

BURIEN SHORELINE MASTER PROGRAM UPDATE

FREQUENTLY ASKED QUESTIONS

(March 10, 2010)

1. Why is the City of Burien updating the Shoreline Master Program now?

A: Most local governments have not updated their local shoreline master programs comprehensively since the mid 1970s and Burien's has not been revised since incorporation in 1993. Burien's old shoreline master program needs to be reviewed and updated to better address current conditions, consider new science regarding the shoreline environment, and to better align with other related laws. In 2003, the state Legislature set up a timetable for local governments to update their local shoreline master programs. The State Legislature appointed the Department of Ecology to be responsible for ensuring that statewide policies are upheld and implemented when local shoreline master programs are adopted. Under Washington's Shoreline Management Act, a locally approved program must meet state guidelines.

2. What is the process at the State level for updating the Shoreline Master Program?

A: The Washington State Department of Ecology provided guidelines to local jurisdictions outlining the essential elements their individual shoreline master programs must address. Department of Ecology also provides financial support, technical assistance, guidance materials and regular training in support of local updates. The guidelines set minimum procedural and substantive standards for local governments to use in updating their programs. Department of Ecology and State Growth Management Hearings Boards use the guidelines to review and approve local shoreline master program updates. The 2003 Shoreline Master Program guidelines were the result of a negotiated settlement between business interests, ports, environmental groups, shoreline user groups, cities and counties, Department of Ecology, and the courts. Also in 2003, the state Legislature provided funding and established a mandatory schedule for local shoreline program updates for all jurisdictions extending through 2014. Burien's deadline for initial adoption of the Shoreline Master Program update is December 1, 2010. After Ecology receives the local program it is reviewed to determine if it complies with state guidelines requirements, the department can approve it as submitted by the local jurisdiction, approve it with changes, or reject it. Once Ecology approves a local shoreline master program, it becomes part of the statewide shoreline "master" program. At that point, local jurisdictions are responsible for carrying out shoreline development ordinances and deciding how the code applies to individual projects.

3. When did Burien start work on the Shoreline Master Program update and what has been do so far?

A: In July of 2007 the City of Burien was awarded an \$117,600 grant from the Washington State Department of Ecology to defray a portion of the costs associated with updating the Shoreline Master Program.

- A consulting firm, Reid-Middleton, was engaged to assist the staff in conducting the update and to collect data required for the update process.
- In January of 2008 the Burien City Council appointed a Shoreline Advisory Committee comprised of ten city residents, five at-large members and five technical positions for a total of 20 members.
- The advisory committee conducted 9 meetings between May, 2008 and October, 2009.
- Following the final meeting staff forwarded a draft program update for consideration by the Burien Planning Commission.
- During the process two community meetings were held, the first was held in May, 2008 at the beginning of the process and another was held in November 2009. At its December 15, 2009 meeting, the Planning Commission received the proposed Shoreline Advisory Committee draft shoreline master program.
- The Commission then conducted a Public Hearing on January 12, 2010 and received oral and written public comments at their January 26 and February 9 and February 23, 2010 meetings.

4. What happens next in the Shoreline Master Program update process and when will it be completed?

A: As of March 10, 2010, the Planning Commission is continuing to deliberate on the subject of updates to the Shoreline Master Program. It is expected the Planning Commission will complete this process in March of 2010. The Planning Commission, which is a volunteer advisory body to the City Council, will prepare a recommendation to the City Council who will then hold a public hearing and approve the document. The updated program will then be submitted to the State Department of Ecology for another review process which includes a local public hearing. The Shoreline Master Program does not become effective until both the State Department of Ecology and the local jurisdiction approve it. The deadline for completing the process is December 1, 2010.

5. What does public access to the shorelines of the state mean?

A: Definitions of access in the proposed City of Burien shoreline master program state that “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.” (20.40.110 & 20.40.205) It should be noted that **no new public access is being proposed** as part of the Shoreline Master Program update, rather the updated SMP includes policy on when and how future shoreline access should be provided. Any new shoreline

public access sites must minimize effects on adjacent properties and ensure it is “designed to provide for public safety and to minimize potential impacts to private property and individual privacy” and “without adversely affecting a sensitive environment” (excerpts from proposed Policies PA 3 and PA 4). If and when specific public access locations are proposed or required they will be reviewed for consistency with the policies and regulations during the associated permit application process. A common example would be an application for subdivision creating more than 5 lots, this type of application includes public notice that would be posted on the property, published in the city’s official news paper (Seattle Times) and mailed to property owners within 500 feet of the subject property.

6. Will I have to tear down my nonconforming structure as a result of the Shoreline Master Program update?

A: No. Updates to a local shoreline programs development regulations only apply to development occurring after adoption. There are no retroactive shoreline master program requirements.

7. What if my nonconforming structure is destroyed by fire, am I allowed to rebuild?

A: If the structure is damaged less than 50 percent of the assessed value, the updated program states that it can be replaced as is. A nonconforming structure that is damaged more than 50 percent of the assessed value can also be replaced but must meet five stipulations:

- 1) The structure must be located on the upland side of the ordinary high water mark;
- 2) The area between the nonconforming structure and the ordinary high water mark shall meet the vegetation conservation standards;
- 3) The remodel or expansion shall not cause adverse impacts to ecological functions or processes;
- 4) The construction shall not extend either further toward the water than the existing primary residential structure (not appurtenance), further into the side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend closer to the water or further into the shoreline buffer or the minimum required side yard setback require a variance;
- 5) An application to reconstruct the structure must be submitted to the City within 18 months of the date of damage.

8. Is “best available science” used in developing the Shoreline Master Program update?

A: No. Current science is the basis for shoreline master programs while “best available science” is a term from the state Growth Management Act, and does not apply to shoreline master programs. Shoreline Management Act requires use of the “most current, accurate and complete scientific and technical information”, as the basis for decision making.

9. What is the required buffer and setback for new structures located in the shoreline?

A: On the Puget Sound shoreline there is a 50-foot buffer with a 15-foot setback.
On Lake Burien the buffer is 30 feet with a 15-foot building setback. Note: Most of the existing structures on the lake are located outside of the buffer or building setback.

10. Can I expand or alter my home if it is located within the shoreline buffer?

A: Yes. Provisions exist that allow for expansion of residence in the buffer or building setback. Generally, expansions may not extend toward the water and may need to address possible impacts resulting from the expansion. Because of the varying conditions of Burien’s shoreline please contact the Burien Planning Department if you are considering an expansion.

11. Are there limits on repairing houses, fences, bulkheads, docks or other structures?

A: Provisions in state law allow for the repair and maintenance of existing, lawfully constructed structures. State shoreline guidelines allow for the repair and maintenance of existing structures, subject to any building requirements imposed separately by local jurisdictions.

12. What does the Shoreline Master Program update goal of “no net loss” mean?

A: The new environmental protection standard for updated shoreline master programs is “no-net-loss of shoreline ecological functions.” While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made “pristine” or returned to pre-settlement conditions. Local governments are required to inventory current shoreline conditions – including identifying existing ecological processes and functions that influence physical and biological conditions. When a shoreline program is adopted, existing ecological conditions on the ground must be protected while development of shoreline areas is continued in accordance with adopted regulations. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

13. Will waterfront property owners still be able to protect their property with a bulkhead under an updated shoreline master program?

A: If property owners can clearly demonstrate a need exists, they can use a stabilization approach that has the least impact on the natural shoreline. The need for hard stabilization (bulkhead) must be demonstrated by a geotechnical analysis stating that the structure that requires protection is in imminent danger from shoreline erosion caused by tidal action, currents, or waves. This does not apply to bulkheads already in place, which may be repaired and maintained.

14. Can I replace or repair my existing bulkhead?

A: Yes. Existing bulkheads may be replaced with a similar structure if the new structure does not extend toward the water. Repair is also allowed if the proposed repair is comparable to the original condition including factors such as its size, shape, configuration, location and external appearance.

15. What is the difference between “hard armoring” and “soft armoring” of the shoreline and what are their impacts on the shoreline environment?

A: The natural character of shorelines and the many organisms living there depend on a continuous and uninterrupted relationship between upland areas and the water. Beaches depend on erosion to supply sand and gravel. Hard armoring is a method used by property owners to protect the waterfront edge and limit loss by erosion. Hard armoring prevents the supply of new material for beach formation and disturbs other ecological functions. There are ways to slow the rate of erosion that are less disruptive of shoreline functions than hard armoring. Soft armoring methods use a combination of less ridged structural materials and native vegetation to stabilize the shoreline. For instance, placing large logs or native vegetation along the shoreline can serve as a natural break for waves while simultaneously providing some habitat value.

16. Are requirements for shoreline vegetation buffers a public taking of private property?

A: No. The U.S. Constitution allows state and local governments to limit private property activities provided it's for a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. For example, state and local governments can adopt regulations that prevent sediment from running off private property and entering a salmon-spawning stream. These regulations protect salmon, a public resource. In most cases, buffers do not deprive landowners of all reasonable use of their property and, in fact, all property tends to benefit from reasonable setbacks and buffers. In those limited instances where the buffer precludes or significantly interferes with a reasonable use, the property owner may obtain a variance.

17. How is the Shoreline Master Program update related to Burien’s Critical Areas Ordinance?

A: A recent state Supreme Court decision (*Futurewise v. Anacortes*) stated that the shoreline master program solely regulates the shorelines and critical areas covered by the program, once the Department of Ecology approves it. Rather than repeat the work local governments have already done developing their critical areas ordinances under the state Growth Management Act, relevant portions of existing critical areas ordinances may be placed in updated shoreline master programs under the Shoreline Management Act.

18. How will mooring buoys be addressed in the Shoreline Master Program update?

A: Under the proposed SMP mooring buoys are allowed and are limited to one buoy per Puget Sound waterfront residential lot and shall be located and installed in a manner to avoid impacts to the beach substrate. Mooring buoys are prohibited on Lake Burien.

19. I have never obtained a permit for a mooring buoy. Is this a new requirement?

A: No, this is not a new requirement, The State Department of Natural Resources, the Washington State Department of Fish and Wildlife and the Army Corps of Engineers all require permits. During the Shoreline Master Program update process there was a desire to have some level of local control on the placement and number of buoys, therefore the City will now also review requests for buoys prior to an applicant receiving approval from other agencies.

20. Will buffers or other shoreline regulations have an impact on shoreline property values?

A: Property values are relatively unaffected by buffers. Waterfront property has skyrocketed in value in the past 30 years despite shoreline buffers of 25 to 125 feet being in place for the same period. Protecting native vegetation along the shoreline actually enhances property values by:

- Stabilizing slopes.
- Screening adjacent development from view.
- Providing attractive landscaping and habitat.
- Blocking noise and glare from adjacent properties.

21. What does “shoreline street ends, rights-of-way and other public lands will be addressed in accordance with RCW 35.79.035” mean?

A: Washington State law 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.

22. Do the new guidelines require restoration?

A: Local governments must plan for restoration in their shoreline master programs. Restoration is not a direct requirement for private development. Local government must consider its restoration needs, identify resources available to conduct restoration, prioritize restoration actions, and make sure development activities don't interfere with planned restoration efforts in the community and vice versa. A shoreline master program may include incentives for developers to invest in shoreline restoration.