



PLANNING COMMISSION AGENDA

March 9, 2010, 7:00 p.m.
Multipurpose Room/Council Chamber
Burien City Hall, 400 SW 152nd Street
Burien, Washington 98166

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

I. ROLL CALL

**II. AGENDA
CONFIRMATION**

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

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

V. OLD BUSINESS Discussion and Possible Recommendation: Shoreline Master Program Update
a. Follow-up on Planning Commission requests for information
b. Public access
c. Bulkheads, docks, piers and floats
d. Shoreline designations
e. Shoreline vegetation
f. Residential development

VI. NEW BUSINESS a. None

**VII. PLANNING
COMMISSION
COMMUNICATIONS**

VIII. DIRECTOR'S REPORT

IX. ADJOURNMENT

Future Agendas (Tentative) March 23-Discussion and Possible Recommendation: Shoreline Master Program Update
April 13-To be determined

Jim Clingan (Vice Chair)
Rebecca McInteer

Planning Commissioners
Joe Fitzgibbon (Chair)
Rachel Pizarro

Stacie Grage
Janet Shull



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City of Burien

BURIEN PLANNING COMMISSION MEETING

February 23, 2010

7:00 p.m.

City Council Chambers

MINUTES

Planning Commission Members Present:

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

Absent:

Rachel Pizarro

Others Present:

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

Roll Call

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

Agenda Confirmation

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

Public Comment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approval of Minutes

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

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

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

Old Business

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

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

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

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

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

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

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

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

There was consensus in favor of the staff proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There was consensus in favor of the proposed language revision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The commissioners concurred with Chair Fitzgibbon.

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

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

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

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

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

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

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

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

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

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

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

New Business – None

Planning Commission Communications

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

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

Director's Report

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

Adjournment

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

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

Approved: _____

Joe Fitzgibbon, chair
Planning Commission

DRAFT

2-182

**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

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

PURPOSE/REQUIRED ACTION

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

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

BACKGROUND

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

PLANNING COMMISSION ACTION

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

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

NEXT STEPS

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

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

Attachments:

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

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



**SHORELINE MASTER PROGRAM
PUBLIC COMMENT SUMMARY
Planning Commission WORKING DRAFT 3/3/2010**

Modified	#	TOPIC	SUMMARY of COMMENT	DRAFT RESPONSE	WAC/RCW	PC Direction
X	0.01	20.10.001	The first pointer should be changed to read " <u>Protect the quality of the water and result in no net loss to the natural environment</u> ".	The pointers summarize the priorities as stated in RCW 90.58.020. No change is recommended as the statement is not inconsistent with the RCW	RCW 90.58.020	2/23/10 See 0.02
X	0.02	20.10.001	The third pointer should be changed to read " <u>Preserve and enhance public access or increase recreational opportunities for the public along publically owned shorelines</u> ".	Suggestion noted, changes are recommended. The section should be replaced with the exact language of RCW 90.58.020 to provide the state legislative findings that provide a solid explanation of why we are planning for/managing our shorelines.	RCW 90.58.020	2/23/10 Insert language of RCW 90.58.020
	0.03	20.10.001 Figure 1	Suggest that the figure be removed given the ongoing legal discussions regarding the controls of GMA vs SMA.	The issue of GMA vs SMA has yet to be resolved and it would be premature to make the changes based on this uncertainty. If the issue is resolved or clarified, the SMP can be updated to be consistent with the resulting legislative change.		NR
	1	Conservation Element 20.20.035	Request that the over-lying principle of no net loss of ecological functions be implemented and if there is a possibility of net loss then the steps of WAC 173-26-201(2.e) be followed.	BMC 20.30.010 addresses no net loss in Policy 1a and Regulation. 2.c outlines the mitigation sequence consistent with WAC 173-26-201(2.e).	173-26-201[2.e]	NR
X	2 (FW)	Urban Conservancy 20.25.015 & Shoreline Residential 20.25.020	There are some areas designated as Residential that have much intact riparian vegetation. These areas have low intensity residential uses (spaced with riparian vegetation between sites) or residences set back well away from the water. These areas need to be protected better than just using the small buffer. We recommend that they be designated as Urban Conservancy, because they meet the criteria for that environment, as noted above. Three stretches of Residential environment have low density segments in them: - Along the area where Maplewild Avenue's NE to SW segment lies closest to the sound. - Along the area of Maplewild Avenue's north-south segment and continuing north to 152nd Place - A segment of shore near the intersection of Shorewood Dr. and 30th Ave. These areas need to be re-evaluated and appropriate areas re-designated as Urban Conservancy.	Items 1 and 2 are areas that have significant residential development. It may appear highly vegetated on the aerial photos however there is a significant amount of residential development. In item 3, it appears they are referencing the Shorewood Community Club property which in all likelihood would not be developed. It should be noted that this property does meet some of the designation criteria for "urban conservancy". <u>Urban Conservancy Designation Criteria</u> A) They are suitable for water-related or water-enjoyment uses; B) They are open space, flood plain or other sensitive areas that should not be more intensively developed; C) They have potential for ecological restoration; D) The retain important ecological functions, even though partially developed; or E) They have the potential for development that is compatible with ecological restoration. <u>Shoreline Residential</u> Purpose - ... to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.	173-26-221 [5. E.iii] and [5.f]	

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

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

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

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			greatest extent feasible." This phrase needs to be removed from the regulation. In the context of mitigation in the Guidelines, the term "to the extent feasible" is only used as it relates to the first two sequencing steps. Projects have to avoid and minimize "to the extent feasible." All impacts still have to be mitigated.			
X	11	Impact Mitigation 20.30.010	<p>A policy link between conservation and restoration is needed. Suggested Language: <i>Policy (a) – Impacts to the ecological functions and values shall be mitigated to result in not net loss of shoreline ecological functions and process. Mitigation for impacts of new development projects should use enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.</i></p>	<p>Staff/consultant support the proposed change. Direction is needed on the suggested language.</p> <p>A new policy should be added.</p> <p><i>b. Mitigation for impacts of new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.</i></p> <p>And a new regulation should be added.</p> <p>f. When requiring compensatory measures or appropriate corrective measures pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. <u>Compensatory mitigation of impacts from new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources, If this is not feasible the second priority should focus mitigation on areas that are in need of restoration.</u> Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.</p>		2/23/10 Consider both a policy and a code change.
	12	Land Use 20.30.015	<p>The regulations do not implement the water dependency preference. Simply restating the water dependency preferences from the SMP Guidelines does not result in preferences being implemented. The regulations need to actually do something to make that preference real. This can be accomplished in several ways:</p> <ul style="list-style-type: none"> - Not allowing uses or modifications based on their lack of water-dependency in different environments. This can be done in the use table by making distinctions in different uses for water-dependency. For example, water-dependent or water related uses 	<p>This comment does not relate or fit local circumstances. Water dependent and commercial uses do not exist and not are planned for the shoreline areas.</p>	173-26-176[3.a]	

		commercial uses could be allowed while commercial uses that do not depend on a waterfront location can be prohibited or only allowed as a conditional use. - When non-water-oriented uses and modifications are allowed, they can be required to obtain a Conditional Use Permit. This can be done in the table by using the CU entry for some environments. - More stringent development standards can be applied based on lack of water dependency.			
13	Land Use (20.30.015) or in the use table notes:	We support the idea of "Shoreline uses and modifications should be compatible with the adjoining shoreline environment and designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions." But there is no implementing regulation Suggested language: <u>"Where a use or modification may occur in the Aquatic environment as indicated in Figure 4 and in the corresponding regulations for that use, it shall also be subject to any more restrictive permit processes or prohibitions on that use or modification as indicated for the adjacent shoreland environment."</u>	This appears to make sense and should be added.		
14	Critical Areas BMC 19.40 20.30.025 [2.a]	Exemptions for stormwater, utilities and trails allowed in the CAO (BMC 19.40) should not be allowed in the shoreline jurisdiction. Exemptions for water dependent uses should however remain.	Trails provide public access and should be allowed in shoreline jurisdiction. Policy C1 9, 10 and 11 state that utility crossings in shoreline areas should preserve shoreline ecology and water quality.		
15	Critical Areas 20.30.025 (2.c) And Definitions 20.40 Fresh Water	Requests that Critical Freshwater Habitats be section be added to 20.30.025 (2.c) pursuant to WAC 173-26-221(iv) and be given equal protection similar to Critical Fresh Water Habitats. Lake Burien is considered a critical area, but there is no definition in the draft SMA of fresh-water habitat. Fresh-water habitat should be added to the SMP. Freshwater habitat needs to be defined and practiced in the SMP so there is no net loss. This can be done by identifying the habitat of birds and fish. The protection of freshwater habitat is not mentioned in the SMP. According to the consultant, it was not included because they do not know how to define it. Research has been done and scientists consider freshwater habitat definable by threatened species that use the area as well as by what were and are the continued native species that currently use the area. The overall goal of the SMP is to protect the ecological function of	The term "critical freshwater habitat" is not specifically defined in the WAC 173-26 or RCW 90.58. However, one Dept. of Ecology document attempts to characterize these habitats (Shoreline Master Program Critical Area Segment Amendment Submittal Checklist—September 29, 2009). http://www.ecy.wa.gov/programs/sea/sma/news/Checklist_CriticalAreaSegment.pdf This checklist applies to jurisdictions amending the critical area portions of their SMPs outside of the overall update process that we are currently following. According to this checklist, the section on critical freshwater habitats "Applies to streams, wetlands, lakes, CMZs, and flood plains <u>designated as critical areas by the local government</u> ; along with additional areas identified by Ecology as vital to fish and wildlife conservation." (emphasis added) The checklist language is slightly different from the applicability section of WAC 173-26-221, which "applies to master program provisions affecting critical freshwater habitats, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains <u>designated as such.</u> " (from WAC 173-26-221(2)(c)(iv)(A) emphasis added)	173-27-030	

the shorelines of the State that are located within the boundaries of the City of Burien. Small, fresh water habitats are in far shorter supply on this planet compared to saltwater habitats and should be afforded greater, if not, equal protection. Critical freshwater habitat of Lake Burien is recognized in the SMP, but no definition is provided. However, it does define a critical saltwater habitat. This suggests that protecting the freshwater habitat is of less importance than protecting saltwater habitat.

The WAC appears to require that a lake or wetland be specifically designated as a critical freshwater habitat (for which there is no definition or designation criterion) while the checklist assumes that all lakes and wetlands that are also locally-designated critical areas are critical freshwater habitats.

If we follow the checklist, Lake Burien and its wetlands would be considered critical freshwater habitats. Regardless of whether Lake Burien and its wetlands are designated as critical freshwater habitat, the draft SMP complies with all of the provisions in WAC 173-26-221(2)(c)(iv)(B) and (C) applying to critical freshwater habitat:

“(B) Principles. Many ecological functions of river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of the river channel. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions downstream. Likewise, gradual destruction or loss of the vegetation, alteration of runoff quality and quantity along the corridor resulting from incremental flood plain development can raise water temperatures and alter hydrographic conditions and degrade other ecological functions, thereby making the corridor inhospitable for priority species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of river and stream corridors depends on:

- (I) Planning for protection, and restoration where appropriate, along the entire length of the corridor from river headwaters to the mouth; and
- (II) Regulating uses and development within the stream channel, associated channel migration zone, wetlands, and the flood plain, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore the corridor’s ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic

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				<p>connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.</p> <p>Master program provisions for river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.</p> <p>(C) Standards. Master programs shall implement the following standards within shoreline jurisdiction:</p> <p>(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss.</p> <p>(II) Where appropriate, integrate protection of critical freshwater habitat, protection with flood hazard reduction and other river and stream management provisions.</p> <p>(III) Include provisions that facilitate authorization of appropriate restoration projects.</p> <p>(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection."</p>		
15 A	Critical Freshwater habitats	Again request that critical freshwater habitats be added to 20.30.025[2.c].		There is no specific definition of critical freshwater habitats, for lakes, comparable to the term used for saltwater habitats, but yes there is a section addressing how critical freshwater habitats are to be managed. The proposal is to use the existing wetland regulations found in BMC 19.40.	173-26-221 Gen Mste. Prg. Req[2.c.iv], pg 60	
16	Critical Areas 19.40.300 20.30.025 [2.a]	BMC 19.40.300 excludes small wetlands from protection. This provision needs to be excluded from the parts of the CAO incorporated into the SMP.		Comment noted. Wetlands within shoreline jurisdiction will be protected or mitigated consistent with provisions in Title 19.40.	173-26-221[2.c.i]	
17	Critical Areas 19.40.300[3,4] 20.30.025 [2.a]	The wetland rating system needs to be changed to use the current science for wetland protection. We recommend the use of Ecology's <i>Washington State Wetland Rating System for Western Washington - Revised</i> .		The SMP inventory on pg. 9 discusses the sources used for wetland identification that included the City of Burien CAO, King County GIS data, National Wetland Inventory, Ecology's Digital Coastal Atlas, WDFW Priority Habitat, and a 2005 report for Seahurst Park.	173-26-221[2.c.i]	
17 A	Critical Areas Wetlands 19.40.300[3,4]	The system reference in #17 above should be used to ensure the SMP is consistent with Policy CON 9 which requires the use of best available science. The current system in the BMC is a less scientific system.		The category 4 wetland rating was determined by review of the sources listed in #17 response above.		
18	Critical Areas BMC 19.40 20.30.025 [2.a]	Storm water and utility alterations to streams, wetlands and their buffers should be required to mitigate or impacts – currently facilities only have to repair damage to the pre-damage condition, not compensate for the new impacts from corridors or facilities....		BMC 20.30.105 (2.k) requires reclamation and maintenance to ensure success of newly planted vegetation.	173-26-221[2.c.i]	
19	Critical Areas 19.40.310 – 350	Stream and Wetland buffer reductions should require that the option of buffer averaging be tried first. To implement the		Comment noted. Wetlands within shoreline jurisdiction will be protected or mitigated consistent with provisions in Title 19.40.	173-26-221[2.c.i]	

	20.30.025 [2.a]	mitigation sequencing concept.			
20	Shoreline Public Access Element 20.20.015	Increasing the amount of public access will not achieve the "no net loss standard"; improve the ecology of the Lake or Puget Sound. If access is granted things such as milfoil will be introduced to the lake. There are no data or analysis of the lake, its water quality, and carrying capacity to support the assumption that public access will do no harm and cause no net environmental loss. (see Turtle v. Fitchett upholding objections to public use on Lake Burien, 1930).	<p>The issue of access was discussed during the Shoreline Advisory Committee meetings. There was a specific policy decision to address access as shown in the Shoreline Advisory Committee Shoreline Master Program draft. There is specific policy that addresses how access is to be provided. Please see SMP policies: PA 3 and PA 4.</p> <p>Public access to shorelines of the state is generally required by the SMA. The Shoreline Master Program Guidelines state....</p> <p><i>173-26-176 (2) General Policy Goals of the Act and Guidelines for Shorelines of the State. "The policy goals for the management of shorelines harbor potential for conflict. The Act recognizes that the shorelines and water they encompass are "among the most valuable and fragile" of the state's natural resources. They are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research and education. Thus, the policy goals of the Act relate both to utilization and protection of the extremely valuable and vulnerable shoreline resources of the state. The Act call for the accommodation of "all reasonable and appropriate uses" consistent with "protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life and consistent with "public rights of navigation." The Act's policy of achieving both shoreline utilization and protection is reflected in the provision that "permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public's use of the water." RCW 90.58.020</i></p> <p>An existing policy statement (PA 9) addresses the concern regarding the process by which public access points are designed improved or created. This provides guidance on the public process to ensure that it is designed consistent with the policy intent and address neighborhood concerns.</p>	RCW 90.58.020 173-26-176 [2] 173-26-221[4]	
21	Shoreline Public Access Element 20.20.015	Access will increase littering, vandalism, property destruction. There are already access points available to the public and it would be expensive to fund and maintain that which is proposed in the plan. The plan should include language to assure that before any changes are made the residents of those areas be given: <ul style="list-style-type: none"> 1) Notice of any specific plans that the City may already have and adequate opportunities to respond and express concerns about impacts of those plans on the community. 	<p>The issue of access was discussed during the Shoreline Advisory Committee meetings. There was a specific policy decision to address access as shown in the Shoreline Advisory Committee Shoreline Master Program draft. There is specific policy that addresses how access is to be provided. Please see SMP policies: PA 3 and PA 4.</p> <p>Policy language exists (PA 9) that provides direction on public involvement when shoreline projects are being planned.</p>	173-26-241	

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

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		20.20.015 Pol. PA 6	title properties that abut shoreline areas shall be prohibited. Vacation or sale of publicly owned tax title properties that abut the shoreline areas shall be prohibited. The City should protect these areas for public access and public viewpoints.			
	21 G	Shoreline Public Access 20.20.015 Pol. PA 7	Proposed Language: <u>Publicly owned shoreline street ends</u> waterfront street ends should be recognized as: a. An important community resource that provides visual and physical access to the Puget Sound; b. Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods; c. A destination resource, where limited facilities and enhancements are provided.	This is a policy that is directly taken from the existing City Comprehensive plan. Street ends are owned by the City, however the language does provide further clarification. Another option may be use of the term "city right-of-ways".		
	21 H	Shoreline Public Access 20.20.015 Pol. PA 8	Proposed Language: The City should manage and develop <u>publicly owned shoreline waterfront street ends</u> by: a. Supporting their use by residents city-wide, yet ensuring that the street ends and their supporting facilities are developed at a level or capacity which are appropriate to the neighborhood character, promotes safety, <u>protects private property rights and individual privacy</u> , and is consistent with City risk management practices; b. Ensuring that public parking is available <u>and limited to a level appropriate to the capacity of the public access site that it supports when used in a manner that results in no net loss of shoreline ecological function</u> , and that any new parking that is developed would be harmonious with the surrounding neighborhood; c. Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area; d. Installing signs that indicate the public's right of access and <u>the rules of use, and penalties for misuse</u> ; encourage appropriate use ; e. Installing limited trail improvements and enhancements <u>in the street ends</u> to allow access to the water; f. <u>Protecting adjacent private property, individual privacy, and public safety</u> ; Minimizing the potential impacts associated with their use on adjacent private property ; and g. Developing a street ends plan that promotes <u>public shoreline waterfront access and public safety</u> .	Note: underlined text in the comment letter did not accurately reflect the proposed changes to the policy. The comment underlines were modified to accurately reflect the proposed changes. Strikeouts were also added. This is a policy that is directly taken from the existing City Comprehensive plan. The Planning Commission will consider the proposed language. It should be noted that the goals and policies should be consistent with the regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations		

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

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

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

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 public shoreline shore-access, or as a consideration in the design of new development. The City should seek a variety of means for financing and maintaining mini-parks, including considering opportunities for community stewardship and grant or private funding.

2. Regional Parks

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

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 publicly owned shoreline waterfront-street ends (including those at SW 170th Pl., SW 163rd Pl., and at the intersection of Maplewild Ave. SW and SW 172nd St.).

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30 D	Recreation element 20.20.020 Pol. REC 10	Proposed Language: The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and /or scenic drives, should be encouraged and <u>must protect private property rights and individual privacy.</u>	The Planning Commission will consider the proposed language.		
30 E	Recreation element 20.20.020 Pol. REC 11	Proposed Language: Development of recreational facility-facilities along <u>publically owned</u> City shorelines should implement Low Impact Development techniques whenever feasible.	Low impact development techniques should be implemented regardless of location. No changes to the existing language are recommended.		
30 F	Circulation element 20.20.025 Goal CI	Proposed Language: Provide safe, reasonable, and adequate circulation systems in the shoreline area that will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline and <u>protecting private property rights and individual privacy.</u>	The proposed language creates a conflict that is inherent when providing necessary circulation systems (roads) and adjacent single-family or other noise sensitive uses.		
30 G	Circulation element 20.20.025 Pol. CI 3	Proposed Language: Provide and <u>Preserve</u> /or enhance existing physical and visual public access along shoreline public roads and trails when appropriate given topography, views, natural features, and surrounding land uses, <u>while protecting private property rights and individual privacy.</u>	Keep existing language, no changes recommended.	RCW 90.58.020	
30 H	Circulation element 20.20.025 Pol. CI 4	Proposed Language: Public transit systems should provide service to designated <u>public parks within the City shoreline-public access points.</u> <i>(The designated access points on the saltwater shoreline [other than Seahurst Park] are so small that any public transit of people to these areas would overwhelm the capacity of the access points and result in harm to the shoreline. This is in direct opposition to the purpose of "no net loss" in the state program.)</i>	The Planning Commission will consider the proposed language.		
30 I	Circulation element 20.20.025 Pol. CI 6	Proposed Language: Parking in shoreline areas should directly serve a permitted shoreline use <u>private property owners within the shoreline area, and existing public access points. Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights and individual privacy.</u>	Residential single-family is a permitted shoreline use. Parking is necessary for other facilities, Seahurst Park is one example. Suggest adding the last portion to further clarify the amount of parking. <u>Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights and individual privacy.</u>		
30 J	Circulation element 20.20.025 Pol. CI 7	Proposed Language: Parking facilities should be located and designed to <u>protect private property rights and individual privacy;</u> and to minimize adverse impacts, including those related to: stormwater runoff; water quality; visual qualities; public access; and vegetation and habitat maintenance.	The Planning Commission will consider the proposed language.		

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

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			<p>from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction. Impacts to existing views from public property or substantial numbers of residences should be minimized by provisions such as maximum height limits, setbacks, and view corridors.</p> <p><i>From page 67, item (iv) of WA State Shoreline Master Program Guidelines)</i></p>		
X	31 C	Public Access 20.30.035 (2)	<p>Proposed Language: 2. Regulations</p> <p>a. Public access provided by shoreline street ends, rights-of-way, and other public lands shall provide, maintain, enhance and preserve visual access to the water and shoreline in accordance with RCW 35.79.035. Vacation of streets or street ends abutting bodies of water must be in compliance with RCW 35.79.035.</p> <p><i>(The only mention of right of way in the state document relates to railroad ROW, ROW related to commercial or industrial use, and location of utilities in ROW)</i></p> <p>b. Existing Visual access to outstanding scenic vistas areas shall be preserved provided with the provision of roadside pullovers or broadening of road shoulders.</p> <p>c. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.</p> <p><i>(There is no mention of unused right of way in the state plan. Once again, wording suggesting the take-over of private property for public use – NOT the intent of the state shoreline management program.)</i></p> <p>d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses, individual single family residences and subdivisions of less than four-five parcels.</p> <p><i>(Another example of wording suggesting the take-over of private property for public use – NOT the intent of the state shoreline management program.)</i></p> <p>e. Same</p> <p>f. Same</p> <p>g. Same</p> <p>h. Required public access sites on public lands shall be fully</p>	<p>Item a – The Planning Commission will consider the proposed language.</p> <p>Item b – The Planning Commission will consider the proposed language.</p> <p>Item c - The Planning Commission will consider the proposed language.</p> <p>Response to comment; A road or right-of-way is public land and therefore there would be no "take over" of private property.</p> <p>Item d -- The proposed language in the comment is very clear and should be used. It is also consistent with the WAC. Related to 31 A above.</p> <p>Item h - No changes are recommended.</p> <p>It should be noted that the goals and policies should be consistent with the</p>	

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		<p>developed and available for public use at the time of occupancy or use of the development or activity.</p> <p>i. Same</p> <p>j. Same</p>	<p>regulations. Care should be taken to ensure the policies changes are consistent with the implementing regulations.</p>		
31 D	Public Access 20.30.085[2.h]	<p>Proposed Language: Delete 20.30.085[2.h] and replace with the following language.</p> <p><u>"Public boating and swimming shall be prohibited on Lake Burien until such time as the city has defined and implemented a series of controls to assure</u></p> <p>1) <u>No invasive species will ever be introduced into the lake.</u></p> <p>2) <u>Patrols, funded by the city, monitor the lake assuring no trespass of lands or vandalism of property.</u></p>	<p>The Planning Commission may consider this restriction.</p>		
31 E	Public Access	<p>There is not a document or policy that clearly explains the steps, studies and checklist to be completed to provide access. In addition there should be a plan for public access and how monitoring is going to take place. A table was provided to showing an example public access plan table that could be included as an appendix. See comment from C Edgar, dated 2/9/10, page 6</p>	<p>Comment noted. Any public access would proceed through the appropriate permit review process and apply all applicable environmental and shoreline regulations. A map of the access areas is included in the shoreline inventory, which is another method to illustrate existing public access points. It should be noted that the inventory primarily focused on physical access points.</p>		
32	Inventory, Flood Hazard Reduction 20.30.030	<p>Section 10.5 Lake Burien in on in the 100-year flood plain and there are no landslide or seismic hazards associated with the lake therefore there is no reason to reference the weir at the lake outlet. Item F in 20.30.030 should be removed.</p>	<p>The weir exists within shoreline jurisdiction and must be periodically maintained. It is appropriate to include this in the SMP.</p> <p>The proposed language removed the notion of the City having an obligation to maintain the weir. The change from the SAC draft to the current version was following discussion with the city legal department. The Lake residents have stated that it is their desire to maintain the weir and this policy change would remove any reference to city having an obligation to do so, it also removes the notion that the City will use this an a method to gain access to the lake.</p>		
X 33	Shoreline Vegetation Conservation 20.30.040	<p>There is no general statement that vegetation removal in the buffer is not allowed without shoreline review. More language is needed to cover different vegetation alteration situations.</p> <p>Suggested Language:</p> <p><i>b. Alterations to vegetation within shoreline jurisdiction (except for the maintenance of existing or approved conditions) are not allowed without shoreline review. When allowed, alterations to the vegetation shall result in no net loss of shoreline ecological value or function.</i></p> <p><i>c. Alterations within the shoreline vegetation conservation buffer shall provide mitigation for new impacts of the development, and shall only be allowed through approval of a vegetation management plan. Mitigation should take the form of vegetation</i></p>	<p>Vegetation alterations require review pursuant to 20.30.040(2.b).</p> <p>There appears to be a mistake in the outline numbering used in the comment letter. b is a, c is b. The correct nomenclature is used below</p> <p>a. Staff/consultant can support this clarification.</p> <p>b. The suggested language implies that all alterations will be associated with new development. This may not always be the case. If mitigation is required it should be accordance with other provisions in the SMP such as 20.30.010[2.c], impact mitigation and 20.30.095[2.a] Residential Development. Suggest the following changes.</p> <p><i>Alterations within the shoreline vegetation conservation buffer shall provide</i></p>		

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		<p><u>enhancement and improvements to ecological functions. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40. At a minimum, mitigation shall include:</u></p> <p><u>i. Revegetation of degraded buffer areas within 20 feet of the ordinary highwater mark (or top of shore armoring if applicable) or wetland edge with dense native vegetation meeting the standards of paragraph (b)(iii-iv), below. The Administrator may require wider widths or other improvements to mitigate greater impacts.</u></p> <p><u>ii. The above revegetation area may be modified using area averaging when existing structures encroach into the 20 foot width, when access through the area to waterfront facilities is needed, or when water-dependent activities need to take place in the area.</u></p> <p><u>d. Within a shoreline riparian buffer as set forth in BMC 20.30.050 alterations shall comply with the following;</u></p> <p><u>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</u></p> <p><u>ii. At least 75% of the buffer area shall be <u>revegetated, where it is degraded;</u></u></p> <p><u>and</u></p> <p><u>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions rather than a landscaped yard; and</u></p> <p><u>iv. Vegetation planting areas shall consist of a mix of native trees, shrubs and ground cover – <u>lawn is not an acceptable groundcover;</u></u></p> <p><u>and</u></p> <p><u>v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and</u></p>	<p>mitigation for new impacts of the development, and shall only be allowed through approval of a vegetation management plan. If mitigation of impacts is necessary it should take the form of vegetation enhancement and improvements to ecological functions. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40.</p> <p>No suggested changes to the remainder of the section.</p> <p>c. These are good clarifications however references too lawn not being an acceptable ground cover is not necessary as it is prohibited by section vii. Agree that section v. should be removed, this is overly restrictive in that any alteration cannot remove vegetation areas, this is may not be possible in some development scenarios. The section is suggested to read as follows:</p> <p>d. Within a shoreline riparian buffer as set forth in BMC 20.30.050 alterations shall comply with the following;</p> <p><u>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</u></p> <p><u>ii. At least 75% of the buffer area shall be <u>revegetated, where it is degraded;</u></u></p> <p><u>and</u></p> <p><u>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions rather than a landscaped yard; and</u></p> <p><u>iv. Vegetation planting areas shall consist of a mix of native trees, shrubs and ground cover – <u>lawn is not an acceptable groundcover;</u></u></p> <p><u>v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and</u></p> <p><u>v. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</u></p> <p><u>vi. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</u></p> <p><u>vii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality.</u></p>		
34	Conservancy Park/Restoration Pol. REC 9 (pg II-7)	Seahurst Park North Seawall Removal – could debris be place at 60-80' depth off park as an artificial reef? Ex: reef of Des Moines Marina/Pier was enhanced as a marine life environment	Seahurst Park has an approved Master Plan. The plan does not include an artificial reef and a component however when the plan is updated or reconsidered this project could be considered.		
35	Dimensional Standards 20.30.050 (Fig. 5) (pg IV-12)	Lots adjacent to Lake Burien should be rezoned back to 12,000 square foot minimum lot size to protect the health of the lake or a method should be created to limit development based on shoreline footage.	Pursuant to WAC 17-26-211 (3) "local comprehensive plans constitute the underlying framework within which master program provisions should fit." Therefore zoning and comprehensive plan changes were not included in the scope of the update process.	WAC 17-26-211 (3)	

	36	Dimensional Standards 20.30.050 (Figure 5) Shoreline Buffers 20.30.055 (1)	The buffer width for the Urban Conservancy area should be a science based buffer which is at least 100 feet wide (150 feet preferred).	We could support this change; however future developments in Seahurst Park will be the most affected. It appears only one SFR would be impacted, which is located south of the Park.		
	37	Restoration	There needs to be a funded monitoring program to watch the water quality/fresh-water habitat on Lake Burien. None is currently written into the SMP.	Suggested that this could be included, but need to identify the specifics of what should be monitored, by whom and if there is a funding source.		
X	38	Shoreline Buffers 20.30.055	There doesn't appear to be a policy for how vegetation is to be protected. A policy needs to be provided or supplemented that provides a foundation for the vegetation and setback regulations, and describes the SMP's strategy for riparian vegetation	A policy could be added to clarify the relationship between vegetation protection and the associated strategy. Please see the suggested policy language below. <u>c. Vegetation within the city shoreline areas should be enhanced over time to provide a greater level of ecological functions, human safety, and property protection. This should be accomplished by managing alterations within shoreline jurisdiction and implementing vegetation management standards that will maintain or enhance the ecological functions. Emphasis on vegetation maintenance and enhancement should be focused in degraded areas and areas that are most beneficial to shoreline ecological functions.</u>		
	39	Bulkheads and Other Shoreline Stabilization Structures 20.30.070	Shore stabilization standards should be in the general standards section with other environmental protection standards. A project proponent, and perhaps even staff, may not normally go the shore stabilization section for find standards about avoiding shore stabilization.	Comment noted but no changes are recommended.		
	39 A	Bulkheads and Other Shoreline Stabilization Structures 20.30.070 & 20.30.075	Requests that the following be added: A. <u>Normal maintenance or repair of existing shoreline components (including damage by accident, fire, or elements) shall be permitted.</u> B. <u>Shoreline structures shall be designed to minimize the transmission of wave energy. (from Medina)</u>	Item A - Please see 20.35.025(4.B) Item B – 20.30.070 [2.f] could be modified to include the proposed language. Staff would support this change.		
	40	Docks, Piers and Floats 20.30.075	The policies and regulations in Section 20.30.075 do not refer to docks and piers together consistently... These facilities need to be treated the same, especially for standards that allow or don't allow them.	The code should be amended to include both facilities having similar regulations.		
	41	Docks, Piers and Floats 20.30.075 Alteration or Reconstruction of	The issue of repair and replacement is not addressed as it relates to bringing piers and docks into conformance with the code as substantial parts are replaced over time. We recommend that you supplement the materials to fully address the issues. The City of Kirkland and City of Kent have thorough piers/docks provisions	We could research additional guidance if requested by the Planning Commission. The Shoreline Advisory Committee did not discuss this.		

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		Nonconforming Structures or Uses 20.35.045 (FW)	that we recommend you use as templates.			
42		Dimensional Standards for Shoreline Development 20.30.050 & Shoreline Buffers 20.30.055	Saltwater reaches have been treated similar to fresh water reaches.	Saltwater reaches were treated differently than freshwater reaches. Saltwater and freshwater reaches have different buffer widths, 50 feet for saltwater and 30 feet for fresh water.		
43		Dimensional Standards for Shoreline Development 20.30.050 & Shoreline Buffers 20.30.055	Requesting that the issue of reduced lot size and buffers around the lake need to be analyzed to ensure there is no net loss of ecological functions pursuant to WAC 173-26-221 (2.b.iv), and c, l and A, B, C, D and WAC 173-26-201 (2.e). Request that this issue be addressed in 20.30.050 and 20.30.055 or as a zoning issue.	See # 35 above, responding to zoning and comprehensive plan land use related comment. In addition see response to potential conflicting policy goals of the SMA and uses adjacent to shorelines (173-26-176[2]). The Act's policy objective is to achieve both shoreline utilization and protection.		
44		Docks, Piers and Floats 20.30.075	The piers/docks section needs to address the problem of the proliferation of boating structures, as required by the SMP Guidelines; 8 and we recommend adding specifics to better guide how it's done. This is a primary issue for us, as it is needed to protect the shoreline functions. We recommend the following new regulation to reduce proliferation through a comprehensive strategy that addresses all aspects of piers and docks. Avoid the proliferation of pier/dock & boating structures through the use of mitigation sequencing, using the following preference criteria: 1. New single family residential subdivisions may only use shared or community facilities. Such facilities should have limits on their size, and single-user structures are not allowed. 2. For existing single family residential lots: - Non-waterfront lots may not have boating structures, but rather must use a marina, community, or public facility. - Waterfront lots first should try to share nearby existing facilities or use nearby public facilities. When that is not possible, new facilities shall be shared with adjacent or nearby lots that do not have facilities, if there are any present. Cost sharing or late-comer agreements, similar to those used for shared roads, driveways, and utilities shall be established as necessary. 3. Multi-family development is not water-dependant, and may not have such structures, unless permitted as a Boating Facility use.	1. Staff and consultant do not object to including this language. 2. Staff and consultant support the inclusion of this language. 3. Staff and consultant support the inclusion of this language.		

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X	45	Residential Development 20.30.095	<p>The residential standards need to be supplemented to address accessory uses and facilities, such as utilities, transportation, recreation, etc. Mitigation sequencing needs to be built into these provisions: avoid first, then minimize, then compensate. We recommend that:</p> <ul style="list-style-type: none"> -Non-water-dependent facilities (storage sheds, decks, driveways, utility lines, entertainment decks/patios) should meet the buffer/setback. -Only water dependent facilities (crossings, boat facilities, etc.) should be within the setback/buffer. -Waterfront facilities should be co-located with each other to reduce the footprint of the facilities. -Water-dependent facilities should be minimized; rather than maximized (smaller dock rather than larger dock, boat slip rather than boat garage, pocket swim area rather than frontage-wide swim area) 	<p>These appear to be good clarifications and should be included in the document.</p> <p>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.</p> <p><u>Accessory structures shall not be located in required shoreline setbacks where feasible and where a shoreline location is not necessary, and shall be prohibited over the water unless clearly water-dependent such as moorage (docks and floats) for recreational or personal use.</u></p>		
	46	Residential Development 20.30.095(c)	<p>The Common Line Setback and buffer reduction process (Regulation (c)) allows buffers smaller than those in the buffer table. However, this provision needs to be clear in reminding the reader that they still must meet the vegetation conservation and mitigation standards.</p>	<p>Clarification could be added but it may not be needed, the development regulations apply and require vegetation management and that development comply with the no net loss standard.</p>		
X	47	Residential Development 20.30.095(c)	<p>The common line setback provision needs to be limited to only the Residential environment, where the situations it is designed for are prevalent.</p>	<p>The code section specifically references "residential development". It however could be expressed more clearly and directly.</p> <p>d. Common-line riparian buffer and building setback standards. Riparian buffer and building setback standards for single-family primary residential structures may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve reduced buffer and setback for residential development under the following conditions:</p>		<p>Direction requested for 3/9/10 meeting.</p>
	48	Residential Development 20.30.095(2.C.ii)	<p>This section should not make a difference if the shoreline resident lives next to a vacant lot. The proposed restrictions for reconstruction next to an empty lot would leave little or no property upon which to rebuild for many property owners. Undeveloped green space should not be a punishment to current adjacent homeowners. They should be allowed to rebuild after a disaster within their current existing footprint, including deck overhangs beyond existing foundation or pilings supporting decks.</p>	<p>The City proposed code allows the reconstruction of non-conforming structures in their legally established location (see # 52 below). The common line setback line scenario that is provided would only apply when a structure is proposed to constructed or expanded. In addition, there always is an opportunity to apply for a shoreline variance, however the project must meet the applicable criteria.</p>		
	49	Residential	<p>This section needs to strengthen the proposed requirements for</p>	<p>The City could support this language, although it is very unlikely that adjacent</p>		

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X		Development 20.30.095[2.i & j]	sharing facilities, otherwise it will not happen. This is part of the first and second steps in mitigation sequencing – avoidance and minimization of shoreline development. Suggested Language: <i>Stairs and trams to the beach are allowed, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use and the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and is not feasible. New facilities shall be shared with adjacent properties that do not already have such facilities, and shall include shared maintenance easements and agreements as necessary. Only one stair or tram system is allowed – duplicate facilities are not allowed.</i>	property owners will share a beach tram or stairs (too many legal issues could be involved). Staff recommends the following language. <i>Stairs and trams to the beach are allowed, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use and the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and is not feasible. New facilities shall be encouraged to be shared with adjacent properties that do not already have such facilities, and shall include shared maintenance easements and agreements as necessary. Only one stair or tram system is allowed for each primary residential structure – duplicate facilities are not allowed.</i>		
	49 A	SMP Applicability 20.30.005	The phrase “the plan shall be liberally construed... exemptions shall be narrowly construed” leads to value judgements, which could become overbearing and opens the city and its citizens to the possible abuse of government authority.	This is a requirement found in the SMA, see RCW 90.58.900.	90.58.900	
	50	Exemptions from Shoreline Substantial Development Permits 20.35.025[4.B]	The exemption for Repair and Maintenance includes provisions for when replacement is an acceptable means of repair. A statement should be included: <u>“The need for replacement resulting from a neglect of maintenance and repair is not considered a common method of repair.”</u>	Staff and the consultant have no objections to the proposed language.	173-27-040(2)(b)	2/23/10 Include the proposed language.
	51	Letter of Exemption 20.35.030.1	Section 20.35.030.1 Letter of Exemption, General states: “Applicants for other permits or approvals must obtain a written letter of exemption.” We recommend that for ANY development project subject to the SMA that might qualify for an exemption, the city should document what is being authorized in a Letter of Exemption. This provides documentation of compliance to the applicant. It also helps the city track the development occurring on its shorelines. So we recommend that “Applicants for other permits or approvals” be deleted and “Persons requesting an exemption” be substituted in Section 20.35.030.1.	The City has no objection to the proposed change in language.	173-27-050(1)	
X	52	Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045(3) 20.35.045(4)	Foundation walls should include allowing existing homes and their deck structures to be rebuilt to set overhang beyond the existing deck piers. If damage occurs to the residence, property owner should be allowed to rebuild exactly as structure was before damage. A policy should be added to SMP that Burien will not see a re-build as a ‘take-away’ & that reconstruction is not viewed as a	The existing language of 20.35.045 could be improved to clarify the intent of the regulations, which is to allow reconstruction of legally established structures in the same location so long as there is no net loss of ecological functions. Non-conformance thresholds were taken from the existing non-conforming chapter in the Burien zoning code. The decision to use the language in the draft SMP was to	173-27-080	2/23/10 Include language. And

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			harm to the community's 'no net loss' goal.	<p>treat non-conformances citywide the same. Consistent with other local regulations was the approach. Consistency avoids confusion on the issue on nonconformance. Please see BMC 19.55.030[3.B], for the source used as a basis for determining the non-conformance threshold. It contains the 50% threshold. It should also be noted that the existing SMP contains the same 50% threshold, however it is based on market value.</p> <p>Proposed Revision</p> <p>4. Reconstruction. A nonconforming structure which is destroyed, deteriorated, or damaged more than 50% of the assessed value of the <i>nonconforming structure</i> as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with existing regulations and the following:</p> <ol style="list-style-type: none"> The structure must be located landward of the ordinary high water mark. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program. The remodel or expansion reconstruction shall not cause adverse impacts to shoreline ecological functions or processes. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into the riparian buffer, or the minimum required side yard setbacks require a variance. An application is filed to reconstruct the structure within 18 months of the date of the damage. 		Please see table outlining non-conforming thresholds for approved SMP's.
X	52 A	Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045(4)	<p>Proposed Language:</p> <p>4. A nonconforming structure which is destroyed, deteriorated, or damaged by <u>more than 50% of the assessed value of the <i>nonconforming structure</i> as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed within the original footprint of the destroyed structure only insofar as it is consistent with existing regulations and the following:</u></p> <p><i>This issue is CRITICAL because it will affect the ability to finance a</i></p>	<p>RCW 90.58.100 6. Provides protection to SFR's and appurtenant structures.</p> <p>The proposed language does not preclude the ability for a single family home to be reconstructed.</p> <p>Please see table outlining non-conforming thresholds for approved SMP's. Provided in 3/9/10 packet.</p>		

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			loan to rebuild and the ability to obtain insurance on the house/property. Home Lenders will disallow mortgage financing if security for the loan (the house) cannot be rebuilt; and the inability to obtain property insurance will eliminate the ability to refinance. In effect, the City is potentially displacing homeowners if this is allowed to stand.		
X	52 B	Alteration or Reconstruction of Nonconforming Structures or Uses 20.35.045(3) 20.35.045(4)	Concern was expressed regarding the language relating to expansions and the language was unclear.	The suggested language should add further clarity and align with terminology used in the zoning code. 20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses 5. Expansion. Enlargement or expansion of single family residences within the riparian buffer or building setback <u>within the building coverage</u> 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 <u>building coverage</u> by the addition of space to the primary structure or by the addition of normal appurtenances as defined in <u>Section 20.40 20.40.000</u> 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: The existing definition of building coverage in the zoning code is as follows; BMC 19.10.050 <u>Building coverage</u> – The percentage of the area of a lot that is covered by the total horizontal surface area of the roof of a <u>building</u> .	2/23/10 Include proposed language. Staff propose additional language
	53	Stormwater	Burien should make a policy to regulate grass and lawns for all Burien property owners, not just property owners on the shoreline. Most stormwater run-off flows to the Puget Sound and all property owners should be treated equally.	The jurisdiction of the Shoreline Master Program is the upland area within 200' of the ordinary high water mark as well as any associated wetlands and therefore this document can not regulate all other properties in Burien.	
	54	Shoreline Advisory Committee	The Citizen's Advisory Council (CAC) composition and affiliations were not documented in the SMP nor the notes. There was a lack of proper notion of consensus of people who live in Burien.	The comment has been noted and an acknowledgements section was always envisioned and will be added to the Shoreline Master Program in future drafts.	
	55	Process	Public participation promised was not delivered by City planner et al. Lack of promised public participations during the early stage of the process.	There were several opportunities and more opportunities to come for public participation. There were two open houses, nine (9) Shoreline Advisory Committee meetings and a public hearing with the Planning Commission. There will be additional public hearings with the City Council, as well as a public hearing with the Washington State Department of Ecology.	
	56	Process	Poor method of documenting what was said in the meetings to the point that much of the important stuff was lost and much was	Meeting summaries were compiled at each Shoreline Advisory Committee. After the meeting, the summaries were prepared and included in the next meeting's packet	

			misquoted.	for the Shoreline Advisory Committee to review, comment on, and approve/disapprove. All meeting summaries were approved by the Committee.		
57	Technical documents	All decisions about the use of critical areas are not required to be based on the Best Available Science about the critical area. Not once during the process of preparing the SMP Update has the Lake Steward for Lake Burien been contacted by the City of information about the lake with regard to: water quality practices, noxious weed control, studies on the lake residents have been involved in, flood issues, operational aspects of the weir, threatened species that use the lake, habitat areas used by threatened species, rules that neighbors follow that protects the lake, historical data about the lake, or a basic tour of the lake.		There were presentations to the Shoreline Advisory Committee on the shoreline inventory to specifically ensure that it accurately captured the best information available. The inventory and shoreline characterization were vetted during that process. In addition other attendees that had opportunities to review the inventory and characterization reports to pursue accuracy and thoroughness of the documents. The Lake Steward was a member of the Shoreline Advisory Committee.		
57 A	Technical documents	The three technical documents have incorrect or incomplete information. Please see letter from Chestine Edgar, dated February 9, 2010, Topic # 57 that contain 9 items		The City will issue an errata sheet.		
58	Land use	The saltwater waterfront lot size on the shorelines of Puget Sound is zoned RS-12,000. The freshwater waterfront lot size on the shorelines of Lake Burien is zoned as RS-7,200. As a result, the city is allowing that the land around Lake Burien develop to a higher density that it is requiring for land development on the Puget Sound. Since small, freshwater habitats should be afforded greater, if not equal protection. This seems to be just the opposite and contrary to the intent of the SMP to protect the ecological function of Lake Burien's shoreline.		Whether the zone is RS-12,000 or RS 7,200, the Shoreline Master Program requires all development to obtain no net loss. In requiring no net loss associated with development, the ecological functions of all shorelines are being protected. Please also see # 35 above.		
59	Inventory 1.2	Section 1.2 of the inventory refers to supporting sources in the Bibliography, Section 7, Appendix A. There is a stated lack of reference for Lake Burien reach. Lacking evidence of any and every kind is not a scientific baseline as required by law, practice, and precedence.		The SMP inventory was accepted by Ecology as adequate to establish the baseline conditions. The inventory research also included King County lake information for the Lake Burien, as well as, the Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake.		
60	Inventory 1.4	Section 1.4 of the inventory contains a typographical error for perimeter measurement of the lake. Source of the measurement is not cited.		Comment noted. The Restoration Plan, dated March 2009, Table 1 has been revised to include the corrected dimensions and conversion for the perimeter of Lake Burien.		
61	Inventory 2.1	Section 2.1 a statement challenging the studies and methods that resulted in the assessment for Lake Burien an all reaches of Burien. The studies referenced are too general and is not use full as a base line for impact assessment.		The SMP inventory was accepted by Ecology as adequate to establish the baseline conditions.		
62	Inventory 10.5	Section 10.5 there are no document at all on the wildlife, resident or migratory of Lake Burien, there are no documents for flora or fauna noted in this or any document associated with the SMP of are of any detail that would allow for baseline adjudication against		King County lake information for the Lake Burien watershed was studied, including water quality data and aquatic plants and fish. In addition, the Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake was researched and evaluated.		

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			future status and conditions.			
63	Inventory	The shoreline inventory is incomplete because WAC 173-26-201 (2) a., states that relevant parties should be contacted for available information. The Lake Steward was not contacted for any information about the lake.	The Lake Burien Shore Club online inventories and description of fish, birds and wildlife using the lake was researched and evaluated. A representative of the club was a regularly attending member of the Shoreline Advisory Committee.			
64	Inventory	There were also no site visits to confirm the conditions and the inventory is inaccurate and incomplete with regard to fish and wildlife habitat, migratory species and vegetation.	The consultant team visited the site several times in 2007 and 2008 to confirm site conditions.			
64 A	Technical documentation	Source information was not properly documented in the bibliographies	The bibliographies document the primary sources used.			
65	Inventory Wetland Category	The section on Wetlands shows Lake Burien as Category 2 with a 100 foot buffer and the SMP has a 30 foot setback with a 15 foot buffer.	This was a typographical error in the inventory. The Cumulative Impacts Analysis evaluated the lake as a category 4 wetland and utilized the 30 foot buffer in the evaluation.			
65 A	Shoreline Analysis and Characterization Wetland Category	Page 17 of this document also lists the lake as a Category 2 wetland rather than a Category 4. The trail of data, analysis and conclusions should be consistent to ensure the legality and legitimacy of the SMP document.	This correction will be made.			
66	Inventory	There is no connection made between the lake outlet waters and the Miller/Walker stream basin. Request that additional scientific information and management recommendations be added to the Shoreline Inventory per WAC 173-26-201, (2)(a)(i-iii).	The consultant team did evaluate the Miller/Walker stream basin and Figure 2 in the shoreline inventory depicts the hydrologic connection.			
67	Public Access Policies ALL 5 and PA 3	Request that wording the Policies ALL 5 and PA 3 be amended to correctly define public access and include the requirement to protect private property and public safety.	Comment noted these policies are the consensus of the SAC and the Planning Commission may consider amendments to address the comment. There is an existing goal and policy that addresses the topics of protection of private property and public safety (Goal PA, Policies PA 3, REC 6)			
68	Recreation Policy REC 3	SMP policy REC 3 should have the word "public" inserted to reflect the correct area being discussed.	Comment noted however the policy currently refers to both private and public lands. The Planning Commission may consider amendments to address the comment.			
69	Recreation Policy REC 2	SMP policy REC 2 should be changed to read "Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and which leave the natural areas <u>undisturbed and protected with no net loss of ecological functions.</u> "	Staff and the consultant have no objection to the proposed language.			
70	20.20.030 Policy USE 8	Request that this policy be re-examined with regard to Lake Burien.	Comment noted this policy reflects the consensus of the SAC and could be considered by the Planning Commission.			
71	20.20.030 Policy USE 17	Request that the term "joint-use activities" be better defined.	Comment noted, no changes recommended.			
72	Stormwater	There are claims that there are holding tanks that protect the lake form impervious surface runoff and non point pollution and the diagrams in the SMP do not match these claims.	The diagrams in the appendix are based on the best available information in the city data base. Private stormwater detention tanks, if they exist, may not be captured at this time in the city stormwater system inventory.			
73	Inventory and	There is a high level of re-development potential around the lake	See # 35 above			

		Cumulative Impact Analysis	due to its current zoning. This development potential was not adequately captured in the inventory or cumulative impacts analysis.			
	74	Cumulative Impact Study	The Cumulative Impacts Analysis is incomplete in does not examine the impact of redevelopment in the Lake Burien area based on zoning and a 30 foot rather than a 100 foot buffer. An improved study is needed to reflect the impact of new development, increased access.	Evaluated on pages 28 and 34 of the August 2009 Cumulative Impacts Analysis.		
	74 A	Cumulative Impact Study	Requesting that the Cumulative Impact Analysis (CIA), the Shoreline Analysis and Characterization, and the Shoreline Inventory be corrected with regard to Lake Burien and that the discussion item #3 in the CIA (Foreseeable Future Development of the Shoreline) be reanalyze to address the impact of the subdividing the current lot to 7,200 sq. ft. on Lake Burien.	The potential for redevelopment along Lake Burien is discussed on page 28 of the Cumulative Impacts Analysis. A 30 foot buffer and 15 foot building setback from the ordinary high water mark would apply to any development.		
	75	Best available science. 19.40.060 (pg 40-4)	Best available science pursuant to 19.40.060 (pg 40-4) appears to be lacking.	Best available science is described in WAC 173-26-201 (2) (a) as: "Base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available.		
	75 A	Best available science. Policy CON 9 and CON 27	The city requires use of "Best available science" pursuant to CON 9 but it is not consistent with CON 27. CON 27 should be updated to reference the 2008 King County Comprehensive Plan, Chapter 4. Section E-487, Page 4-58.	CON 27 was taken word for word from existing comprehensive plan policy E V 4.3 pg. 2-31.		
	76	Existing Structures	Nothing in the document should be allowed to negatively impact property or existing structures that were present before this act is approved.	Comment noted.		
	77	Implementation	The City must also follow its own rules in shorelines.	Comment noted.		
	78	No Net Loss	What date is 'no net loss' measured from?	Generally, 'no net loss' is measured using the shoreline inventory document, which was completed in March 2008.		
	78 A	Inventory	The standard of "no net loss" cannot be measured if the inventory in incorrect or missing data. Once corrected the conclusions need to be re-examined based on the corrected information.	Monitoring for no net loss will be part of the implementation of the SMP.		
	79	Land Use/Zoning	Fresh water is a very scarce and valuable resource. Freshwater, wetlands, and aquifer recharge areas need protection from over-development if they are to remain clean and useable for things. At some point in time in order to satisfy King County's density requirements, the City of Burien rezoned the land surrounding Lake Burien to the lot size of 7,200 square feet without thoroughly analyzing the impact it would have to this critical area.	Past Comprehensive Plan land-use decisions are not part of the scope of this Shoreline Master Program update. See #35 above.		
	80	Lake Burien	The City should remove all language associated to Lake Burien, relying instead on the rest of the regulations of the City, such as the Critical Areas Ordinance and building codes. All notion of	The Shoreline Management Act and associated update guidelines require the City to apply the provisions within the shoreline jurisdiction which includes Lake Burien. Therefore removing any reference to the Lake Burien would not be consistent with		

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

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

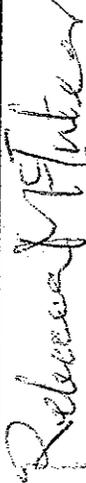
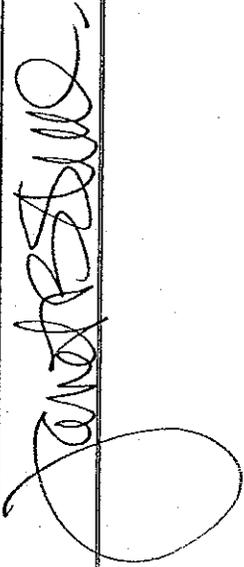
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				<p>GMA goal. RCW 36.70A.020 (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.</p> <p>RCW 36.70A.400 & RCW 43.63A.215 state "accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, or official control." <i>[excerpt]</i></p> <p>Burien Comprehensive Plan Pol. HS 1.11 The development of accessory dwelling units in single-family residences should be allowed to continue. (pg 2-65, <i>[excerpt]</i>)</p>		
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CITY OF BURIEN

Planning Commission Attendance

Meeting Date: March 9, 2010

Commissioner Name	Signature
Jim Clingan	
Joe Fitzgibbon	
Stacie Grage Resigned effective 3/9/10	
Rebecca McInTeer	
Rachel Pizarro	
Janet Shull	



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SH SHORELINE MASTER PROGRAM NONCONFORMING THRESHOLDS COMPARISON

CITY	SMP NONCONFORMING THRESHOLD DUE TO DAMAGE BY FIRE OR OTHER NATURAL ACT	SMP NONCONFORMING THRESHOLD FOR VOLUNTARY ALTERATION
Proposed Burien SMP	<p>20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses:</p> <p>4. Reconstruction. A nonconforming structure which is destroyed, deteriorated, or damaged more than 50% of the assessed value of the 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 only insofar as it is consistent with existing regulations and the following:</p> <ol style="list-style-type: none"> The structure must be located landward of the ordinary high water mark. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program. The remodel or expansion shall not cause adverse impacts to shoreline ecological functions or processes. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into the riparian buffer, or the minimum required side yard setback require a variance. An application is filed to reconstruct the structure within 18 months of the date of the damage. 	<p>20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses</p> <ol style="list-style-type: none"> 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. Expansion. Enlargement or expansion of single family residences less than 500 square feet of roof area may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of roof area by the addition of space to the primary structure or by the addition of normal appurtenances as defined in 20.40.000 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met: <ol style="list-style-type: none"> The structure must be located landward of the ordinary high water mark. 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. 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.
Existing Burien SMP	<p>25.32.060 B.</p> <p>A use or development, not conforming to existing regulations, which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed insofar as it is consistent with existing regulations.</p>	<p>25.32.060 B.</p> <p>A use or development, not conforming to existing regulations, which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed insofar as it is consistent with existing regulations.</p>

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

19.44.030 Nonconforming structures.

(3) A nonconforming structure which is voluntarily or accidentally destroyed, demolished or damaged, or allowed to deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure, may be restored and rebuilt only if the structure, in its entirety, is brought into conformity with the then-current bulk and dimensional requirements of the zone in which it is located; provided, that a single-family residence with nonconforming status in a residential zone may be restored and rebuilt to any extent as long as it does not increase the preexisting degree of nonconformance; provided, a single-family residence with nonconforming status in zones other than residential may be restored and rebuilt to any extent on the original footprint of the structure's foundation so long as it does not increase the preexisting degree of nonconformance, upon obtaining a conditional use permit pursuant to this chapter.

19.44.030 Nonconforming structures.

(1) Nonconforming structures may be repaired and maintained. The ~~method~~ of said structures may be restored, remodeled and improved to the extent of not more than 25 percent of the assessed value of the structure in any consecutive period of 12 months.
(2) The exterior dimensions of a nonconforming structure may be enlarged by up to 100 percent of the floor area existing at the effective date of the nonconformance upon obtaining a conditional use permit pursuant to this chapter; provided, that the degree of nonconformance shall not be increased, and the then-current bulk and dimensional requirements of the zone in which it is located shall be observed with respect to the new portion of the building.
(3) A nonconforming structure which is voluntarily or accidentally destroyed, demolished or damaged, or allowed to deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure, may be restored and rebuilt only if the structure, in its entirety, is brought into conformity with the then-current bulk and dimensional requirements of the zone in which it is located; provided, that a single-family residence with nonconforming status in a residential zone may be restored and rebuilt to any extent as long as it does not increase the preexisting degree of nonconformance; provided, a single-family residence with nonconforming status in zones other than residential may be restored and rebuilt to any extent on the original footprint of the structure's foundation so long as it does not increase the preexisting degree of nonconformance, upon obtaining a conditional use permit pursuant to this chapter.

(4) When a structure or a portion thereof is moved to a new location, it must be made to conform to all then-current land use restrictions applicable to the new location.

8.08 Nonconforming Development, Development & Building Permits and Unclassified Uses

Nonconforming Development

2. If a nonconforming structure is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;

8.08 Nonconforming Development, Development & Building Permits and Unclassified Uses

Nonconforming Development

1. Nonconforming development may be continued provided that it is not enlarged or expanded and said enlargement does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;
A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;

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

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renovated, or remodeled to the extent that non-conformances with the standards and regulations of this Program is not increased, provided that a non-conforming development that is moved any distance must be brought into conformance with this Program and the Act; provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.

E. Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.1 apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Chapter 23.100.05.B.1(e).

1. Enlargement or expansion of single family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further into areas where new structures or developments would not now be allowed under the Program may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark.
2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.
3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.
4. The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

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