d. Prior to issuance of a building permit, the applicant of a new shoreline substantial development project shall submit a vegetation management plan pursuant to section g. The plans shall state what erosion control measures will be implemented during and after construction resulting in long term shoreline stabilization.

e. All clearing, grading and vegetation removal associated with new shoreline substantial development project shall be the minimum necessary except for the removal of noxious and invasive vegetation. Hand equipment should be used when feasible.

f. In accordance with existing regulations, only noxious weeds shall be removed from the Lake Burien 30 foot wetland or wetland buffer without approval of the Shoreline Administrator. Replacement of non-native vegetation may be allowed through approval of a vegetation management plan as prescribed in section g.

g. ~~The Director may establish minimum standards for vegetation management plans. At a minimum, v~~Vegetation management plans required by this section 20.30.040 for new substantial development projects shall comply with the following;

i. Describe the area to be disturbed and the proposed vegetation to be altered; and

ii. Outline specific actions or methods that will be used to minimize impacts to the ecological functions and values; and

iii. Indicate how existing shoreline vegetation will be preserved and protected; and

iv. Describe measures that will be used or enacted that will ensure any alteration and required vegetation will be maintained for the duration of the use or development; and

v. Delineate any applicable critical area and/or buffer; and

vi. The plan shall document how the proposed alteration will result in ~~equal or better~~ ecological function and value that is equal to or better than pre-development conditions.

h. Hand removal of noxious weeds or invasive vegetation that constitutes new

development may be allowed without approval of a vegetation management plan as prescribe in section g, following a consultation with the shoreline administrator or his or her designee.

20.30.045 Water Quality, Storm Water and Nonpoint Pollution

Storm water picks up oil, grease, metals, yard and garden chemicals, dirt, bacteria, nutrients, and other pollutants from paved areas, and carries them to Puget Sound and Lake Burien without treatment. The higher rate of runoff from more impervious areas also results in decreased water quality by flushing more sediment into the water.

1. Policies

a. The City of Burien should protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 12.)

2. Regulations

a. Construction materials that come in continuous, direct contact with surface waters shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the City of Burien building official determines that there is no feasible alternative to toxic treatments that will provide the structural characteristics necessary for the project.

b. Low impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible.

20.30.050 Dimensional Standards for Shoreline Development

The following buffers and setbacks are based on the City of Burien Shoreline Inventory (Appendix 1), City of Burien Shoreline Analysis and Characterization (Appendix 2) and, the City of Burien Shoreline Cumulative Impacts Analysis (Appendix 4) reports contained in this shoreline master program.

There are two categories of dimensional standards: (1) standards shown in figure 5 for shoreline development of new structures and uses; (2) standards shown in figure 6 for

shoreline development associated with structures in existence as of December 1, 2010, the date of the adoption of this Master Program. In both instances, tThe shoreline riparian buffers and building setbacks are calculated from the ordinary high water mark or from the landward face of a bulkhead or other shoreline stabilization structure if one is present. For measurement methods, refer to BMC 19.17.

For single family residential development, the buffers presented in this section may be reduced to recognize existing patterns of development pursuant to BMC 20.30.095 through the conditional use permit process.

Figure 5 Dimensional Standards for New Uses and Shoreline Development of New Structures

	SHORELINE ENVIRONMENT DESIGNATION		
	Shoreline Residential	Urban Conservancy	Aquatic
Marine Riparian Buffer	50 ft.(3)	50 ft.	N/A
Lake Burien Riparian Buffer(1)	30 ft.(3)	N/A	N/A
Vegetation Conservation Buffer (2)	150 ft.	200 ft.	N/A
Building Setback from Riparian Buffer	15 ft.(3)	15 ft.	N/A
Height Limit (see BMC 19.15)	35 ft.	35 ft.	35 ft.
Lot Size (see BMC 19.15)	RS-12,000 RS-7,200 (Lake Burien)	RS-12,000	N/A
Building Coverage (see BMC 19.15)	35%	30%	N/A

(1) Consistent with BMC 19.40 and BMC 20.30.040 (2) (f).
(2) See BMC 20.30.040 Shoreline Vegetation Conservation for specific requirements.
~~(2)~~(3) For single family residential development, the buffers presented in this section may be reduced to a minimum of 20 feet pursuant to BMC 20.30.095 through the conditional use permit process.

Figure 6 Dimensional Standards for Shoreline Development Associated with Existing Residential Structures and Uses (as of December 1, 2010)

	SHORELINE ENVIRONMENT DESIGNATION		
	Shoreline Residential	Urban Conservancy	Aquatic

Marine Riparian Buffer	20 ft.	20 ft.	N/A
Lake Burien Riparian Buffer(1)	20 ft.	N/A	N/A
Vegetation Conservation Buffer (2)	150 ft.	200 ft.	N/A
Building Setback from Riparian Buffer	N/A	N/A	N/A
Height Limit (see BMC 19.15)	35 ft.	35 ft.	35 ft.
Lot Size (see BMC 19.15)	RS-12,000 RS-7,200 (Lake Burien)	RS-12,000	N/A
Building Coverage (see BMC 19.15)	35%	30%	N/A

(1) Consistent with BMC 19.40 and BMC 20.30.040 (2) (f).

(2) See BMC 20.30.040 Shoreline Vegetation Conservation for specific requirements.

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20.30.055 Shoreline Buffers

Regulations:

1. ~~A fifty foot riparian buffer for the marine shoreline (thirty feet for Lake Burien) shall be established from the ordinary high water mark for all lots.~~ The riparian buffer is measured landward from a perpendicular line from the edge of the OHWM.

2. Docks are allowed within the buffer as provided herein. Structures and development such as viewing platforms, boardwalks, benches, and trails are allowed when associated with public access.

3. ~~Whenever the Shoreline Administrator determines that monitoring has established a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the applicant or the property owner shall be required to institute corrective action(s), which shall also be subject to further monitoring as provided in this section.~~

Comment [A7]: It is not clear what is intended by this provision.

4. The Shoreline Administrator may require a performance bond(s) or other security in an amount sufficient to guarantee that all required mitigation measures will be completed in a manner that complies with conditions of approval and to guarantee satisfactory workmanship and materials for a period not to exceed five years. The Shoreline Administrator shall establish the conditions of the bond or other security

according to the nature of the proposed mitigation, maintenance or monitoring and the likelihood and expense of correcting mitigation or maintenance failures.

5. All costs associated with the mitigation/monitoring and planning including city expenses, shall be the responsibility of the applicant.

20.30.060 Select Shoreline Uses and Modifications

Shoreline master programs establish a comprehensive program of use regulations for shorelines and provisions for specific uses to assure consistency with the policy of the act and where relevant within the jurisdiction. This section provides specific policies and regulations for the following types of uses and modifications:

x Aquaculture

x Bulkheads and Other Shoreline Stabilization Structures x

Docks, Piers and Floats

x Habitat Restoration and Enhancement

x Recreation

x Recreational Mooring Buoys

x Residential

x Transportation Facilities and Parking

x Utilities

20.30.065 Aquaculture

Aquaculture means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Sport fishing is not considered an aquaculture activity. Aquaculture activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

1. Policies

a. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with existing adjacent uses.

b. Aquacultural facilities must be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

2. Regulations

a. Aquaculture shall be limited to geoduck harvesting within Department of Natural Resources' tracts or for recovery of a native aquatic population in accordance with a government and/or tribal approved plan.

b. Aquaculture is not permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses.

c. Aquaculture is prohibited in critical saltwater habitat or within a 10 foot buffer from these areas.

d. No aquatic organism shall be introduced into City of Burien shoreline areas without the prior written approval of the Director of the Washington State Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism.

e. No aquacultural processing, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall be permitted waterward of the ordinary high water mark unless fully contained within a tending boat or barge.

f. Shellfish seeding and culturing is allowed when conducted for native population recovery in accordance with a government and/or tribal approved plan.

20.30.070 Bulkheads and Other Shoreline Stabilization Structures

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, roads and utilities, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

1. Policies

a. New development should be located and designed to avoid the need for future shoreline stabilization to the ~~greatest~~ extent *feasible.*

b. New ~~B~~bulkheads should be designed to blend in with the natural surroundings and not detract from the aesthetic qualities or degrade the natural processes of the shoreline.

c. Burien should take active measures to preserve natural unaltered shorelines, and prevent the proliferation of new bulkheads and other forms of shoreline armoring.

d. Non-structural stabilization measures including relocating structures, increasing buffers, enhancing vegetation, managing drainage and runoff and other measures are preferred over structural shoreline armoring.

e. Where feasible, any failing, harmful, unnecessary, or ineffective structural shoreline armoring that cannot be repaired or replaced should be removed, and shoreline ecological functions and processes should be restored using non-structural methods.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7, 11, 13.)

2. Regulations

a. In general, ~~N~~non-structural shoreline stabilization or flood protection measures ~~shall~~ are preferred over ~~be used instead of~~ installation of new structural solutions ~~unless the project proponent demonstrates that a non-structural solution is not~~ where *feasible* ~~and there would be no net loss of shoreline ecological functions.~~

~~b. Construction of bulkheads, gabions, revetments, retaining walls and bluff walls, are only permitted when non structural methods (e.g., building setbacks, biotechnical vegetation measures, anchor trees, upland drainage control, and beach enhancement) are not feasible to protect a residence or other *primary structure* or essential public facility.~~

b. Existing structural shoreline stabilization measures may be repaired and maintained.

c. New structural stabilization measures ~~shall not be allowed except~~are permitted when the necessity to protect existing *primary* ***and appurtenant*** *structures* is demonstrated in the following manner:

i. New or enlarged structural shoreline stabilization measures for an existing *primary structure,* including residences and roads, shall not be allowed unless a geotechnical analysis demonstrates ~~, accepted by the City of Burien Shoreline Administrator, indicates~~ that there is a reasonable likelihood that the primary or appurtenant structure is in ~~imminent~~ danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.

ii. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

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Comment [AB]: This appears duplicative of the provisions below and creates confusion regarding the appropriate standard.

d. An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

i. The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect the *primary or appurtenant structures* or there is a need to protect established uses.

ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless ~~the residence was occupied prior to January 1, 1992, and there is overriding safety or environmental concerns~~the existing shoreline stabilization structure currently exists in that location. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

iii. Where a net loss of ecological functions associated with *critical saltwater habitats* would occur by leaving the existing structure, removal of that structure ~~would~~ may be required as part of the construction of the replacement.

e. Structural shoreline stabilization may be allowed to protect new development when all the following conditions apply or have been complied with:

i. The need to protect a new *primary structure* from damage due to erosion must be demonstrated by a geotechnical analysis ~~accepted by the City of Burien Shoreline Administrator~~. The analysis shall specifically find and state that there is a reasonable likelihood that the *primary structure* will be in ~~imminent~~ danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

ii. The erosion on the site is not being caused by upland conditions, such as the loss of vegetation and drainage.

iii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or are not sufficient.

f. Bulkheads shall be located and constructed in a manner which will not result in adverse effects on littoral drift and adjacent properties.

g. Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead.

h. The size and quantity of material utilized for ~~the~~ a new bulkhead shall be the minimum necessary to protect the structure from the estimated energy intensity of the shoreline hydraulic system. In the case of a replacement bulkhead, the size and

quantity of material cannot exceed that of the existing bulkhead unless a larger size or quantity of material is necessary to protect the structure from the estimated energy intensity of the shoreline hydraulic system.

i. The maximum height of a new bulkhead on the marine shoreline shall be no greater than four (4) vertical feet above the OHWM. A replacement bulkhead cannot exceed four (4) vertical feet above the OHWM or the size of the existing bulkhead, whichever is greater.

20.30.075 Docks, Piers and Floats

Docks are fixed structures floating upon the water. *Piers* are fixed, pile-supported structures. *Floats* (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. All of these types of overwater structures are found in the City's shoreline jurisdiction. These structures typically require permits from local, state and federal agencies. For structures overlying state owned lands, an Aquatic Lands lease and authorization from the Department of Natural Resources is required.

1. Policies

a. Inwater structures should be designed to minimize impacts to ecological functions of the water body including but not limited to water quality, anadromous and forage fish habitat, spawning and rearing areas, migration, and passage.

b. New *piers* and *docks* should be restricted to the minimum size necessary and permitted only when the applicant has demonstrated that a specific need exists to support the intended *water dependent* use.

c. Ensure that *docks, piers* and *floats* (rafts) are designed and maintained to avoid adverse impacts to the environment and shoreline aesthetics and minimize interference with the public's use of the water and public beach area.

d. Encourage the use of mooring buoys in place of overwater boating structures.

e. Encourage shared docks between multiple owners for single family waterfront development to minimize overwater coverage adversely impacting shoreline ecological functions.

f. Overwater structures should be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.

2. Regulations

a. New docks, *piers,* floats and rafts shall be limited to those required as part of a permitted water dependent use or for joint use of the facility.

b. Private, single residence piers for the sole use of the property owner shall not be considered an outright use on City of Burien marine shorelines. A pier, dock or float may be allowed on the marine shoreline when the applicant has demonstrated

a need for moorage and the following alternatives have been investigated and are not available or feasible:

i. Commercial or marina moorage;
ii. Floating moorage buoys;
iii. Joint use moorage pier.

c. The design and construction of docks, floats, and *piers* as well as their subsequent use and operation, shall:

i. Be capable of withstanding expected environmental conditions; and,
ii. Minimize interference with adjacent water uses and navigation; and
iii. Minimize adverse effects on fish, shellfish, wildlife, water quality and geohydraulic processes by limiting the size of the structure and the use of hazardous materials, incorporating grating to allow light passage or reflective panels to increase light refraction; and spaced and oriented to minimize shading and avoid a 'wall' effect that would block or baffle wave patterns, currents, littoral drive, or movement of aquatic life forms.

d. *Piers, docks* and *floats* shall not be used for residential dwelling purposes nor provide moorage for boats that are occupied longer than two (2) days unless pump-out facilities are available and then no longer than seven (7) days total.

e. Only joint use *dock,* moorage, *float* or launching facilities are allowed for attached dwelling unit developments.

f. Only one *dock,* moorage, raft, *float* or launching facility is allowed for each single family detached residential lot.

g. No covered moorage is allowed waterward of the ordinary high water mark.

h. The total surface area of *piers, docks, floats* and rafts shall not exceed 150 square feet of surface area.

20.30.080 Habitat Restoration and Enhancement

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. Restoration or enhancement of shoreline areas means a change of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic ecological functions of a former or degraded wetland or fish and wildlife habitat conservation area.

1. Policy

Habitat restoration or enhancement projects that are not exempt pursuant to WAC 173-27-040, may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 16 & 17.)

2. Regulations

a. Shoreline restoration or enhancement shall be designed to result in a natural shoreline with functions, vegetative communities and structure similar to what would historically have been found on the site or in the vicinity.

b. All shoreline restoration or enhancement projects shall ensure that critical areas and their functions are not degraded by the action.

c. Shoreline restoration projects shall implement the City's adopted shoreline restoration plan and be conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

d. Nonstructural approaches for shoreline restoration or enhancement shall be used for shoreline stabilization instead of bulkheads or other structural stabilization measures, where feasible.

e. Shoreline restoration projects that are not specifically listed in the City's adopted shoreline restoration plan shall be considered subject to approval of the Shoreline Administrator.

f. Existing artificial structures on a restoration project site that appear to be impeding natural recovery of a species or habitat shall be removed.

g. When habitat is restored or enhanced, priority shall be given to retention of snags and trees that provide overhanging vegetation and/or nesting or perching branches for eagles, other raptors, or priority species.

h. Shoreline habitat restoration or enhancement projects shall not adversely impact sediment processes, littoral drift, wetlands or fish and wildlife habitat conservation areas.

i. Beach enhancement shall not be allowed within spawning, nesting or breeding habitats unless the completed project will result in a greater long term benefit to the ecological functions and values.

j. Restoration of native vegetation shall comply with the vegetation conservation section BMC 20.30.040. In addition to the provisions of BMC section 20.30.040 a re-vegetation plan shall include a monitoring and maintenance program that shall, at a minimum, include the following:

a. Goals and objectives for the mitigation plan; and
b. Criteria for assessing the effectiveness of the mitigation; and
c. Monitoring plan including annual progress reports submitted to the Shoreline Administrator. The plan shall be in effect for a period of time sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and
d. A contingency/adaptive management plan.

k. Restoration resulting in movement of the *OHWM.*

(1) The Shoreline Administrator may grant relief from shoreline master program development standards and use regulations when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i) (A) Land that had not been regulated under this Shoreline Master Program prior to construction of the restoration project is brought under shoreline jurisdiction; or

(B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the shoreline master program; and

(ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by other development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;
(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;
(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during the Department of Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the Department of Ecology shall conduct its review when the City of Burien provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (2) of this section, the Department of Ecology shall provide at least twenty-days (20) notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on their web site.

(ii) The department shall act within thirty calendar days of close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(2) The public notice requirements of subsection (1)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the Department of Ecology under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(3) A substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

Comment [A9]: This section is confusing. Revisions are necessary to clarify intent.

20.30.085 Recreational Development

Shoreline recreational development includes facilities for activities such as hiking, fishing, picnicking, swimming, photography and viewing. It also includes facilities for more intensive uses, such as parks. This section applies to both publicly- and privately-owned shoreline facilities intended for use by the public or private group, association, or individual.

1. Policies

a. Allow a variety of active and passive recreation opportunities in the shoreline areas.

b. Encourage provision of view points, rest areas and picnic facilities in public shoreline areas.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 4-7, 15.)

2. Regulations

a. Prior to creation of new park facilities or expansion of existing park facilities, the City shall establish and implement a planning process to identify and evaluate potential opportunities. Through the planning process the City shall inventory available opportunities and factors that will help evaluate the sites, including: the character of the surrounding neighborhood, proximity to surrounding private properties, ability of the area and surrounding community to support the demands associated with new public recreation areas, impacts on the surrounding community, and other safety and risk management considerations. During the planning process, the City shall seek input from the general public and residents in the immediate vicinity of the identified public recreation areas.

~~a.~~b. Commercial recreational development or use in Seahurst Park shall be consistent with the provisions of this section.

~~b.~~c. Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.

~~c.~~d. Recreation areas shall promote public health, safety and security and not materially interfere with the normal public use of the water and shorelines.

~~d.~~e. Recreation facilities shall provide adequate provisions to to protect privacy and private property rights and prevent the general public from trespassing and overflowing into adjacent, privately owned properties. Provisions can include: adequate visual buffers, fencing, restricted hours of public access, site design that ensures separation of public and private uses, and posting signs that inform the public of the limits of the public access. Additionally, the City will review for and require mitigation of parking impacts associated with the public access amenities on the surrounding neighborhood.

~~e.~~f. Recreation facilities shall provide signage that prohibits tree cutting and collecting of marine life, driftwood and other natural materials.

~~f.~~g. Jet skis and water craft with combustion engines are prohibited on Lake Burien.

~~g.~~h. No person shall moor, anchor or dock a boat or other object overnight on or within

50 feet of the ordinary high water mark at any city beachfront park without authorization from the City of Burien Parks Department.

~~h.~~i. Should public access occur on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public access areas.

20.30.090 Recreational Mooring Buoys

A recreational mooring buoy is a device used to tie up a boat and typically consists of a line from the boat attached to a float at the water's surface with a cable or line fixed underwater to the submerged ground. The anchor line allows the boat to float and swing around the fixed buoy anchor.

1. Policies

a. Recreational boat mooring buoys are the preferred method to provide moorage instead of constructing new residential docks, piers or floats.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7.)

2. Regulations

a. Mooring buoys shall be located as close to the shore as possible while avoiding beaching under all tidal situations and no farther waterward than existing authorized mooring buoys unless the drift of the boat dictates it.

b. Mooring buoys shall be located away from critical saltwater habitat.

c. Mooring buoys shall utilize a system design that minimizes damage to underwater lands and marine vegetation.

d. Individuals owning residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes after obtaining approval from the State of Washington Department of Natural Resources (DNR), Washington Department of State Fish and Wildlife (WDFW) and the Army Corps of Engineers.

e. Recreational mooring buoys on public lands shall be installed using a DNR or WDFW approved system.

f. Buoys shall be visible under normal daylight conditions at a minimum of 100 yards during daylight hours and must have reflectors for night time visibility.

g. Recreational mooring buoys on public lands are prohibited for commercial and transient uses or live-aboards.

h. Boats must be sixty feet or less in length to tie up to a recreational mooring buoy on public lands.

i. A *Community Beach* may have one mooring buoy for every one hundred (100) lineal feet of waterfront.

j. Mooring buoys are prohibited on Lake Burien.

20.30.095 Residential Development

Single family residences are the most common form of shoreline development and are identified as a priority use in RCW 90.58.320 ~~when developed in a manner consistent with control of pollution and prevention of damage to the natural environment~~. Residential development shall mean the construction or exterior alteration of one or more buildings, structures or portions thereof which are designed for and used to provide a place of abode for human beings including one and two family detached dwellings, multi-family residences, townhouses and condominiums, together with appurtenances and accessory structures. Bed and Breakfast establishments are considered an accessory use.

1. Policy

a. The Shoreline Management Act gives priority to alterations for single family residences and their appurtenant structures.

b. New r~~R~~esidential development should ~~demonstrate that the development and its related activities will not be detrimental to~~be balanced against the public interest and public uses of the shoreline and its associated water bodies.

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(For additional policy guidance please see Chapter II General Goals and Policies, pg. 8-15.)

2. Regulations

a. **General.** When considering applications for ~~R~~residential development the City will consider ~~shall protect existing shoreline and water views, promote~~ public safety, ~~avoid adverse~~ impacts to marine bluffs and nearshore habitat and ~~not result in a net loss of~~ shoreline ecological functions.

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b. **Dimensional Standards.** Residential development in shoreline jurisdiction shall conform to the dimensional standards found in BMC 20.30.050.

c. **Common-line riparian buffer and building setback standards.** Riparian buffer and building setback standards may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve reduced buffer and setback for residential development under the following conditions:

i. Where there are existing legally nonconforming residences that encroach on the established *OHWM* buffer and setback, within 50 feet of either side of the proposed building site, the required buffer and setback from the *OHWM* of the new or expanded home may be reduced. In such cases, proposed residential structures may be set back from the *OHWM* common to the average of the setbacks of the existing adjacent residences. (see Figure 6)

ii. In those instances where only one existing nonconforming single family residence is within 50 feet of the proposed building site, the

OHWM setback of the proposed structure may be reduced to the average of the *OHWM* setbacks for the existing adjacent residence and the applicable setback for the adjacent vacant parcel (65-feet for marine shorelines, 45-feet for Lake Burien).

iii. In no case shall the reduced buffer and setback be less than 20 feet landward of the *OHWM* without a variance.

iv. In cases where the common line setback does not apply, expansion within the buffer/setback of existing homes may be allowed through a conditional use permit if there is no development waterward of the existing primary structure.

v. Any setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.

d. **Lot size calculations.** Lot size calculations shall not include portions of the lot that are waterward of the ordinary high water mark.

e. **Bluff top protection.** New development located at the top of bluffs in shoreline jurisdiction must be setback to ensure that shoreline stabilization is unlikely to be necessary for the life of the structure as demonstrated by a geotechnical analysis.

f. **Vegetation removal for access.** Private access from single family detached residences to the shoreline shall avoid removal of trees and other woody vegetation when *feasible*.

g. **Accessory structures.** Accessory structures that are not normal appurtenances as defined at the end of this chapter must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural features.

h. **Floating homes or houseboats.** Floating homes or houseboats are prohibited in shoreline jurisdiction.

i. **Stairs and trams.** Construction of new ~~S~~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*.

j. **Beach stairs and trams design.** New ~~B~~beach stairs and trams shall be designed and located such that no fill or other modification waterward of the ordinary high water mark is necessary to construct or use the structure. Stairways, trams and landings shall be located upland of existing bulkheads.

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Figure 6Z Common-line Riparian Buffer and Building Setback Reduction Examples_STRIKE THE PHRASE "NON-CONFORMING" from the graphic

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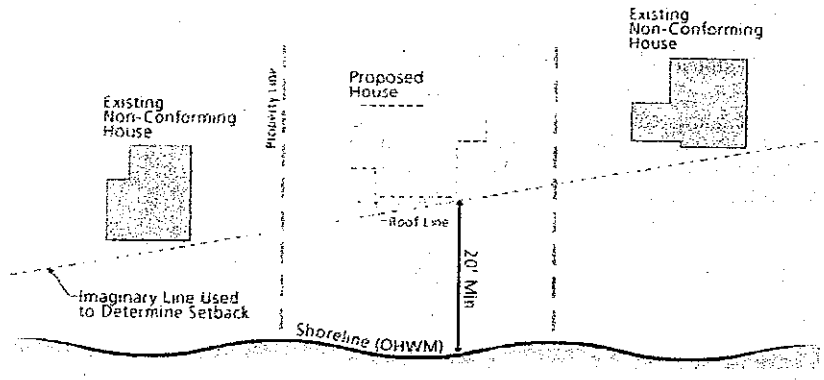
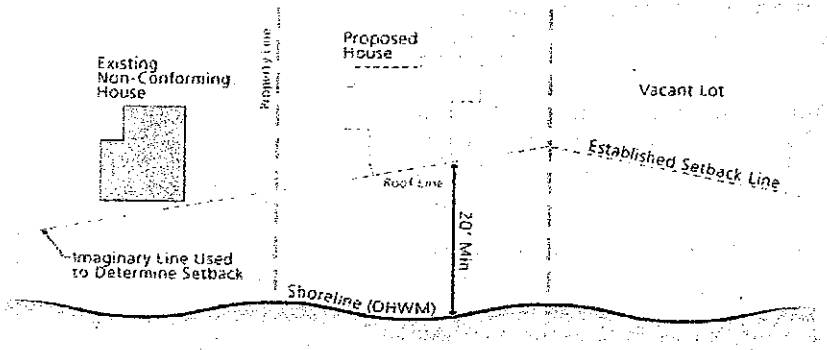


OHWM = Ordinary High Water Mark



OHWM = Ordinary High Water Mark

20.30.100 Transportation Facilities and Parking

Transportation facilities are those structures and developments that aid in land and water surface movement of people, animals, goods and services. They include streets, bridges, bikeways, trails and other related facilities.

1. Policies

a. All new or expanded roadways should be designed and located to minimize impacts to shoreline ecological functions including riparian and nearshore areas, and the natural landscape.

b. Parking, other than parking incidental to residential uses, is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7 & 8.)

2. Regulations

a. Unless in support of public access or other authorized use, new transportation and parking facilities shall be located outside of the shoreline jurisdiction or as far landward from the ordinary high watermark as feasible.

b. Transportation facilities shall be designed and maintained to minimize erosion, preserve natural drainage ways and utilize low impact development techniques.

c. Require transportation and utility facilities share use of rights-of-way to minimize disturbance in shoreline areas.

d. The City shall give preference to mechanical means rather than the use of herbicides for roadside brush control on City streets in shoreline areas.

e. Construction debris, overburden and other waste materials shall not be allowed to enter into any water body by disposal or erosion from drainage, high water or other means.

f. Transportation facilities shall provide public access appropriate to the location and extent of the facility.

g. All shoreline areas disturbed by road construction and maintenance shall be replanted and stabilized. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established.

h. Landscaping shall be provided to minimize visual impacts for all new and expanded transportation facilities in shorelines. A landscape plan shall be provided in conjunction with review and issuance of a shoreline substantial development permit.

20.30.105 Utilities

Utilities are services and facilities that produce, convey, transmit, store, or process water, sewage, communications, electric power, fuel, natural gas, and the like. On-site utility features serving a primary use, such as a water, sewer or gas lines to a residence, are "accessory utilities" and shall be considered a part of the primary use.

1. Policies

a. On-site utility features serving a primary use, such as a water, sewer or gas lines to a residence, are considered a part of the primary use.

b. Utilities production and processing facilities, such as sewage treatment plants, or parts of those facilities that are nonwater-oriented should not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

c. Utilities should be located and designed to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

d. New development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 4 & 9.)

2. Regulations

a. Utilities shall be placed underground whenever *feasible.*

b. New development of underwater pipelines and cables on tidelands is prohibited except for deepwater outfalls and facilities where no other reasonable alternative exists.

c. New cable crossings for telecommunications and power lines entering or leaving a body of water shall be bored or buried below the surface of the water body's bed

from the ordinary high water mark out to a minimum water depth of minus ten feet (-10') below mean lower low water.

d. Directional boring, instead of excavation or trenching is required where *feasible.*

e. New transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where *feasible* and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

f. New or altered aerial utility lines and vertical utility facilities shall make maximum use of topography to minimize visual impact on the surrounding area.

g. Communication and radio towers shall not obstruct or destroy scenic views of the water. This may be accomplished by design, orientation and location of the tower, height, camouflage of the tower, or other features consistent with utility technology.

h. Culverts shall be located and installed in accordance with City of Burien standards and specifications.

i. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

j. Except for water lines, all underwater pipelines transporting substances hazardous to aquatic life or water quality are prohibited unless no other practical alternative exists. Such facilities shall include an automatic shut off valve on both shorelines and maintenance procedures are established.

k. Expansion or repair of existing, underground utilities within shoreline jurisdiction shall include reclamation of areas disturbed during construction including, where *feasible,* replanting and maintenance care until the newly planted vegetation is established.

Chapter V. Administration and Shoreline Permit Procedures

Table of Contents

20.35.001 Purpose and Applicability

The purpose of this chapter is to establish a program for the administration and enforcement of the permit system for shoreline management provided by the Shoreline Management Act of 1971 (RCW Chapter 90.58). This chapter applies to all development within shorelines of the state within the City of Burien's shoreline jurisdiction. The City's shoreline administrative procedures are intended to be consistent with all provisions, criteria, application requirements, public notice requirements, and local or state review procedures set forth in WAC 173-27, Shoreline Management Permit and Enforcement Procedures. In the event of any inconsistencies between this Shoreline Master Program and WAC 173-27, the WAC shall govern.

All development in designated shoreline areas shall comply with the policy, provisions, and intent of the City of Burien Shoreline Master Program. Definitions contained in the Shoreline Management Act of 1971 (RCW Chapter 90.58) and the Shoreline Master Program Guidelines (WAC Chapter 173-26) shall apply to all terms and concepts used in this chapter, provided that definitions contained in this title shall be applicable where not in conflict with the Shoreline Management Act and the Shoreline Master Program Guidelines. In addition, the City will establish minimum application requirements, checklists, handouts, forms and fees for shoreline permits and shoreline exemption determinations.

Amendments to the City of Burien Shoreline Master Program will not become effective until approval by the Washington State Department of Ecology pursuant to RCW 90.58.090.

20.35.005 Authority and Rule of Liberal Construction

This chapter is promulgated pursuant to the authority and mandate of RCW 90.58.140(3). Compliance with this chapter shall constitute compliance with the Shoreline Management Act, the Shoreline Master Program Guidelines, and the City of Burien Shoreline Master Program (SMP) for evaluating permits on shorelines of the state.

As provided under RCW 90.58.900, the Shoreline Management Act (SMA) is exempted from the rule of strict construction. The SMA and the City of Burien Shoreline Master Program shall, therefore, be liberally construed to give full effect to the purposes, goals, policies, and standards for which the SMA and this Master Program were enacted. Exemptions from the Act or this Master Program are to be narrowly construed.

20.35.010 Shoreline Permit Types and Review Procedures

1. **Non-Exempt Activities.** All non-exempt substantial use and development undertaken on the City of Burien's shoreline jurisdiction must first obtain either a shoreline exemption, *Shoreline Substantial Development Permit, Shoreline Conditional Use Permit,* or *Shoreline Variance* from the City.

2. **Pre-application Meeting.** The owner of the subject property or the authorized agent of the owner is encouraged to have a pre-application meeting with the Shoreline Administrator to determine the appropriate type of shoreline permit needed for the proposed action.

3. **Consolidated Permit Review.** All shoreline permits shall be processed using the Type 1 land use decision process as set forth in BMC Chapter 19.65. If any shoreline use or development is subject to other approvals or permits under another permit authority, such as the zoning or subdivision codes, they shall be subject to a consolidated review and the decision maker designated for the approval or permit shall be the decision maker for the consolidated review.

   Issuance of a shoreline permit is typically processed as a Type 1 land use action as set forth in the City of Burien Municipal Code Chapter 19.65. A Type 1 land use decision is an administrative decision made by the Community Development Director following issuance of a public notice, consideration of written public comments and review of a written staff recommendation. The Director's decision can be appealed to the City's Hearing Examiner. Depending on the underlying land use permits, the shoreline permit maybe processed as a Type 2 or 3 process involving the Hearing Examiner or the City Council.

4. **Public Notice.** Public notice of an application for a shoreline permit shall be provided pursuant to BMC Chapter 19.65 unless otherwise specifically stated in this code. The public notice period shall extend thirty (30) days. If there is conflicting public notice time periods with State Law or Administrative Codes, the longer notice period shall be used.

5. **Department of Ecology Notification.** The Washington Department of Ecology-SEA Division (Ecology) shall be notified of the permit decision in the case of a shoreline permit or shoreline exemption involving a federal agency.

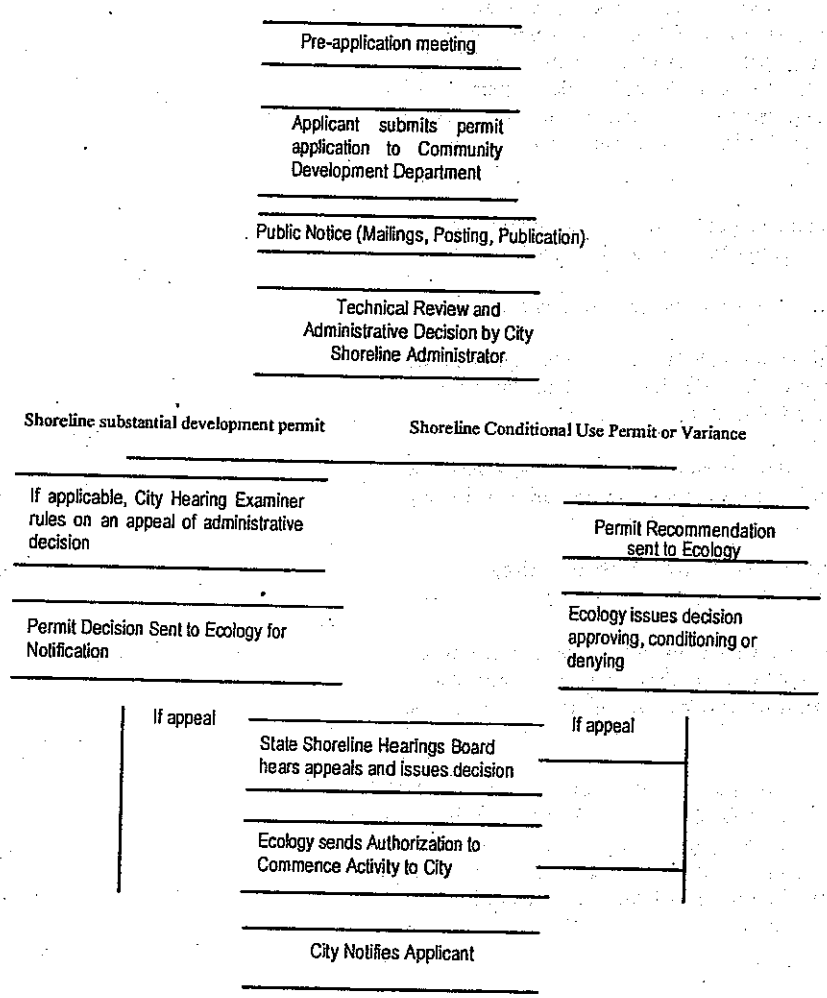
6. **Compliance with Regulations.** In the case of either a shoreline conditional use permit or a shoreline variance, the Shoreline Administrator shall determine the application's compliance with the relevant review criteria and prepare a recommendation that is then forwarded to Ecology for review and approval. The City's recommendation may include issuing the shoreline permit, issuing the shoreline permit with conditions, or denial of the requested shoreline permit.

7. **Shoreline Conditional Use Permit required.** A development activity or use that is listed as a conditional use pursuant to this master program or is an unclassified use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

8. **Shoreline Variance Required.** When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance, consistent with WAC 173-27-170.

Figure 7 is a flow chart illustrating the shoreline permit review process for a type 1 shoreline permit.

Figure 7 Shoreline Permit Review for Type 1 Process



20.35.015 Shoreline Substantial Development Permits

1. **Substantial Development Permit Required.** Prior to any shoreline substantial development within a shoreline of the state, a shoreline substantial development permit shall be obtained. A shoreline substantial development permit may be granted only when the development proposed is consistent with the Shoreline Management Act, the City of Burien Shoreline Master Program, the State Environmental Policy Act, and other applicable statutes, plans, regulations and policies. Development undertaken pursuant to the issuance of a permit shall be limited to that specifically delineated on the official site plan submitted by the applicant. The development shall be in compliance with any and all conditions imposed upon such permit at its issuance, including any impact mitigation measures identified in documents submitted in support of the application.

2. **Approval Criteria.** A substantial development permit shall be granted by the Shoreline Administrator only when the development proposed is consistent with the following;
   A. City of Burien Comprehensive Plan, Burien Municipal Code, and Burien Shoreline Master Program; and
   B. The proposed development or activity must also be found to be consistent with policies, guidelines, and regulations of the state Shoreline Management Act (RCW 90.58, WAC 173-26 and WAC 173-27).

3. **Authority to Condition.** The Shoreline Administrator may attach conditions to the approval of permits and shoreline exemptions as necessary to assure this consistency.

20.35.020 Substantial Development Permits for Limited Utility Extensions and Bulkheads

1. **Procedures.** An application for a substantial development permit for a limited utility extension or for the construction of a new bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

   a. The public comment period shall be 20 days. The notice provision set forth in BMC 19.65.040 shall explain how the public may obtain a copy of the city's decision on the application no later than two days following its issuance consistent with BMC 19.65.055. If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

b. For purposes of this section, a limited utility extension means the extension of a utility service that:

1. Is categorically exempt under RCW Chapter 43.21C for one or more of the following: natural gas, electricity, telephone, water or sewer;

2. Will serve an existing use in compliance with RCW Chapter 90.58; and

3. Will not extend more than 2,500 linear feet within the shorelines of the state.

20.35.025 Exemptions from Shoreline Substantial Development Permits (See WAC 173-27-040 for additional language and details)

1. **Rule of Narrow Construction.** There are several types of development activities that are exempt from the requirement to obtain a Shoreline Substantial Development Permit. State law requires that such exemptions be construed narrowly and if any part of the development is not eligible for exemption, then a Substantial Development Permit is required for the entire proposed development. No pre-application meeting is required for a shoreline exemption and the City usually makes a determination within thirty days. The Department of Ecology does not review shoreline exemptions unless State or Federal agency approvals are required for the project.

2. **Shoreline Exemption Process.** Exemption from the Shoreline Substantial Development Permit process does not constitute exemption from compliance with the policies and use regulations of the SMA (RCW 90.58); the provisions of this master program; or other applicable city, state or federal permit requirements. The Shoreline Administrator is authorized to grant or deny requests for exemptions from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in the Shoreline Permit Matrix (Figure 4) of this master program. Such requests shall be applied for on forms provided by the Shoreline Administrator. The request shall be in writing and shall indicate the specific exemption of this SMP that is being applied to the development. The Shoreline Administrator shall prepare an analysis of the consistency of the project with this SMP and the SMA. As appropriate, the Shoreline Administrator's analysis and decision shall include statements of exemption which may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the SMA and SMP. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to BMC 19.65.

3. **Agency Approvals Required.** Even though a project is exempt from obtaining a substantial development permit, it may still need approvals from other agencies. If the proposal involves construction within navigable water or if the project includes dredging or placement of fill, a U.S. Army Corps of Engineers Section and 10 and/or

404 permit is required. In addition, if the project involves construction or other activity waterward of the ordinary high water mark or if the project includes an activity that will use, divert, obstruct, or change the natural flow or bed of any state waters, a Hydraulic Project Approval from the Washington State Department of Fish and Wildlife is required.

4. **Exemptions.** The following developments or activities shall not require a local Shoreline Substantial Development Permit:

   A. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred and eight dollars ($5,718), if such development does not materially interfere with the normal public use of the water or shorelines of the state and does not result in a net loss of ecological functions. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.5 8.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

   B. **Normal Maintenance and Repair.** Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including, but not limited to its size, shape, configuration, location and external appearance, except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment. Normal repair must occur within a reasonable period after decay or partial destruction. If decay or partial destruction occurs to an extent of fifty percent or greater of the replacement cost of the original development, repair or replacement must be addressed within one year. Restoration may include total replacement of buildings and structures when supported by a statement from the Building Official that complete replacement is common practice. Replacement of nonconforming buildings, structures, land and uses shall comply with the provisions of BMC Chapter 19.55 and the Burien SMP.

   C. **Construction of a normal protective bulkhead common to single family residences.** A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Bioengineered erosion control and alternative bank stabilization projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been

approved by the Department of Fish and Wildlife. Backfill behind a constructed normal protective bulkhead is allowed, however no more than 1 cubic yard of fill per 1 horizontal foot of bulkhead wall may be used.

D. **Emergency Construction.** Emergency construction necessary to protect property from damage by the elements. An *emergency* is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed, except where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation. Upon abatement of the emergency situation the new structure shall be removed or any permit be obtained which would have been required, absent an emergency, pursuant to RCW Chapter 90.58, or the Burien Shoreline Master Program.

E. **Single Family Residence.** Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his/her own use or for the use of his/her family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the state agencies having jurisdiction and the City. "Single-family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenances. An *appurtenance* is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Appurtenances typically include a garage, decks, driveway, utilities and fences. Construction of a single-family residence may include grading which does not exceed two hundred fifty (250) cubic yards, and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

F. **Marking of Property Lines.** The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.

G. **Navigational Aids.** Construction or modification, by or under the authority of the Coast Guard, of navigational aids such as channel markers and anchor buoys.

H. **State Certified Project.** Any project with a certification from the Governor pursuant to RCW Chapter 80.50.

I. **Site Exploration and Investigation.** Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

   i. The activity does not interfere with the normal public use of the surface waters;

   ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water

quality, and aesthetic values;

iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to ensure that the site is restored to preexisting conditions;

v. The activity is not subject to the permit requirements of RCW 90.58.550 (oil or natural gas exploration in marine waters).

J. **Noxious Weeds.** The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or Ecology jointly with other state agencies under RCW Chapter 43.21 C.

K. **Watershed Restoration Projects.** The Shoreline Administrator shall review *watershed restoration projects* for consistency with the this master program in an expeditious manner and shall issue a decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee will be charged for accepting and processing requests for a shoreline exemption for watershed restoration projects as used in this section.

L. **Private or Public Restoration Projects.** A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:

i. The project has been approved in writing by the Washington State Department of Fish and Wildlife (WDFW) as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;

ii. The project has received hydraulic project approval by WDFW pursuant to RCW Chapter 75-20; and

iii. The Shoreline Administrator has determined that the project is consistent with this master program.

M. **Hazardous Substance Remedial Actions.** The procedural requirements of RCW Chapter 90.58 shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to RCW Chapter 70.1 05D or to Ecology when it conducts a remedial action under RCW Chapter 70.1 05D. Ecology shall, in consultation with the City, assure that such projects comply with the substantive requirements of RCW Chapter 90.58, WAC Chapter 173–26 and this master program.

20.35.030 Letter of Exemption

1. **Letter of Exemption, General.** Applicants for other permits or approvals must obtain a written letter of exemption verifying the proposed development as not subject to a Shoreline Substantial Development Permit. The letter of exemption must state how the proposed action is consistent with the policies and regulations of the City of Burien Shoreline Master Program. For example, the approval of a Building Permit for a single-family residence and bulkhead can be conditioned on the basis of shoreline policy and use regulations. The Building Official or other permit authorizing official, through consultation with the Shoreline Administrator, shall attach shoreline management terms and conditions to a building permit or other permit approvals pursuant to RCW 90.58.140.

2. **State and Federal Agencies.** Where shoreline development proposals are subject to review, approval, and permitting by a federal or state agency, the Shoreline Administrator shall prepare a letter and send to the Department of Ecology indicating the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the City's analysis of the consistency of the project with the City of Burien Shoreline Master Program and the state Shoreline Management Act.

20.35.035 Shoreline Conditional Use Permits (See also WAC 173-27-160)

1. **Purpose.** The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of the Burien Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act. This allows for review of a proposed action which may have a potential for compatibility concerns with nearby uses of other impacts that could be resolved under special circumstances with appropriate mitigation measures or conditions of approval.

2. **Criteria.** Shoreline conditional uses identified in the Burien Shoreline Master Program Use Matrix or those that are unlisted uses but not prohibited uses, may be allowed only when the applicant can demonstrate all of the following:

    a. The proposed use will be consistent with RCW 90.5 8.020 and the Shoreline Management Act and the Burien Shoreline Master Program;

    b. The proposed use will not interfere with the normal public use of public shorelines;

    c. The proposed use and development of the site and design of the project will be compatible with other permitted and planned uses within the area;

    d. The shoreline proposal will not result in significant adverse impacts on the shoreline environment and that the cumulative impact of additional

requests for like actions in the area will remain consistent with the policies of the Shoreline Management Act and the Burien Shoreline Master Program.

e. That the proposed use will not cause a substantial detrimental effect to the public interest. In authorizing a shoreline conditional use permit, special conditions may be attached to the permit to prevent undesirable effects of the proposed use, to ensure consistency with the Shoreline Management Act and the Burien Shoreline Master Program, or to address cumulative impacts of all like actions.

20.35.040 Shoreline Variance Permits (See also WAC 173-27-170)

1. **Applicability.** A shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that strict implementation of the policies, regulations or development standards would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020 or the Burien Shoreline Master Program. Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.5 8.020. The applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect. A variance permit cannot be granted for a use.

2. **Landward Variance Criteria.** Variance permits for development and/or uses that will be located landward of the ordinary high water mark and/or landward of a wetland may be authorized provided the applicant can demonstrate all of the following:

   a. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
   b. The hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
   c. The design of the project is compatible with other authorized developments within the area and with uses planned for the area under the City's comprehensive plan and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
   d. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
   e. The variance requested is the minimum necessary to afford relief; and
   f. The public interest will suffer no substantial detrimental effect.

3. **Waterward Variance Criteria.** Variance permits for development and/or uses that will be located waterward of the ordinary high water mark or within a wetland, may be authorized provided the applicant can demonstrate all of the following:

   a. The strict application of the bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program precludes all reasonable use of the property;
   b. The proposal is consistent with the criteria established (b) through (f) of section 2; and
   c. The public rights of navigation and use of the shorelines will not be adversely affected.

4. **Consideration of Cumulative Imp acts.** In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.5 8.020 and shall not cause substantial adverse effects to the shoreline environment.

20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses

1. **Nonconformance Defined.** A nonconforming use or structure means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the City of Burien's shoreline master program, or amendments thereto, but which does not conform to currently adopted regulations or standards.

2. **Limitations on Nonconforming Structures.** . ~~Uses and developments that were legally established and are nonconforming with regard to the use regulations of this master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single family may be modified consistent with this section of the City of Burien Shoreline Master Program.~~

   Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, density, bulk, or height, may be maintained~~,~~ and repaired~~,~~ and may be enlarged or expanded provided that ~~these actions~~said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

   Additionally, enlargement or expansions of a single family residence including the addition of normal appurtenances as defined in 20.40.000 that would increase the

nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:

a. The structure must be located landward of the ordinary high water mark.

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b. Expansions shall not extend further into the minimum side yard setback, or further into any critical area unless authorized by the provisions of BMC 19.40.

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c. The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of Burien SMP section 20.30.030.

3. ~~**Voluntary Removal,**~~ **Moving ~~or Alterations~~.** ~~Voluntary removal or alteration of a primary structure or appurtenance that exceeds 50% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll shall comply with the provisions of this City of Burien Shoreline Master Program.~~ A nonconforming structure which is moved any distance must be brought into conformance with provisions of this shoreline master program and the SMA.

4. ~~**Reconstruction**~~ **of Nonconforming Structures.** A nonconforming structure ~~which~~ that is ~~destroyed~~damaged to an extent not exceeding 80% of the actual or appraised replacement cost~~, deteriorated, or damaged more than 50% of the assessed value~~ of the *nonconforming structure* ~~as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God,~~ may be reconstructed and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity prior to damage by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Reconstruction is allowed only if ~~only insofar as it is consistent with existing regulations and the following:~~

~~a. The structure must be located landward of the ordinary high water mark.~~

~~b. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program.~~

~~c. The remodel or expansion shall not cause adverse impacts to shoreline ecological functions or processes.~~

~~d. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into the riparian buffer, or the minimum required side yard setback require a variance.~~

~~e.~~ ~~A~~an application is filed for the permits necessary to restore the development ~~to reconstruct the structure~~ within ~~18~~24 months of the date of the damage. Additionally, in the event of an emergency or catastrophe affecting more than one residence, the administrator may extend the timeframe for submission of applications by an additional 24 months.

~~5. **Expansion.** Enlargement or expansion of single family residences less than 500 square feet of roof area may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of roof area by the addition of space to the primary structure or by the addition of normal appurtenances as defined in 20.40.000 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the~~

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~~following criteria are met:~~

~~a. The structure must be located landward of the ordinary high water mark.~~

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~~b. The enlargement, expansion or addition to the existing primary residential structure shall not extend further waterward except through application of the common line setback provision of 20.30.100 [2.c]. Expansions shall not extend further into the minimum side yard setback, or further into any critical area unless authorized by the provisions of BMC 19.40.~~

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5. ~~The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of Burien SMP section 20.30.030.~~

6. **Development on Nonconforming Lots.** Any existing single family lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the Burien master program but which does not conform to the present lot size standards shall be considered a legally conforming lot for building purposes, and on such lots new homes may be built provided that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met. Existing homes on such lots may be expanded and remodeled pursuant to the regulations governing nonconforming structures in this section.

Comment [A1]: This is text that was revised and moved from the policy chapter 2.

~~e.~~

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7. ~~6.~~ **Structures Within the Aquatic Designation.** Replacement of any portion of any structure in the Aquatic shoreline designation shall comply with the SMP requirements for materials the come in contact with the water pursuant to 20.30.070 [2.b.c].

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8. **Limitations on Nonconforming Uses.** Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

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20.35.050 Appeals

Any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state pursuant to BMC 19.65.060 and RCW 90.58.140 may seek review from the state shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

20.35.055 Effective Date and Duration of Shoreline Permits

No construction authorized by an approved shoreline permit may begin until 30 days after the final city decision on the proposal. This restriction shall be stated on the permit. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years and the construction related activity shall terminate within five years after the effective date of a shoreline permit or the final settlement date of any associated appeals or legal actions regarding the proposed action. Provided, that the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. The City shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.

20.35.060 Compliance and Enforcement

A. Choice of Action/Penalty; Conflict. The choice of enforcement action to be taken and the severity of any penalty to be imposed shall be guided by the nature of the violation, the damage or risk to the public or to public resources, and /or the existence or degree of bad faith of the person or persons subject to the enforcement action. The provisions of Section 20.3 5.060 shall supersede and take precedence over any other enforcement provisions of the City Code in conflict herewith.

B. Order to Cease and Desist; Notice of Correction: In the event any person is or has engaged in activity that violates any of the provisions of, BMC Chapter 20.35, RCW Chapter 90.58, or a permit issued pursuant to BMC Chapter 20.35, the City may issue and serve upon such person or persons, a cease and desist order and/or an order to take corrective action.

(1) Content of order. The order shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time, which corrective action may include, but is not limited to, restoration and/or mitigation of the site and other property damaged.

(2) Effective date. An order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(3) Compliance. Failure to comply with the terms of an order issued pursuant to BMC Section 20.3 5.060(B) shall be a violation of BMC Chapter 20.35 and can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

(4) Other Action. In addition to the issuance of the cease and desist order and/or an order to take corrective action, the City may take other enforcement action available at law including, issuance of a civil notice of violation and penalties pursuant to BMC Section 20.3 5.060(C), seeking injunctive or declaratory relief, imposition of criminal penalties, and permit rescission as set forth in RCW 90.58.140. The City may combine an order issued pursuant to Section 20.3 5.060(B) with a notice of violation.

C. Civil Penalties; Procedures; Remission:

(1) Civil Violations. It shall be a civil violation of this BMC Chapter 20.35. for any person to:

(a) Use, construct or demolish any structure, or to conduct clearing, earth-moving, construction or other development not authorized under a Substantial Development Permit, Conditional Use Permit or Variance Permit, where such permit is required by BMC Chapter 20.35.

(b) Undertake or conduct any work which is not conducted in accordance with the plans, conditions, or other requirements in a permit approved pursuant to BMC Chapter 20.35, provided that the terms or conditions are stated in the permit or the approved plans;

(c) Remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Chapter 20.35;

(d) Misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization;

(e) Fail to comply with the requirements of a substantial development permit, conditional use permit or variance issued pursuant to BMC Chapter 20.35;

(f) Undertake a development or use on shorelines of the state without first obtaining a permit required pursuant to BMC Chapter 20.35;

(g) Fail to comply with an order issued under BMC Section 20.35.060(B);

(2) Amount of penalty. The penalty for each civil violation shall not exceed one thousand dollars for each violation and shall not be less than twenty-five dollars. The amount of the penalty prescribed in the notice of violation shall be determined based upon the guidelines set forth in BMC Section 20.35.060(A).

(3) Separate Violation. Each calendar day that a civil violation occurs or continues to occur shall constitute a separate civil violation.

(4) Notice of Civil Violation. A notice of civil violation and penalty shall be imposed by issuance and service of a notice of civil violation in writing.

(5) Contents of Notice of Violation. The notice of violation shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation(s) and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time; and

(c) A notice that any order included in the notice of violation shall become effective immediately upon receipt by the person to whom the order is directed.

(6) Service of Notice of Violation. The notice of violation shall be served upon the person or persons alleged to have committed the violation either by certified mail with return receipt requested, at such person's or persons' last known address of record, or by personal service.

(7) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing, within thirty days of receipt of the penalty, to the Director for remission or mitigation of such penalty. The application shall be filed with the City Clerk and shall identify the specific violation or violations for which the applicant seeks remission or mitigation, set forth the specific facts establishing the extraordinary circumstances which the applicant desires the Director to consider, include complete copies of any documents or records applicant wishes the Director to consider, include the mailing address (not a post office box) at which the applicant will receive notice of the decision, and shall be signed by the applicant. Incomplete applications and applications filed with the City after the thirty-day period specified herein shall not be considered by the Director.

Upon receipt of a complete application for remission or mitigation, the Director, or his/her designee, shall consider the application, together with any information the Director, or his/her designee, determines is relevant, and may remit or mitigate the penalty only upon a finding that that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. When a penalty is imposed jointly by the Department of Ecology and the City, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the City agree.

(8) Right of Appeal.

(a) Any person issued a notice of civil violation pursuant to BMC Section 20.3 5.060(C), may appeal the same to the City Council; provided that, if the penalty is imposed jointly by the City and the Department of Ecology, an appeal shall be filed with the shorelines hearings board in accordance with WAC 173-27-290.

(b)Timing of Appeal. Except as provided below, any person appealing a notice of civil violation to the City Council shall file a written notice of appeal with the City Clerk within thirty days of service of the notice of civil violation. In the event that a timely and completed application is filed with the City Clerk for remission or mitigation, an appeal of a civil violation that is the subject of the application for remission or mitigation shall be filed within thirty days of applicant's receipt of the City's written decision regarding the remission or mitigation. The applicant shall be deemed to have received the written decision upon the earlier of the date of personal service of the written decision or three days after the written decision is deposited in the United States Mail, in a postage pre-paid, properly addressed envelope, using the applicant's address as stated in the application.

(c)Notice of Appeal. All appeals shall be in writing and contain the following:

i. A heading in the words: "Before the Hearing Examiner;

ii. A caption reading: "Appeal of _____" giving the name of all appellant(s);

iii. A brief statement in concise language of the violation or violations protested, together with any material facts claimed to support the contentions of the appellant, including a copy of the notice of civil violation(s) being appealed;

iv. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested notice of violation(s) should be reversed, modified or otherwise set aside;

v. The signatures of appellant and appellant's official mailing addresses;

vi. The verification (by declaration under penalty of perjury under the laws of the State of Washington) of the appellant as to the truth of the matters stated in the appeal.

(d) Hearing. Within 10 days of receiving the written appeal, the city clerk shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed; provided that, the Hearing Examiner may reset or continue a hearing upon request of the City or the party appealing, upon good cause shown, or sua sponte. Written notice of the date of the hearing shall be provided to the appellant by mailing such notice by first class mail, postage prepaid, to the appellant at the address shown on the notice of appeal. At the hearing the appellant shall be entitled to appear in person and be represented by counsel, and to offer evidence pertinent and material to those matters or issues specifically raised by the appellant in the written notice of appeal.

(e) Evidence: Unless otherwise provided by law, evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements and subject to administrative rules of proceedings before the Hearing Examiner, shall be admitted into the record whether or not such evidence was considered by the official issuing the notice of civil violation.

(f) Findings/Conclusions/Recommendation. The Hearing Examiner shall conduct adjudicative proceedings, receive and examine all evidence it finds relevant to the subject matter, and prepare a record thereof. When the Hearing Examiner renders a recommendation, the examiner shall make and enter written findings and conclusions which support such decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with applicable laws, regulations and policies of the city of Burien. The Hearing Examiner may recommend that the notice of civil violation be affirmed, dismissed or modified consistent with his/her findings and conclusions. The decision or recommendation shall be rendered as soon as possible but in all events within 20 working days of the conclusion of the hearing.

(g) City Council. When taking final action, the City Council shall make and enter findings of fact from the record before the Hearing Examiner which support its action, may affirm, reverse, modify, or remand the decision of the hearing examiner, and may adopt all or portions of the examiner's findings and conclusions. The decision of the City Council shall be a final decision.

(9) Penalties due.

(a) Penalties imposed under BMC Section 20.35.060(C) shall become due and payable thirty days after receipt of notice of civil violation unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the City's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

(b) If the amount of a penalty owed the City is not paid within thirty days after it becomes due and payable, the City may take actions necessary to recover such penalty.

(10) Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the civil violation shall be considered to have committed a civil violation for the purposes of the civil penalty.

D. Criminal Penalties.

In addition to incurring civil penalties under BMC Section 20.3 5.060(C), any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of BMC Chapter 20.35, shall be guilty of a gross misdemeanor, and shall be punished by:

(1) A fine of not less than twenty-five dollars ($25) or more than one thousand dollars
($1,000);

(2) Imprisonment in the County/City jail for not more than ninety (90) days; or

(3) Both such fine and imprisonment; provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000); provided further, that fines for violations of RCW 90.5, 8.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

E. Inspection Access.

The Director and his/her authorized representatives, may for the purpose of inspection for compliance with the provisions of a permit issued pursuant to BMC Chapter 20.35, enter all properties that are subject to such a permit. All persons applying for a permit under this BMC Chapter 20.35 shall be deemed to have given their consent to entry upon the property upon issuance of the permit. No owner or occupant of any premises shall fail to provide prompt entry to the Director or authorized representative for the purposes of inspection under this section. If such entry is refused, the City shall have recourse to every remedy provided by law to secure entry, including, issuance of a notice of a notice of correction and issuance of a notice of civil violation.

Whenever entry is required for purposes of inspection pursuant to this section, if the premises are occupied, the persons conducting the inspection shall present proper credentials and request entry, and if the premises are unoccupied, reasonable effort shall first be made to locate the owner of the premises and request entry.

F. Other Remedies.

(1) In addition to the civil and criminal penalties provided for herein, the City may, pursuant to RCW Chapter 90.58, bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within the City of Burien in conflict with the provisions of, RCW Chapter 90.58, BMC Chapter 20.35, a permit issued pursuant to BMC Chapter 20.35, or other regulations adopted pursuant state law or city code, and to otherwise enforce the provisions of the City's Shoreline Master Program.

(2) Any person subject to the regulatory provisions of this Program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The City Attorney may bring suit for damages under this section on behalf of the City and on the behalf of all persons similarly situated pursuant to RCW Chapter 90.58.

G. Abatement.

Structures or development on shorelines considered by the Director to present a hazard or other public nuisance to persons, properties or natural features may be abated by the City using all lawful means available.

20.35.065 Revisions to Shoreline Permits (See also WAC 173-27-100)

1. **Revision required.** A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the shoreline permit. Changes are considered substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Burien Shoreline Master Program and/or the policies and provisions of RCW Chapter 90.58. Changes which are not substantive in effect do not require approval of a revision.

2. **Required Information.** When an applicant seeks to revise a permit, the city will request from the applicant detailed plans and text describing the proposed changes. If the Shoreline Administrator determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the Burien Shoreline Master Program and the Shoreline Management Act, the city may approve a revision.

   "Within the scope and intent of the original permit" means all of the following:

   a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
   b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
   c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
   d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable county master program;
   e) The use authorized pursuant to the original permit is not changed; and

f) No adverse environmental impact will be caused by the project revision.

3. **New Permits Required.** If the revision, or the sum of the revision and any previously approved revisions will violate the criteria specified in (a)-(f) of the preceding section, the City shall require that the applicant apply for a new shoreline permit. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-080(2). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of RCW Chapter 90.58, the Burien Shoreline Master Program and this section. If the proposed change constitutes substantial development, then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the Washington State Department of Ecology. In addition, the city shall notify parties of record of the action.

4. **Revisions to Conditional Use or Variance Permits.** If the revision to the original permit involves a conditional use or variance, the city shall submit the revision to the Department of Ecology for the required state's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The Department of Ecology shall render and transmit to the City and the applicant its final decision within fifteen days of the date of their receipt of the submittal from the City. The City of Burien shall notify parties of record of the Department of Ecology's final decision.

5. **Effective Date.** The revised permit is effective immediately upon final decision by the City or, when appropriate, upon final action by the Department of Ecology.

6. **Appeals.** Appeals shall be to the state shorelines hearings board in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the City's action by the Department of Ecology or the date the Department of Ecology's final decision is transmitted to the City and the applicant.

7. **Construction Authorization.** Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

20.35.070 Rescission of Shoreline Permits (See also RCW 90.58. 140(8))

Whenever any development or use is in violation of a permit or shoreline exemption issued pursuant to this chapter, the City may, concurrent with or as an alternative to any other remedy provided by this title or other law or ordinance, initiate permit rescission proceedings by scheduling a public hearing before the hearing examiner and serving the applicant with written notice thereof. Notice shall be provided in accordance with BMC 19.65.045 and contain a general description of the alleged noncompliance and date, time, and place of public hearing. It shall be served by registered mail at least 15 calendar days prior to such hearing. The permit rescission request shall be processed as a Type 2 decision in accordance with the procedures established in BMC Chapter 19.65.

Chapter VI. Shoreline Definitions

20.40.000 Alteration means any human activity which results or is likely to result in an impact upon the existing condition of a critical area. Alterations include, but are not limited to, grading, filling, dredging, draining, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except storm water, grazing domestic animals, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in an impact to existent vegetation, hydrology, wildlife or wildlife habitat. Alterations do not include walking, fishing or any other passive recreation or other similar activities.

20.40.005 Appurtenance means development necessarily connected to the use and enjoyment of a single family residence and located landward of the perimeter of an associated wetland and landward of the ordinary high water mark. Normal appurtenances include a garage; deck; driveway; utilities solely servicing the subject single family residence; fences; and grading which does not exceed 250 cubic yards.

20.40.010 Aquaculture means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

20.40.015 Associated wetlands means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

20.40.020 Beach means the zone of unconsolidated material that is moved by waves, wind, and tidal currents, extending landward to the coastline.

20.40.025 Boat ramp means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

20.40.030 Bulkhead means a solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purposes of protecting adjacent uplands from waves or current action.

20.40.035 Critical saltwater habitat means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

20.40.040 Community Beach means a beach area jointly owned by a homeowners association for use of the neighborhood.

20.40.045 Docks are fixed structures floating upon the water.

20.40.050 Dredging means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body. However, the creation of temporary depressions or contour alterations on tidelands or bedlands through the use of aquaculture harvesting equipment approved by the Washington State Department of Fish and Wildlife shall not be construed to be dredging.

20.40.055 Feasible means actions that meet all of the following conditions:
(a) The action can be accomplished with technologies and methods that are available at a reasonable cost and have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available at a reasonable cost and likely to achieve the intended results;
(b) The action provides a reasonable likelihood of achieving its intended purpose;
(c) The action does not physically preclude achieving the project's primary intended legal use.

20.40.060 Fill means any material, such as earth, clay, sand, concrete, rubble, wood chips, bark or waste of any kind which is placed, stored or dumped upon the surface of the ground resulting in an increase in the natural surface elevation.

20.40.065 Floating home means a structure designed and operated substantially as a permanently based structure and not as a vessel and is typically characterized by permanent utilities, a semi-permanent anchorage/moorage design, and by the lack of adequate self-propulsion to operate as a vessel.

20.40.070 Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline.

20.40.075 Houseboat means a vessel used for living quarters but licensed and designed substantially as a mobile structure by means of detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion to operate as a vessel.

20.40.080 In-water structure means a structure located waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.

20.40.085 Littoral drift means the mud, sand, or gravel materials moved parallel to the shoreline in the nearshore zone by waves and currents.

20.40.090 Mooring buoy means a floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

20.40.095 Normal protective bulkhead means a bulkhead, common to single family residences, constructed at or near the ordinary high water mark to protect an existing single family residence, the sole purpose of which is to protect land from erosion, not for the purpose of creating new land.

20.40. 100 Ordinary High Water Mark (OHWM) means the mark on lakes, streams and tidal waters that approximates the line of mean high water as commonly evidenced by a mark upon the soil a character distinct from that of the abutting upland with respect to vegetation.

20.40. 105 Piers are fixed, pile-supported structures extending over the water.

20.40.110 Physical access means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

20.40.115 Primary structure means any permanent building, road, bridge or utility requiring a permit or approval which is necessary to support the primary use of a site.

20.40.120 Shorelands means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and 100-year floodplains; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the State of Washington Shoreline Management Act.

20.40.125 Shoreline Administrator means the City Manager or his or her designee in the Community Development Department who is responsible for administering the City of Burien Shoreline Master Program.

20.40. 130 Shoreline conditional use means a use or modification classified by the City of Burien Shoreline Master Program as a conditional use or modification for certain shoreline environments or is an unlisted use/modification.

20.40. 135 Shoreline modification means an action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a breakwater, dock, boat launch ramp, or other shoreline structures. A shoreline modification also can consist of other activities, such as dredging and filling.

20.40. 140 Shoreline permit means any substantial development, variance, conditional use, or revision thereto authorized under the provisions of the City of Burien Shoreline Master Program subject to review by the Washington State Department of Ecology.

20.40. 145 Shoreline substantial development means any development of which the total cost, or fair market value, whichever is higher, exceeds $5,000, or any development which materially interferes with the normal public use of the water or shorelines of the state.

20.40. 150 Shoreline variance means a permit for the limited purposes of granting relief to specific bulk, dimensional, or performance standards set forth in the City of Burien Shoreline Master Program.

20.40.155 Shoreline environment designations means the categories of shorelines established by the City of Burien Shoreline Master Program in order to provide a uniform basis for applying policies and use regulations within physically distinct shoreline areas. The City of Burien Shoreline Master Program classifies shorelines into three shoreline environment designations: Urban Conservancy, Aquatic and Shoreline Residential.

20.40. 160 Shoreline jurisdiction means the proper term describing all of the geographic areas regulated by the City of Burien Shoreline Master Program.

20.40. 165 Shoreline master program means the general term for shoreline comprehensive plans and regulations prepared under the jurisdiction of the Shoreline Management Act.

20.40. 170 Shorelines means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (1) shorelines of statewide significance, (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments, and (3) shorelines on lakes less than 20 acres in size, and wetlands associated with such small lakes.

20.40.175 Shorelines of statewide significance means shorelines designated by the State of Washington that are major resources from which all people in the state derive benefit. Shoreline areas in the City of Burien that are designated as shorelines of statewide significance are portions of the Puget Sound adjacent to the city limits extending out to mid channel.

20.40.180 Shorelines of the state means the total of all "shorelines" and "shorelines of statewide significance" within the state.

20.40. 185 Tidal waters means marine and estuarine waters bounded by the ordinary high mark. Where a stream enters the tidal waters, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream.

20.40. 190 Tidelands means the land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

20.40. 195 Tram means a conveyance that transports passengers or freight in carriers on rails or suspended from cables supported by a series of towers.

20.40.200 Upland means generally the area above and landward of the ordinary high water mark.

20.40.205 Visual access means access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline.

20.40.210 Water dependent means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

20.40.215 Water enjoyment means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water enjoyment use, the use must be open to the general public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment. Examples may include parks, piers, museums, restaurants, educational/scientific reserves, resorts, and mixed use projects.

20.40.220 Water oriented means any combination of water dependent, water related, and/or water enjoyment uses. Nonwater oriented serves to describe those uses which have little or no relationship to the shoreline. Examples of nonwater oriented uses include professional office, automobile sales or repair shops, mini storage facilities, multifamily residential development, department stores, and gas stations.

20.40.225 Water related means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples of water related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage.

20.40.230 Watershed restoration plan means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a water body or reach, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

Susan Coles

[illegible]:	Concerned Burien Citizens [concernedburiencitizens@gmail.com]
	Thursday, March 18, 2010 6:18 PM
To:	Susan Coles; Public Council Inbox
Subject:	SMP Updates

Dear Planning Commissioners and City Council Members, March 16, 2010

First we'd like to thank you for your work representing the citizen's of Burien, it's not an easy job and we appreciate your efforts. As a shoreline community we want to voice our concern regarding the Shoreline Master Program's regulations regarding bulkheads and other shoreline stabilization structures.

While many of us would support prohibitive regulations on any ***new*** shoreline stabilization that is proven to adversely impact ecological functions, *the ability to repair and replace existing shoreline stabilization for protection of not only primary structures,* ***but also appurtenant structures and established uses must be accommodated.***

Many shoreline homeowners do not have homes directly on the water, but rather homes that are set back from the water or are located up the hillside. Current regulation that does not allow these residents to replace existing bulkheads will shred property values along the shoreline. In turn this will create millions of dollars in annual revenue loss for the city and will no doubt result in tax increases **for everyone.**

With the real estate market and economy in its current state of peril, and the City of Burien already behind in its revenue needs for basic infrastructure improvements, education and security- we simply *cannot afford* anymore regulation that inhibits our community's ability to develop and thrive economically. Maintaining property values and the subsequent revenue it brings to bear for all our citizens is a tangible part of solving Burien's difficult and ongoing revenue/growth dilemma.

We urge you to adopt the following recommended revisions to the Shoreline Master Program. In so doing you'll allow all shoreline citizens to protect their home, the property around it, and the value it brings- while saving local jobs and supporting the broader community's ability to do legal business, build safe community and thrive through a well-funded local government.

20.30.070 Bulkheads and Other Shoreline Stabilization Structures

2. REGULATIONS:

ADDITION:

Repair of existing shoreline stabilization measures is allowed. (this language is taken directly from

Marysville's DOE approved SMP document … (c) Regulations, #12)

d. An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

REVISION:

d. An existing shoreline stabilization structure may be replaced with a similar structure if ***any*** of the following apply:

i. The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect the primary structure.

REVISION:

i. The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect the primary structure,

or where there is a need to protect established uses or structures from erosion caused by currents, tidal action, or waves.

(this language is taken from the DOE guidelines)

At the discretion of the City Engineer, the determination of adequacy or need does not necessarily require a

geotechnical report by a licensed geotechnical engineer or related licensed professional. (similar language is located in

Marysville's DOE approved SMP document)

ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the

residence was occupied prior to January 1, 1992, and there is overriding safety or environmental concerns. In such cases,

the replacement structure shall abut the existing shoreline stabilization structure.

REVISION:

ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless

the structure to be replaced currently exists in that location. In such cases, the replacement structure shall abut the existing

shoreline stabilization structure.

iii. Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure,

removal of that structure would be required as part of the construction of the replacement.

REVISION:

iii. Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure,

removal of that structure ***may be*** required as part of the construction of the replacement.

g. Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead.

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REVISION:

g. Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead, ***ɔt where a structure***

is being repaired or replaced with a similar structure and fill is part of the original construction. In this case, no additional

fill shall be added beyond what is needed to repair the structure to its original form and capacity.

h. The size and quantity of material utilized for the bulkhead shall be the minimum necessary to protect the structure from the

estimated energy intensity of the shoreline hydraulic system.

REVISION:

h. The size and quantity of material utilized for the bulkhead shall be the minimum necessary to protect the structure,

appurtenant structures and established uses from the estimated energy intensity of the shoreline hydraulic system.

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

REVISION:

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

Replacement bulkheads may be built to the height of the original. (taken from Marysville's DOE approved SMP document)

ADDITION:

Where a stabilization structure exists waterward of the OHWM and requires replacement and such replacement is prohibited,

a shoreline ecological restoration plan for the affected area that mitigates ecological impact over time may be considered as

an alternative to removal, re-location and/or alternative building materials, by applying the following set of mitigation steps to

the affected area: (the following are taken from DOE's approved and recommended mitigation steps)

(1)Reduce or eliminate the impact over time by preservation and maintenance operations; (2) Compensate for the impact

by replacing, enhancing, or providing substitute resources or environments; and (3) Monitor the impact and the compensation

projects and take appropriate corrective measures.

ADDITION:

ɔft shoreline replacement stabilization measures that provide restoration of shoreline ecological functions n. ɔe permitted

waterward of the ordinary high-water mark. (taken directly from the DOE requirements)

ADDITION:

Shoreline stabilization measures along the shoreline that incorporate ecological restoration through the placement of rocks,

gravel or sand, and native shoreline vegetation is allowed.

Sincerely,
Concerned Burien Citizens

Susan Coles

From:	Lisa Clausen
Sent:	Monday, March 22, 2010 9:37 AM
To:	Susan Coles
Subject:	FW: SMP

FYI for staff....

From: Public Council Inbox
Sent: Monday, March 22, 2010 9:36 AM
To: 'Paula Anderson'
Subject: RE: SMP

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

L. Clausen
City Manager's Office

From: Paula Anderson [mailto:mudwagon@juno.com]
Sent: Friday, March 19, 2010 3:33 PM
To: Public Council Inbox
Subject: SMP

Burien SMP draft:

I am very concerned with the direction the SMP is going. I hope the council will take the needed time and energy to make this a good regulation.

It is imperative that you understand all of the following:

90.58 RCW Shoreline Management act of 1971. This is an updated law that governs shoreline. Please understand 90.58.020 regarding
single family residence & 90.58.100 (5)

173-27 WAC Shoreline Management Permit & Enforcement.. This with 90.58 RCW are the state shoreline regulations for shoreline
permits. Please review 173-27-020 "Minimum procedural requirements as necessary". 173-27-040 2 (g)
"single-family residence means.....

173-26 WAC State Master Program. This mandates that Burien developes their own SMP & how to do it.

Title 25 Shoreline Management. This is the current Burien Shoreline plan. This with the state regulations allow residents to
have a 20' setback from the OHW 25.16.100 C
DOE will forgo the Dec. 1st deadline as long as Burien continues to work on the SMP, so doesn't need to be a rushed
regulation. The Burien SMP is allowed to have

a No Net Loss of ecological functions, and ecological functions may be impaired by development. 173-26-186 (8)

Public access does not have to be allowed. "if access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment" 173-26-221 (4) Public access (d) (ii).

I feel the current SMP Draft is overly restrictive to the approximately 400 properties at a value I would guess over $200 million dollars.

I feel the advisory committee & the planning commission did not properly use or apply 90.58 RCW 173-26 173-27. or acknowledge the change from the current Burien Title 25 Shoreline Management & the New SMP draft.

I hope this helps the council in making the SMP a great document regulating some of the nicest and most valuable residential private property in the city of Burien.

If you have any questions, please feel free to contact me.

Thank you,

Greg Anderson

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David Johanson

From: Public Council Inbox
Sent: Tuesday, March 23, 2010 4:52 PM
To: Scott Greenberg; David Johanson; Susan Coles
Subject: FW: Lake Burien
Attachments: AN OPEN LETTER TO THE CITIZENS OF BURIEN about their lake.doc; borissieverts.vcf

Fyi...

-----Original Message-----
From: Boris Sieverts [mailto:borissieverts@gmx.de]
Sent: Tuesday, March 23, 2010 2:54 AM
To: Public Council Inbox
Subject: Lake Burien

Dear City Council of Burien,

It is nearly a year ago now, that my father and I visited Burien, when my father was invited to come to your place to speak and discuss about the role of places like Burien in bigger agglomerations, that are in the process of working on their identity and character. We were quite impressed by the efforts that the community had done so far, until we got to know about a lake, that noone had spoken about before, although it obviously was the biggest potential in the struggle of the city for quality and character. At the time I was so irritated by the fact that noone did anything to bring that lake back to the city, that I made some notes that I finally brought into the form of an open letter to the Citizens of Burien. I would be happy if you could publish it in the one or the other form.

Sincerely,

Boris Sieverts
Büro für Städtereisen
Pellenzstr. 6
50823 Köln
Germany
borissieverts@gmx.de

RECEIVED

MAR 23 2010

CITY OF BURIEN

AN OPEN LETTER TO THE CITIZENS OF BURIEN about their lake

written from notes after a visit in Burien on July 2nd 2009 on the occasion of my father Thomas Sieverts speaking in Burien.

I remember the unbelievable story of an invisible lake in the center of a town called Burien. There was no public access to the lake, but my father and I were introduced to one of the "owners" of the lake and she invited us to take a bath. She was talking about the good quality of the water that is due to the common not use of motorboats of the neighbouring properties and the renouncement of fertilizer in the gardens, which I found really impressive. She then said that when the lake would get a public access, all this would be gone. I wondered about that argument, because, apart from the bewildering strong conviction of a lack of responsibility of her common citizens that it showed, there are of course ways of controlling water pollution at public accesses, be it by neighbourhood control, by closing hours at night, by park wardens, by the arrangement of a public bath with attendants or other solutions, which she obviously had not ever even thought about.

The second line of her argumentation was, that if the lake would get a public access, the values of their properties would fall and then they would pay less taxes wich could not be in the interest of the municipality, a fairly absurd way of thinking, which I will come back to later.

And the third line of her argumentation was, that there are enough lakes nearby. When I asked her, what nearby means, she talked of distances, that are only practicable by car, and of course this is a deep and profound difference, if you can walk from your own city center, maybe with an ice cream in your hands, in just 5 minutes to such a wonderful nature spot or if you have to go back home to get the car and drive there. As my father and I had just been shown before, Burien has made a big effort to become an urban, pedestrian friendly, sustainable and atmospheric place. I could only understand the inaccessibility of the lake as a kind of relict of other times, when there was maybe less citizen spirit or so, which I don´t know.

When we got to know, that there would be a property to sell in the near future, and that if the city administration would buy it, they could get a public access, we looked at that property and it was just perfect in its position to the city center as well as in size and character.

Talking about the issue with council members, we got the impression that they were not willing to face the people that live around the lake and try to keep it exclusively their´s. What, under these circumstances, did all the embellishments and structural improvements of the city center, that we had just been shown, mean? Were they just covering the real scandal of what was happening in this town?

To give away the unique chance of a public access to the lake after all these efforts would at least heavily affect everything that you, the citizens of Burien have done and reached for in the past years. The fact, that the vacant lot in question is just on the perfect location seen from the city center (you could even have a nice pedestrian´s connection through the alley between 152nd an 153rd street, that leads right on the spot), to me was like a sign from above that this is a chance to fight for, because it will never come again.

I am convinced that, if it would be well managed, the neighbours of the lake won´t be seriously harmed by a public access (except maybe that they have to give up the idea that the lake is "theirs", which in fact it is not) and that at the same time the overall image and value of Burien as a whole (not only in the city center) would rise remarkably. Close to Cologne, where I live, there is a small town called Haltern. It is close to a lake. A couple of years ago they changed their name to "Haltern am See" (Haltern on the lakeside). Property prices have nearly doubled since then!

The degree of hypocrisy of those who keep the lake for themselves now and thereby pretend to do it for the best of nature and the city of Burien is hard to bear. Municipalities need money to invest in the quality of life in their boundaries. For no tax money in the world, Burien will be able to invest in such a good improvement in the quality of life of its inhabitants as a public access to the lake on that spot

Jane S. Kiker
kiker@ekwlaw.com

RECEIVED
MAR 24 2010
CITY OF BURIEN

March 24, 2010

Via Facsimile (205) 248-5539
Email and U.S. Mail

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

Re: Lake Burien Shore Club: Letter Report By Cooke Scientific, re City's Proposed SMP Update

Dear Planning Commission:

Attached please find a letter to the Lake Burien Shore Club from local wetlands ecologist Sarah Spear Cooke, Ph.D., of Cooke Scientific, along with Ms. Cooke's resume. The Shore Club asked Ms. Cooke to provide comments on the City's proposed Shoreline Master Program (SMP) public access policies with respect to Lake Burien, in light of her own review of available data and her independent field investigation regarding the Lake and its wetland areas. Ms. Cooke's report documents the paucity of scientific information relied upon by the City and its consultants in including the public access policies in the Draft SMP Update, and supports the Shore Club's position that the introduction of public access to Lake Burien is not supported by relevant (and available) science/data respecting the Lake's critical areas and wildlife habitat.

Ms. Cooke's letter supplements earlier comments submitted by this office on behalf of the Shore Club, as well as the aquatic resources report, prepared by limnologist Rob Zisette of Herrera Environmental Consultants, Inc., and submitted March 17, 2010.

1000 Second Avenue, Suite 3130 Seattle, Washington 98104
telephone 206.441.1069 • www.ekwlaw.com • facsimile 206.441.1089

The Shore Club thanks you for your consideration of the attached.

Respectfully,

EGLICK KIKER WHITED PLLC

Jane S. Kiker
Attorney for Lake Burien Shore Club

cc: Client

Attachments: Cooke Scientific: Review of City of Burien's Draft SMP
Curriculum Vita, Sarah Spear Cooke, Certified Wetland Professional, Cooke Scientific

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March 23, 2010

Attn: Don Warren, President & Lake Steward
Lake Burien Shore Club
Burien, WA

RE: Review of the City of Burien's Draft Shoreline Master Plan (SMP) as it applies to Public Access for Lake Burien

Dear Mr. Warren:

The Lake Burien Shore Club is concerned that the Draft Shoreline Master Program (SMP) adopts a policy of public access for Lake Burien without an investigation into the impacts it might have on the Lake ecosystem and water quality. The Shore Club asked me, in my capacity as a professional wetlands scientist, to review the portions of the Draft SMP amendments pertaining to Lake Burien, and to determine what data, if any, exists to support the City's proposed public access policies. As detailed below, my review and analysis of the existing data and my own field investigation lead me to the conclusion that there is insufficient information to support adoption of these policies and that such adoption would likely be inconsistent with the level of protection required to maintain the sensitive lake, it's adjacent wetlands, streams, and associated wildlife, in sound ecological health.

Findings Summary

It is apparent that the Burien Shoreline Master Program Update relies on the following reports generated by City's Consultants:

- Shoreline Inventory (Grette Associates 2008)
- Shoreline Analysis and Characterization (Grette Associates 2008)
- Cumulative impacts Analysis (Grette Associates 2009)
- Shoreline Restoration Plan (Grette Associates 2009)

These documents do not reflect analysis of existing data and conditions with respect to Lake Burien as is required under the Shoreline Management Act (SMA) and outlined in the Shoreline Management Plan Guidelines adopted by the Department of Ecology (WAC 173-26-201, Comprehensive Process to Prepare or Amend Shoreline Master Programs, Section 3C and D).

The City is proposing public physical access to the Lake without studying the impacts to the Lake functions that could result, and therefore, without addressing measures necessary to mitigate such impacts. The Draft SMP is therefore, not in

compliance with the Shoreline Management Act (SMA) (RCW 890.58), and SMP Guidelines (WAC 173-26, Part III). The SMA and SMP Guidelines require current scientific-based or a "Best Available Science" (BAS) -based characterization of shoreline ecological functions, adoption of a no-net-loss policy with respect to these ecological functions, recognition of potential consequences from proposed management actions, and adoption of appropriate mitigation measures.

Focusing primarily on the Lake's wetland functions. I have reviewed all the documents and web-based resources listed in the reference section at the end of this document in addition to undertaking the personal communications listed there. I also conducted reconnaissance field research at the Lake and its wetlands on March 3, 2010. Most of the wetlands information I have reviewed (and gathered) is notably not referenced in the City's or its consultant's characterization and resultant analysis. The Lake's aquatic resources, and potential impacts to them from the proposed public access, were finally addressed in a report by limnologist Rob Zisette of Herrera Environmental Consultants, which was submitted to the Planning Commission by the Shore Club on March 17, 2010. This report concluded that providing public access to Lake Burien could have adverse and unintended impacts on its ecological well-being in terms of the introduction of invasive, non-native plant and animal species, and the potential for water quality degradation.

Analysis

1. **Proposed SMP Policies are not based on current and best available science.** In reading the four reports listed above which formed the basis for the Draft SMP Update, it is apparent that very little attempt was made to find the available data for the Lake, let alone do additional studies required by the SMA and SMP guidelines. Rather, the City's consultant team stated that they only needed to comply with the characterization of the Lake found in the City's Municipal Code and Comprehensive Plan. In my own discussions with Department of Ecology scientists, (Pers. Comm. With Eric Stockdale, March 2010), it has been made clear that an SMP developed without analysis of current lake conditions and functions (e.g., water quality, hydrology, and wildlife habitat) would be unlikely to survive Ecology's mandatory SMP review process.

   There is little evidence that Grette staff reviewed existing Lake data or coordinated their recommendations with any other scientists with expertise of the Lake. The SMP guidelines specifically identify this collaboration as being essential to the characterization and impact assessment for developing the SMP. King County has an on-line a report that covers ten years of study data and analysis of the Lake. There is only one apparent reference to other studies in the Grette reports and this is regarding phosphorus concentrations in the Lake. This data likely comes from the King County Lake Report, although it is not listed in the bibliography. The Coastal Atlas (Wa. DOE Web resource 2010) similarly is not referenced and it shows the quality of Lake Burien to be excellent, in stark

contrast to all other lakes in the urban corridor. The Lake shore is completely surrounded by private property and no residents report seeing Grette staff on their properties to collect data.

As part of the impact analysis, it is important to know what wildlife currently exists on the lake. No wildlife censuses were done as part of the lake characterization and there was no attempt to collect existing data from King County and/or local residents regarding the Lake's resident birds, migratory birds, mammals, fish, amphibians, reptiles or insects. The residents and a local fish expert, Richard Streater, have identified trout, bass, sunfish and perch, yet the City in their Municipal Code, Comprehensive Plan, and Draft SMP state there are no fish in the Lake. As discussed below, shore residents regularly observe eagles, hawks, and heron preying on fish in the Lake. The Lake Steward has not been contacted by anyone from the City's consultant team, despite the fact that he has a significant amount of data after years of monitoring the Lake.

2. **Lake Reconnaissance and other data discoveries.** In addition to reviewing and analyzing existing data respecting Lake Burien, I visited the Lake on March 3, 2010; met with shore residents and circumnavigated the shoreline in a boat. I took photographs, recorded vegetation types, shoreline characteristics, water visibility, the presence of invasive plant species: aquatic, wetland, and upland plant and animal taxa. I ran the wetland data through the Wetland Rating form for Western Washington (Hruby 2004) and I took notes on birds and fish and reptiles. A neighbor showed me photos of the painted turtles that lay eggs on her beach, and there are reports that red slider turtles may also be present. There are bullfrogs and Cascade frogs, and crayfish in the Lake. None of this information is included in Grett's Shoreline Inventory or Shoreline Analysis and Characterization. One wonders how Grette developed the Impact Analysis without being aware of the wildlife and water quality of the Lake.

For more than 60 years, shore residents have tracked wildlife use of the lake and environs and recently have been taking bird census data, some using Audubon Guidelines. Priority species, including bald eagles, osprey, and blue heron use this lake for perching and feeding. These species are observed regularly. Although not documented in the City's record, the residents give first hand reports of this. I saw both blue heron and bald eagles the day I visited. Lake residents have identified over 80 different species of birds. Long-term residents report bird sightings have increased since the development of the third runway and filling of many of the wetlands at SeaTac. An animal inventory was compiled by the residents and included bats, mice, rats, voles, shrews, raccoons, weasels, opossums, squirrels (grey), and a historic sighting of otter in the 90's.

There are existing patches of undisturbed wetlands scattered around the Lake, especially in the northeast corner in front of the Ruth Dykeman Center. This area has a large aquatic plant community dominated by hardstem bulrush (a native plant), with an associated riparian corridor that leads to the outlet and Burien Creek which has both upland and wetland components. The other lakeshore vegetation patches are both herb and shrub dominated, ranging from 1/5 to ½ of

the lakeshore frontage of a particular lot. The herbaceous patches are dominated by softrush and yellow-flag iris, but native rushes, grasses and sedges can also be found. There are scattered sandy beaches around the Lake and resident reports indicate that turtles nest on most.

The Lake water quality is remarkably good, according to the Department of Ecology Coastal Atlas and King County Lake Monitoring Data, as well as the analysis recently prepared by Rob Zisette at Herrera Environmental Consultants. The only motors allowed in the Lake are electric. The lake residents do not move their boats from Lake Burien to outside lakes and back. This means that there are few to no opportunities for invasive weeds to be introduced into the Lake. Mr. Zisette's limnology report addresses the ecosystem effects of introduction of invasive species, plant and animal.

The Lake residences are on sewer so there is no septic effluent leaching into the Lake, a common occurrence in other lakes throughout the County. There were no algal blooms, and I could see the bottom in areas where the depth is reported to be at least 10 feet (King County Web site bathymetry). There appear to be only a few patches of pond lily (as seen on aerial photographs from the summer). I saw no algae, milfoil or elodea (common noxious aquatic weeds in urban lakes)

The Lake is currently entirely developed with residences, with the exception of the Ruth Dykeman parcel in the northeast corner. The dominant activity on the Lake is by personal boats, most using electric motors. Electric motors make very little wake as they tend to move very slowly through the water. Additionally, the local residents and Lake Steward monitor the Lake for any irregular activity. Residents for the most part, keep their dogs from the Lake, so there is no dog fecal matter entering the lake and according to residents there is relatively little disturbance of the birds by dogs or cats.

3. SMP Public Access provisions should not be adopted in absence of required scientific support and analysis

Based on my research and observations, I find Lake Burien to be in surprisingly good condition for an urban lake and the water quality, habitat, and the number of species of wildlife present are not matched in the urban setting. In a case such as this, public access would result in (potentially irreparable) impacts to the ecosystem. It would be unwise to introduce public access which could upset the current balance, especially without investigating what the potential impacts might be.

References

City of Burien, Washington. December 2009. Ordinance 528. City of Burien, Burien Comprehensive Plan Update.

City of Burien 2003. Burien Municipal Code. Chapter Title 19.

Grette Associates. 2008 City of Burien Shoreline Master Program Update Shoreline Inventory.

Grette Associates. 2008 City of Burien Shoreline Master Program Update Shoreline Analysis and Characterization.

Grette and Associates. 2009 City of Burien Shoreline Master Program Update Cumulative Impacts Analysis.

Grette and Associates. 2009 City of Burien Shoreline Master Program Update Shoreline Restoration Plan.

King County Water Quality in Lakes report. 1998 – 2004. Lake testing http://your.kingcounty.gov/dnrp/wlr/water-resources/small-lakes/data/lakepage.aspx?SiteID=43

King County. 2009. Lake Burien Lake Characterization. Web resource http://your.kingcounty.gov/dnrp/wlr/water-resources/small-lakes/data/lakepage.aspx?SiteID=43

Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. March 2005. Wetlands in Washington State - Volume 1: A Synthesis of the Science. Washington State Department of Ecology. Publication #05-06-006. Olympia, WA.

Washington State. Revised Code of Washington *RCW 36.70A.172. Growth Management ACT.*

Washington State. 1972. Revised Code of Washington 90.58. Shoreline Management ACT.

Washington State. 2003. (WAC 173-26, Part III) Shoreline Master Program Guidelines

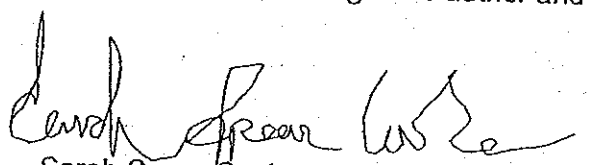
Washington State Department of Ecology. 2010. The Coastal Atlas. Web resource. https://fortress.wa.gov/ecy/coastalatlas/viewer.htm

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. March 2006. Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1).Washington State Department of Ecology Publication #06-06-011a. Olympia, WA.

Personal communications

Erik Stockdale, Washington State Department of Ecology, Bellevue staff. Staff assigned to review the Burien SMP. March 3 and 11.

Richard Streater, fishing lures author and fish expert. March 2010



Sarah Spear Cooke
Certified Wetland Professional and Fellow
Society of Wetland Scientists

Cooke Scientific

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SEATTLE, WA 98125
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Sarah Spear Cooke, Ph.D.

Wetlands Ecologist, Soil Scientist, Plant Ecologist and Taxonomist

Expertise

- Wetlands creation, restoration, and enhancement , CAD design and implementation
- Wetlands delineation and delineation methodology instruction
- Invasive weed identification and development of control strategies, control manuals, and field oversight of control efforts
- Ordinary High Water Mark (OHWM) determinations and instruction.
- Regulatory and Permitting Assistance, on local, state and national levels
- Wetland Functional Evaluation, including the "SAM" method and a botanical expert on the development of the State wetland manual
- Masters in Botanical taxonomy, Doctorate in Botany and soils, specializing in wetland plants
- Author *A Field Guide to the Common Wetland Plants of Western Washington & Northwestern Oregon*, published by the Seattle Audubon Society
- Certified soil scientist (hydric soils), soils mapping and classification
- Watershed Analysis
- Rare plant surveys and mapping
- Mine reclamation ecology and uplands restoration

Dr. Cooke has 24 years of experience in wetlands ecological research and environmental consulting, and 27 years of experience in ecological and geological research, in the Pacific Northwest. She specializes in habitat creation, restoration and enhancement projects, both in design and implementation. She excels in permitting assistance on the local, state, and national level. She was a co-senior investigator for the Puget Sound Wetland and Stormwater Management Research Program, a 10-year systematic wetland ecosystem study conducted under the auspices of the Environmental protection Agency, The US Geological Survey, Washington State, and King County in Washington State. Dr. Cooke's areas of expertise include: wetland and stream inventories, delineation, restoration/mitigation designs, baseline studies, permitting, and monitoring programs; weed identification and control; rare plant surveys and vegetation mapping; soil assessments; watershed analysis; and environmental assessments in the region. She has more experience in developing assessment methodologies than any other private wetlands consultant in the PNW. She has extensive experience in classroom instruction of wetlands ecology, restoration ecology and implementation, delineation protocols, functional assessment, weed identification and control, hydric soils, and wetland plant identification. She has 16 years experience in managing multidisciplinary teams, supervising subcontractors, and generating reports, and marketing from a consulting perspective. She currently teaches restoration ecology and implementation, wetland botany, and weed ecology and control at Portland State University. She is a former instructor for the Wetland Certification Program at the University of Washington and Wetland

Ecology and Science for the graduate program at the Evergreen State College. She has been teaching classes for the Coastal Training Program through the Washington State Department of Ecology for eight years and has taught wetland Delineation for the US Army Corps of Engineers. She is also the senior author/editor of the *A Field Guide to the Common Wetland Plants of Western Washington & Northwestern Oregon*. And the Semi Quantitative Wetlands and Buffer Functional Assessment Method used since 2001 by most wetland practitioners.

Education

Ph.D., University of Washington, Dissertation title: The Edaphic Ecology of Two Northwest American Composite Species. Major: Botany, Geology, and Soils; minor Statistics, Plant Physiology, and Genetics
M.S., Plant Taxonomy, University of Washington, 1987.
Honors Degree, Geobotany, McGill University, 1979.
B.S., Biology and Geology, McGill University, 1979.
Undergraduate studies in Biology and Geology at Purdue University 1974-76.

Experience

- Self-employed, Cooke Scientific. Seattle Washington. Projects include wetland mitigation (restoration, enhancement, and creation), wetland delineations, weed identification and control, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, and mine reclamation, third party regulatory review for various small jurisdictions. 1998-present.
- Western Washington Representative, Washington State Noxious Weed Board. 2005 to present. Chair, Standards committee. Developed a methodology for inventorying weeds used by County Weed boards in Wa.
- Instructor, Habitat Restoration, and Mitigation. Wetland Training Institute. Syllabus development, classroom instruction, and field trips. Spring 2010.
- Instructor, PNW Winter Twig ID. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 2007-present
- Instructor, Grass, Sedge and Rush ID in PNW. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 6-class contract, 2004-present.
- Instructor, Washington State Wetland Rating System in Western Washington. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 6-class contract, 2005- 2006.
- Instructor, Weeds of the Pacific Northwest. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Summer 2004.
- Development Advisory Team. Washington State Wetland Rating for Western Washington. Washington State Department of Ecology. 2002-2004.
- President Pacific Northwest Chapter Society of Wetland Scientists. May1999- May 2000. Executive Vice President SWS PNW Chapter 1998-1999.
- Development Advisory Team. Washington State Functional Assessment Method. Washington State Department of Ecology. 1996-1998.
- Instructor, WNPS Native Plant Stewardship program, King, Snohomish, Pierce Counties, Washington Native Plant Society, Syllabus development, classroom instruction, Fall 1996- present.
- Instructor, Hydric soils class, University of Washington, College of Forest Resources, Center for Urban Horticulture. 1998, 2006.

- Instructor, Habitat Restoration, and Mitigation. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Fall 1998- 2008.
- Owner, Cooke Scientific Services, Inc. Seattle, Washington. Principal Scientist and President of company. Projects include wetland mitigation (restoration, enhancement, and creation), wetland delineations, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, and mine reclamation in upland and wetland areas. 1995-2003.
- Instructor, Wetland Plants of the Pacific Northwest; Winter trees and shrubs; and Grasses, Sedges, and Rushes. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Spring 1998- present.
- Principal Scientist, wetlands Group, Pentec Environmental Inc., Edmonds, Washington. Started, marketed, and managed the wetlands group. Projects included wetland mitigations (restorations, enhancements and creations), wetland delineations, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, mine reclamation in upland and wetland areas. 1990 – 1995.
- Instructor, University of Washington, Extension Services, Wetland Certification Program. Wetland Science and Ecological Processes. . Syllabus development, classroom instruction, and field trips. 1994-1996.
- Instructor, University of Washington, Extension Services, Wetlands Flora of Western Washington. Syllabus development, classroom instruction, and field trip. 1990-1996.
- Long-term Research Co-manager, Puget Sound Wetlands and Stormwater Management Research Program. Experimental design, implementation, and coordination of a five-year total ecosystem survey and monitoring study. 1987-1996.
- Project Coordinator, Senior Editor and Author. US Environmental Protection Agency/Washington Native Plant Society. A Field Guide to the Wetland Flora of Pacific Northwest Project. Grant writing, project management, technical coordination, and writing the grass, sedge, and rush sections of book. 1992-1997.
- Instructor, Washington State Department of Ecology, Wetland and Riparian Restoration, a workshop for agency staff and consultants. Co-development of syllabus, text, class instruction for the vegetation portion of the workshop. 1993.
- Co-instructor, Hydric Soils workshop. University of Washington Center for Urban Horticulture, College of Forest Resources. 1992.
- Instructor, Hydric Soils, Processes and Characteristics. University of Washington Extension Services. Development of syllabus, text, classroom instruction, and class field trip. 1992.
- Co-instructor, Wetlands Ecology. The Evergreen State College, Masters of Environmental Science. Co-development of syllabus and co-instructor for wetlands ecology, management, and regulatory policy class. 1991.
- Instructor, Interagency Wetlands Delineation Agency Training/USACOE, EPA, SCS, Fish, and Wildlife Service. Taught vegetation and soils methodology (1987 and 1989 methodologies).
- Field Biologist/Soil Scientist, King County Wetlands Inventory. Paper inventory, development of field assessment protocol, manager field-inventory. 1990.

- Professional Botanist, Washington Native Plant Society. Research, teaching workshops related to the native flora, establishment, and curator of the plant species distribution library. 1989.
- Senior Wetlands Ecologist, Shapiro and Associates. Wetland delineation, plant identification, vegetation analysis, soils assessment, aerial photo interpretation, and report writing, with emphasis on wetlands problems, and toxic waste. 1988.
- Botany and Soils Consultant and Subcontractor, Raedeke Associates. Plant identification, vegetation analysis, soils assessment, and aerial interpretation with emphasis on wetlands problems. 1986-1987.
- Team Member, Cedar River Watershed Long-term Wetlands Monitoring Project, Seattle City Light. Design and implementation of vegetation and soils aspects of the study, and air photo interpretation. 1988.

Awards

- International fellow. Society of Wetland Scientists. Dr. Cooke was one of three internationally scientists recognized by the SWS for our contributions to Wetland Science. 2003.
- Elected President, Society of Wetland Scientists, Pacific Northwest Chapter. 1999-2000.
- Best Paper Award. International Serpentine Conference, Society of Serpentine Ecology. 1999.
- Sigma Xi, Forestry Society. Elected to be a member of the Washington State Chapter of Sigma Xi, the professional Foresters Society. 1994.

Professional Affiliations

- Member of Society of Wetland Scientists
- Member Society for Ecological Restoration
- Member Association of State Wetland Managers
- Member Sigma Xi
- Member Ecological Society of America
- Member Consulting Soils Scientists of America

RECEIVED

MAR 23 2010

CITY OF BURIEN

To-The Planning Commission
To-the City Council
From Chestine Edgar
Re-The Burien Comprehensive Plan, Corrections that need to be made, The SMP Draft
March 23, 2010

I am requesting that the following changes be made to the Comprehensive Plan and the Shoreline Master Plan documents that are being created based on the Best Available Science that is supposed to be in the Comprehensive Plan

1. Lake Burien has always been a Class 2 wetland in the Comprehensive plan from 1997 to 2009. In am requesting that the section in Chapter 4, Wetlands that states the Lake Burien is a wetland according to the King County rating scale add the words- **Class 2 wetlands. Additionally, I am requesting that the SMP documents that were created based on the Comprehensive Plan comply with that plan and show Lake Burien as a Class 2 wetland. The city's historical records and documents support my request.**

a. In 1980-81, King County classified all of their major wetlands with the King County wetland rating system. Lake Burien was designated as Class 2 wetlands (King County, 8-18-81). Also, the Lake Burien Creek was identified as a Class 2 stream. Lake Burien remained Class 2 wetlands until Burien became a city. When Burien incorporated in 1993, the city kept the King County Class 2 wetlands rating on Lake Burien. From Burien's adoption of its first Comprehensive Plan in 1997 until the most recent update to the Comprehensive Plan in December 2009, Lake Burien has always been classified as Class 2 wetlands according to the King County Rating Scale.

During the past 30 years, the wetlands designation of Lake Burien has always been a Class 2. In 2003, the City of Burien created their Critical Areas Ordinance and added a fourth designation (not supported by any science) to their wetlands rating scale and arbitrarily changed the wetlands designation of Lake Burien from a Class 2 to a Class 4 wetlands, again with no supporting scientific evidence. This was in complete conflict with the Comprehensive Plan. Currently, the Comprehensive Plan shows Lake Burien as wetlands based on the King County rating scale.

b. It is important that the change I am requesting happen now because once the Shoreline Master Program is adopted, it will become the CAO for critical shorelines. King County, the Burien Comprehensive Plan and the Grette Technical Documents, Nov. 2009/Draft all show Lake Burien to be Class 2 wetlands. The SMP requires that there be agreement with the Comprehensive Plan as well as best current science. Lake Burien is Class 2 wetlands.

2. Based on the Comprehensive Plan, the buffer on Lake Burien needs to be changed in the Shoreline Master Plan and its supporting technical documents.

a. When King County classified Lake Burien in 1980; the buffer that was required by the county was 50'. That buffer requirement stayed in place until 2003. In 2003, when Burien adopted its CAO (creating their own rating scale, designating Lake Burien as Class 4 wetlands, but included a map that still identified it as Class 2 wetlands) the buffer was changed to a default 30' buffer regardless of property characteristics. **However according to the Comprehensive Plan Policy, this new buffer was not in compliance with the Comprehensive Plan because in the Comprehensive Plan, Lake Burien was still Class 2 wetlands on the King County rating scale.**

b. It seems only logical that a buffer of no less than the historical one of 50' be allowed. In viewing most of the developed properties on Lake Burien, it appears that their set-back and buffer are 50' or more on the sites. I am not an expert on buffers and setbacks but it appears that 50' was the standard number used. To make it greater than 50' would turn almost every home on Lake Burien into a non conforming structure and that makes no sense. The Dept. Of Ecology will probably need to be consulted on this issues. However, I am requesting that a re-examination of the buffer issue happen before a buffer is set in the SMP document. Also, I am requesting that a correction on the buffer be made in all of the Shoreline Master Plan documents.

3. The Lake Burien Residential Zoning Area has always been Low Density because it is located in a sensitive/critical area (actually two areas-Wetlands and Aquifer Recharge Area). Additionally, the area is already characterized by single family residential development at four houses per acre or less-see Pol RE1.5, page 2-8 of the Burien Plan.

a. In 1980-81 when King County rated the lakes, it also created zoning areas and stated that sensitive areas would get a low density rating to ensure adequate protection of the sensitive area. Burien's Comprehensive Plan, created in 1997, had the same low density provision in it. This provision has been carried forward into the current Comprehensive Plan most recently updated in December, 2009.

Lake Burien has always been a Low Density Zoning Area because it is located in a sensitive/critical area. Additionally, the area has always been characterized by 4 or less houses/units per acre. The City of Burien has tried to mess around with the lot size and buffer to increase density on Lake Burien. But the fact remains that by both King County policy and the Burien Comprehensive Plan policy, Lake Burien has always been a Low Density Zoning Area.

b. In June 2010, the city (when the Plan comes up for review) should correct its map to reflect that Lake Burien and the houses immediately adjacent to the lake are a low density residential area.

c. The Pol REC 1.5, page 2-8 requires that The Cumulative Impacts Document(from SMP documents) analysis be redone to examine the environmental implications of imposing a medium density lot size into a low density area. Only after that analysis is completed, should a buffer be recommended and decided on for the Burien SMP.

d..In June 2010, the Burien Planning Commission may want discuss the issues of lot size, zoning and impervious surface allowed and how that applies to the Comprehensive Plan for Lake Burien.

<u>Conclusion</u>- Until the above corrections are made, the Burien SMP will be out of compliance with the Burien's Comprehensive Plan. I urgent you to attend to these changes immediately.

Attachment - Residential Neighborhoods,
Burien Comprehensive Plan,
Pol RE 1.5

Residential Neighborhoods

Goal RE.1

Provide a variety of attractive, well-designed housing choices that reinforce the character of the neighborhoods and meet the needs of existing and future City residents.

Pol. RE 1.1 The planned densities in single family neighborhoods should match the land use map.

Pol. RE 1.2 The planned densities for single family development should encourage a lower development potential in areas with development constraints.

Discussion: Within the City, potential development constraints include, but are not limited to, critical areas, such as areas along the coastline that are susceptible to landslides, areas with wetlands or areas prone to flooding; areas with stormwater drainage problems; exposure to exterior noise levels that exceed an Ldn of 55 dBA; or deficiencies in the type or level of services necessary for urban development, such as transportation facilities (roadway and pedestrian), sewer, or water.

Pol. RE 1.3 Any existing single-family lot that was legally subdivided or legally created prior to enactment of subdivision statutes prior to incorporation or annexation shall be considered a legally conforming lot for building purposes, providing the size of the lot was not reduced by more than 50 percent through acquisition for public purposes, and on such lots new homes may be built and existing houses may be expanded and remodeled, provided that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met.

Pol. RE 1.4 When determining buildable lot size for residential development, the area of a lot covered by water (including but not limited to lakes or the Puget Sound) shall not be included in the calculation.

Pol. RE 1.5 The *Low Density Residential Neighborhood* designation will provide for low-density residential development. Development within this designation includes existing neighborhoods that are zoned for four units per acre or less.

Allowed Uses and Description: The *Low Density Residential Neighborhood* designation allows single family residential uses and their accessory uses at a density of 4 units per acre or less, due to the constraints posed by critical areas. This policy may be implemented by more than one zoning category, based on the ability of the land and public facilities to support development. Development standards, for such items as impervious surfaces, streetscapes, sidewalks and stormwater drainage,

may vary within each zoning category based on the existing character of the area.

Designation Criteria: Properties designated *Low Density Residential Neighborhood* should reflect the following criteria:

1. The area is already generally characterized by single family residential development at four units per acre or less; and

2. Relative to other residential areas within the City, the area is characterized by lower intensity development as shown on Map LU-2.

3. The land is designated as a potential landslide hazard area, steep slope area, or wetland on the City of Burien's Critical Areas Map,

4. The existing and planned public facilities for the area cannot adequately support a higher density.

5. The area is subject to existing impacts from high levels of airport-related noise.

Discussion: Portions of the City that contain critical areas are appropriate for a lower level of residential density to protect those critical areas from impact associated with higher density development. Lower density development is appropriate to protect the critical areas and those functions that they serve including but not limited to the natural habitat and promoting the overall public health, safety and welfare. In addition, lower density residential development is often more compatible with high levels of airport-related noise than higher density residential development. For example, currently within the city, the northeastern area is subjected to high levels of airport-related noise, yet maintains good neighborhood quality. Applying lower density development potentials to such areas will help to preserve the existing quality of the neighborhoods and protect critical areas. (Amended, Ord. 445, 2005)

Pol. RE 1.6 The *Moderate Density Residential Neighborhood* land use category will provide primarily single family residential uses in neighborhoods suitable for this type of development, where community improvements and facilities that are normally necessary for development can be provided. Development within this designation includes existing neighborhoods that have been platted at an average of five to six units per acre.

Allowed Uses and Description: *The Moderate Density Residential Neighborhood* designation allows for single family residential uses, their accessory uses and public and semi-public uses. The maximum residential density shall not exceed six units per net acre.

To retain the existing character of development in the neighborhoods classified as *Moderate Density Residential Neighborhood,* the City's zoning code will specify appropriate density and dimension standards that include floor area ratios (FARs) in addition to lot coverage, setbacks and height. Development standards for impervious surfaces, streetscapes, sidewalks and stormwater drainage, may vary within each zoning category based on the existing character of the area.

Discussion: There are specific concerns about increasingly large home sizes within the City's moderate density neighborhoods. The zoning code will need to include measures that adequately restrict homes from becoming massive structures that cover almost an entire lot and are out of character with the surrounding residential development.

Designation Criteria: Properties designated for Moderate Density Residential Neighborhood uses should generally reflect all of the following criteria:

1. The area is already characterized by primarily single family residential uses at greater than four units per acre.

2. The existing or committed public facilities are adequate to support residential development at this density.

3. The area does not have significant amounts of critical areas.

4. The area is designated Urban on Figure 2 LU-2 (Application of this designation outside of the area delineated as Urban, shall be limited to five units per acre).

Pol. RE 1.7 The *Low and High Density Multifamily Neighborhood* designations should provide for the location of stable and attractive multifamily development near transit, employment, shopping and recreation facilities.

Compatibility between these uses and adjacent single family development is provided through the City's design guidelines. Recreation facilities, including a park or open space, is required as an integral part of any multifamily development. Public facilities, especially pedestrian access to activity centers, are a requirement for development. In addition, adequate services and facilities (such as sewer, water and roadway capacity) must be provided concurrent with development before the upper density limit is reached. Developments within these designations include existing multi-family dwellings at an average of 8 to 48 units per acre.