

1.0 SUMMARY

Where this chapter of the Final Environmental Impact Statement (FEIS) includes clarifications or corrections to the Draft Environmental Impact Statement (DEIS) (whether in response to public comments on the DEIS, or based on clarifications or corrections by the City of Burien [City], its consultants, or the Applicant), the changes are identified in this FEIS using underlined text (underlined) for additions and strikethrough text (~~strikethrough~~) for deletions. However, minor non-substantive edits—such as punctuation, grammar, structure of citations, or use of abbreviations and capitalization—have been made without using underline/strikethrough in the text.

1.1 Introduction

The City of Burien prepared this ~~Draft~~ Environmental Impact Statement (~~DEIS~~) to identify and address the potential environmental impacts associated with a proposed Project to develop a multi-family development within the City. The Project, known as Emerald Pointe on the Sound (Emerald Pointe), was originally submitted to King County (County) on February 15, 1990, and it is vested under the County land use regulations in place at the time (see Section 1.3, Project History, for more information). February 15, 1990, is the date of Project vesting. In 1993, the City of Burien incorporated and the Emerald Pointe application was transferred to the City. In August 1996, the City of Burien issued a State Environmental Policy Act (SEPA) Determination of Significance (DS) for the Project, based on a review of the Project's SEPA checklist and the City's conclusion that the proposed Project could create a significant adverse impact to some elements of the environment. In addition, a Scoping Notice that established the alternatives and elements reviewed in this DEIS was issued on April 30, 1997. The City of Burien's DS followed the issuance of a DS by King County in June 1991, when the Project was still under the jurisdiction of the County. In response to the DS determination by the City, this EIS has been developed to evaluate two alternative development scenarios that would implement the Proposed Action on the Emerald Pointe site. In addition, a No Action Alternative, in compliance with SEPA and Revised Code of Washington (RCW) Chapter 43.21C, is also analyzed.

As stipulated in the RCW, the potential impacts of the Proposed Action alternatives have been evaluated in this document for circulation for public and agency review. Impacts identified herein are defined as either "adverse" or "significant." Significant, as used in the context of SEPA, means "reasonable likelihood of more than a moderate adverse impact on environmental quality" (SEPA Rules, Washington Administrative Code [WAC] Section 197-11-794(1)). Significance involves both context (physical setting) and intensity (magnitude and duration of an impact). The SEPA Rules also note that "an impact may be significant if its chance of occurrence is not great, but that resulting environmental impact would be severe if it occurred" (WAC Section 197-11-794(2)).

This section presents the purpose and need for the Project, reviews significant events in the Project's history, generally describes the Project site, and lists the individual elements of the environment that are analyzed in depth in Chapter 3 of the DEIS. With this information as

general background, an overview of the three alternatives and the associated impacts identified in subsequent sections is also provided.

1.2 Purpose and Need for the Project

The primary purpose of the Project is to develop a new multi-family condominium development, to be known as Emerald Pointe on the Sound, within the Burien city limits. Two action alternatives are proposed that would provide either 178 or 200 units of market-rate housing, plus an additional manager's unit, in accordance with applicable regulations. These alternatives aim to provide market-rate housing opportunities to existing and new Burien residents, while allowing the property owner to develop his property. The action alternatives discussed below, and their proposed residential densities, are consistent with the land use requirements of the vested 1990 King County Development Code. Under the vested code, the Project site is split between the RM-1800 and RM-2400 zoning designations. These zoning designations allow for high-density multi-family residential and medium-density multi-family residential uses, respectively. Additional objectives of the development include recognizing and accommodating the development constraints and opportunities of the site and mitigating potential environmental impacts, particularly to sensitive environmental features such as streams and wetlands.

Since the City of Burien incorporated in 1993, most of its population increase has come from annexation. In 1999, the City annexed the Manhattan area (south Burien), adding approximately 2,500 residents. Since that time, the population of the City of Burien has remained relatively stable. Between 2000 and 2005, the City's population fluctuated between approximately 31,000 and 32,000 residents. Washington's Office of Financial Management (OFM) estimated Burien's population in 2006 to be 31,080, down from a high of 31,881 in 2000 (OFM 2006). The provision of new housing serves to accommodate this expanding population with adequate housing opportunities, as established in *The Burien Plan* housing goals and policies (City of Burien 2006).

1.3 Project History

Since the submittal of the original Emerald Pointe building permit application and permit fees to King County in 1990, the Project has been subject to a number of important events and jurisdictional decisions that set the stage for the preparation of the EIS. Key events in the process leading up to the preparation of this EIS include:

- (1) *February 15, 1990* – The Applicant submitted the original Emerald Pointe building permit application and fees to King County. The original site plan for the Project proposed a total of 216 units. This submittal represents the “vesting” date of the Project (see below for more discussion of vesting).
- (2) *June 19, 1991* – King County issued a SEPA DS on the Project, based on the completion of a SEPA Checklist. The County's issuance of a DS for the Project required the preparation of an EIS.
- (3) *May 18, 1992* – The Applicant submitted an addendum to the original SEPA Checklist that reduced the size of the proposed Project to 178 units. After reviewing the addendum, King County maintained its requirement of an EIS for the Project.

- (4) *February 28, 1993* – The City of Burien, previously part of unincorporated King County, officially incorporated, establishing a separate jurisdictional entity. As a result of an interlocal agreement between King County and the City of Burien, lead agency status on the Emerald Pointe Project (and a number of other projects) was transferred to the City of Burien. With this, the City assumed the responsibility for the Project’s compliance with SEPA.
- (5) *August 17, 1996* – The City of Burien issued its DS for the proposed Emerald Pointe Project based on its review of the Applicant’s original SEPA Checklist. In its DS, the City recognized King County’s previous identification of “a series of natural and built environment issues to be considered along with appropriate alternatives to the Project proposal...requiring additional environmental analysis.” The City determined that these environmental issues would still require environmental review in an EIS.
- (6) *September 3, 1996* – The Applicant filed an appeal of the City’s DS (an amended Notice of Appeal was submitted to the City on May 12, 1997 after the EIS scoping process).
- (7) *March 21, 1997* – The City of Burien issued a notice soliciting public comment on the scope of the Emerald Pointe EIS. The City issued the final scope of the EIS on April 30, 1997.
- (8) *January 14 and 20, 1998* – The City of Burien Hearing Examiner held hearings to make a decision on the Applicant’s appeal of the City’s DS determination. Due to ongoing litigation between the Applicant and the City and the potential for a settlement, the Hearing Examiner did not make a decision at the time (for more information on the legal aspects of the Project, see below).
- (9) *September 23, 2003* – The City withdrew the 1996 DS and issued a Mitigated Determination of Non-Significance (MDNS) based on the mitigation measures proposed by the Applicant in its submittal materials.
- (10) *October 14, 2003* – William Taylor appealed the City’s withdrawal of the DS and issuance of an MDNS to the City of Burien Hearing Examiner.
- (11) *February 18, 2004* – The City of Burien Hearing Examiner held a public hearing on the Taylor appeal.
- (12) *April 19, 2004* – The City of Burien Hearing Examiner issued a decision on the Taylor appeal, withdrawing the MDNS and reinstating the DS.
- (13) *October 18, 2005* – After an extended period due to litigation, the City of Burien Hearing Examiner denied the Applicant’s appeal. As a result of the Hearing Examiner’s denial of the appeal, completion of the current EIS was required for the Project application to proceed.

A major issue for the Project has been “vesting.” Based on State of Washington case law, vesting refers to the “notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the applicant’s submission” (*Friends of the Law v. King County* [1994]). The Applicant

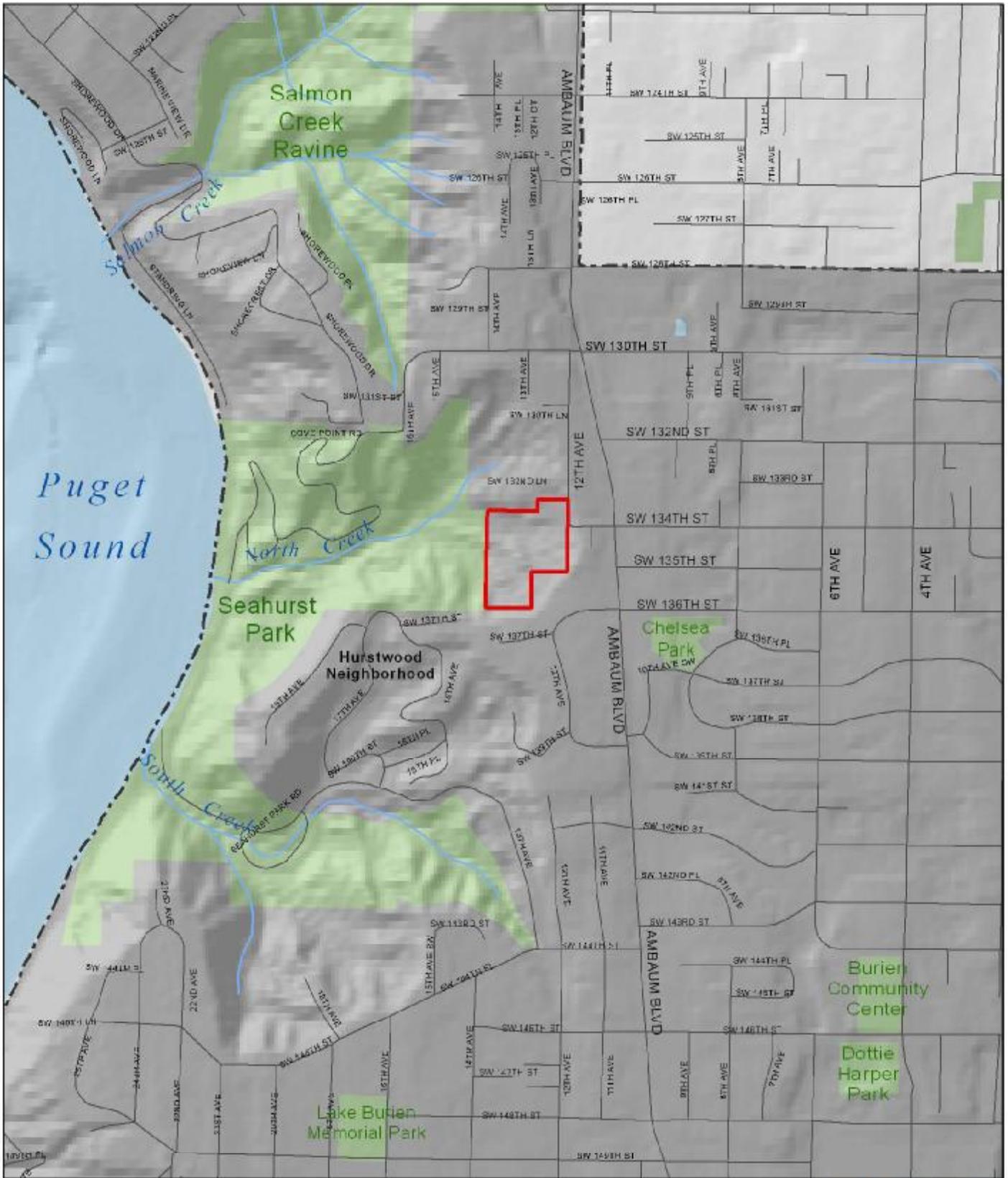
originally filed a complete building permit application for the Emerald Pointe on the Sound Project in King County on February 15, 1990, because at the time of its original filing, Burien was not an incorporated city. As such, the Project is vested under 1990 King County land use regulations and must comply with the requirements contained in those regulations.

According to Washington case law, the “vested rights rule is generally limited to those laws which can loosely be considered ‘zoning’ laws” (*New Castle Investments v. City of Lacenter* [1999]). Therefore, a project is only vested to those regulations specifically established to control land use-related activities. Resource areas guided by the 1990 King County land use regulations include Earth, Water, Plants and Animals, Wetlands, Land Use, and Aesthetics, Light, and Glare (except for illumination standards, as explained below). Comprehensive Plan priorities and policies are not considered to be land use regulations; they may be used as guidance, but may not act as a substitute for development regulations. To ensure appropriate public safety, vesting does not apply to regulations governing health and safety. Therefore, current Burien transportation, noise, public services and utilities, and parks and recreation standards are discussed in the applicable sections. Illumination standards are also considered health and safety regulations. A matrix showing the applicable plans and regulations for each section of this EIS can be found in Appendix A of the DEIS.

1.4 Project Site: Location and Description

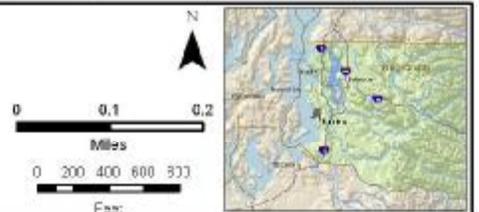
Located at 13401 12th Avenue SW, in Burien, Washington, the proposed Project site is in the north-central portion of the City of Burien (see Figure 1.4-1). The site, roughly 1 mile from downtown Burien, abuts the eastern border of Seahurst (Ed Munro) Park and encompasses three parcels, all owned by the Applicant, totaling approximately 9.8 acres. Physically, the site sits on the upper part of the Puget Sound bluff, a moderately to steeply sloped hillside facing westward toward Puget Sound. The northeast corner of the Project site is framed by the intersection of 12th Avenue SW and SW 134th Street. Property owned by the Highline School District—and containing the former Burien Senior Center—is directly adjacent to the southeast boundary of the site. Directly south (across an undeveloped portion of the SW 136th Street right-of-way) is the Vintage Park apartment complex. Vintage Park contains over 500 multi-family rental dwelling units. Sound Vista, a 110-unit condominium development, is located directly north of the Project site. Residential densities of these two adjacent projects are approximately 15 dwelling units per acre and 22.5 dwelling units per acre, respectively.

According to the vested 1990 King County zoning, the Project site is zoned for multi-family development. Although the entire site was zoned for multi-family use, the three parcels have different zoning designations. The zoning on the Project site is split between RM-1800 and RM-2400. The two northernmost parcels are designated RM-1800 and the southernmost parcel is designated RM-2400. These zoning designations allow high-density, multi-family residential development (one dwelling unit per 1,800 square feet) and medium-density, multi-family residential development (one dwelling unit per 2,400 square feet), respectively. On a per acre basis, these zoning designations allow a maximum of 24.2 dwelling units per acre (RM-1800) and 18.1 dwelling units per acre (RM-2400).



Emerald Pointe EIS - Burien, WA
Figure 1.4-1 Project Location

- Emerald Pointe Site Location
- City of Burien
- Rivers, Streams, & Drainages
- Parks/Open Space
- Roads
- Open Water



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1.5 Elements of the Environment Analyzed

As noted above, the City of Burien issued a SEPA DS for the Project, followed by a scoping notice. This DS followed the issuance of a DS by King County, prior to the City's incorporation. In response to the DS determination by the City, this EIS has been prepared to evaluate two alternative development scenarios. A scoping meeting was held on April 3, 1997, and extensive comments were made at the meeting regarding the scope of the EIS. Comments from agencies and the public were accepted by the City through April 14, 1997, and were incorporated into the final scope for the EIS. The EIS process was on hold for several years while the Applicant's SEPA appeal process proceeded. The appeal process was completed and it was determined that the City had authority to require preparation of a SEPA EIS for the proposed Emerald Pointe Project. As a result of the City of Burien's scoping, the following elements of the environment must be addressed in the EIS:

- *Transportation*: Analyzes transportation-related impacts of the alternatives on traffic operations within the area of study, including traffic level-of-service (LOS), concurrency, and on-site circulation, including fire access.
- *Drainage and Water Quality*: Analyzes hydrologic impacts, including runoff generation, detention, and sediment control during construction and site occupancy. The section presents information about the proposed design of the on-site stormwater handling and conveyance facilities.
- *Earth and Geotechnical*: Analyzes the potential grading and earthwork impacts associated with building a project of this type on the moderate and steep slopes that occur on the site.
- *Plants and Animals*: Analyzes the potential impacts of the alternatives on plants and wildlife on the site and its immediate vicinity, including Seahurst Park, located adjacent to the site.
- *Wetlands*: Analyzes the potential impacts of the alternatives on the wetlands found at the west end of the site and the requirements for protecting that wetland.
- *Land Use, including Relationship to Plans and Policies*: Analyzes existing and proposed land uses and patterns on the Project site and its immediate vicinity.
- *Aesthetics, Light, and Glare Impacts*: Analyzes potential impacts on views surrounding the site and other aesthetic changes proposed in each of the alternatives, including the proposed architecture.
- *Noise Impacts*: Analyzes potential impacts on the site and its immediate vicinity due to noise effects, including impacts during the construction period.
- *Parks and Recreation Resources*: Analyzes potential impacts on parks and recreation resources within the Burien city limits, with a special focus on the adjacent resource of Seahurst Park.
- *Public Services*: Analyzes the ability to deliver an appropriate level of public services in to the Project, consistent with Growth Management Act (GMA) requirements, including but not limited to police, fire, and schools.

- *Utilities:* Analyzes the ability to deliver an appropriate level of utilities service to the Project, consistent with GMA requirements, including but not limited to water, sewer, and solid waste collection.

1.6 Overview of Alternatives

This EIS analyzes two development scenarios and a No Action Alternative for the proposed Project site in Burien, with primary access for the two development scenarios currently proposed from an extension of the existing street within the unopened right-of-way (ROW) of SW 136th Street immediately west of this street's intersection with Ambaum Boulevard SW. The Project site abuts 12th Avenue SW, a public right-of-way (ROW), and has legal access to the street ROW. Although access from 12th Avenue SW and SW 134th Street was proposed at one time, it is not being analyzed in this FEIS. A site plan showing this access is on file at the City of Burien, Highline Public School District, and Highline Mental Health offices. Both development scenarios would be for the purpose of building and selling market-rate condominium housing units. The two action alternatives are differentiated from each other primarily by size and density, not land use. Alternative 1 would construct 201 dwelling units (du), while Alternative 2 would construct 179 du. Both action alternatives would also include a clubhouse and a swimming pool, with a manager's unit to be located in the clubhouse (included in the total dwelling units identified above). Both action alternatives would result in a new, gated condominium community on the site, which would be similar in bulk and density to existing developments to the north and south along the west-facing slope. While both action alternatives provide continued pedestrian access to Seahurst Park, Alternative 2 has been modified since the release of the DEIS to show the retention of the existing trail through the northwest corner of the site, located upslope of the 50-foot wetland buffer, and largely outside of the 15-foot building setback.

The No Action Alternative assumes no change to the current land use. While the site is privately owned and could be sold or developed in the future, the environmental analysis assumes that the No Action Alternative would result in the site remaining undeveloped for the foreseeable future. As noted above, the current development proposal of the site under current ownership is vested under prior King County development codes predating the current Burien Municipal Code (BMC). However, any other development proposal not covered by the intent of the original proposal would not be vested under prior regulations and would be subject to the current regulations of the BMC. Under the BMC, the site is zoned RS-12,000 (Residential Single-Family Zone).

1.7 Relationship to Previous and Future Environmental Review

This EIS was prepared in response to the City of Burien's DS, as discussed in Section 1.3 above. Originally, the City's DS proposed to analyze three action alternatives (as compared to the two reviewed in this EIS), along with a No Action Alternative. Alternative 3 proposed the use of the site for open space and trails connected to the western portion of Seahurst Park. For this analysis, Alternative 3 was removed because, as established by the SEPA Rules [WAC Section 197-11-794(1)], all alternatives reviewed must meet the Applicant's objectives. In this case, Alternative 3 does not adequately meet the Applicant's objectives and, consequently, was not considered further.

In addition to the removal of Alternative 3 as a viable alternative, some modifications have been made to the action alternatives proposed in this EIS. The proposed alternatives differ in that the action alternatives in this EIS propose the construction of market-rate condominium units, rather than the apartment units proposed in the original scoping notice. Additionally, the current alternatives incorporate an alternative location for the access road, ~~has been chosen for the current alternatives~~ and the siting and numbers of the buildings vary slightly from the original proposal. These changes were determined to be consistent with the intent of the original proposal and, as such, do not represent a significant deviation from it.

No other known EIS processes are running concurrently with this process in the vicinity of the Project site. The DEIS for Emerald Pointe was issued on August 21, 2007.

The City provided several copies of the DEIS to the Burien Library for in-library use. These documents were stolen from the library and the City was not notified of this theft until near the end of the comment period. Free reading copies of the DEIS also were available at Burien City Hall and copies were available for purchase at a local copy center.

The City provided legal notification consistent with its standard procedures for issuance of a DEIS. The City of Burien's standard procedures are based on the King County Code (KCC), with a few procedures that exceed the KCC. These procedures include:

1. Posting a minimum of three signs readily observable from adjacent property and adjoining streets (KCC Section 20.44.060). Yellow notice boards were erected in the following locations: (1) on SW 136th Street in front of the old Senior Center; (2) on the west side of 12th Avenue SW at SW 134th Street; and (3) along a trail near the west side of the property adjacent to Seahurst Park.
2. Publication of a DEIS notice in a newspaper of general circulation in the Project area (KCC Section 20.44.060), a minimum of 10 days before the hearing [WAC Section 197-11-502(6)(b)]. The notice was published in the City's official newspaper (*The Seattle Times*) on August 21, 2007, 28 days before the DEIS hearing.
3. Mailing notices for a DEIS is not required under KCC 20.44.060. However, consistent with City practice, the City mailed notices to all property owners within 500 feet of the boundaries of the property. The City also mailed notices to all "parties of record" from lists dating back to 1996.
4. The City posted notice of the DEIS and hearing on its website, although this is not a KCC requirement.

The City of Burien held a public hearing on the DEIS on September 18, 2007. Public comments were due on October 5, 2007. Comments on the DEIS are responded to in Chapters 3 and 4 of this FEIS. Comments received after October 5, 2007, are not included in this FEIS, but have been placed in the City's official Project file.

This is a project-level EIS and no further SEPA review is anticipated. After the City of Burien issues this FEIS, the City is prepared to review the Project application and issue a building permit(s), authorize construction, and issue standard occupancy-related permits. Other entities, such as utility providers, would issue other permits and approvals, as applicable.

~~Future development review is expected to be limited to standard construction and occupancy-related permits. These permits will be issued by the City of Burien and the appropriate utility service providers.~~

1.8 Major Issues to Be Resolved

If the Applicant pursues building permit(s) (consistent with Project vesting) following completion of the FEIS, then there are no major issues to be resolved. The remaining permits and approvals must meet the applicable codes, but these are generally matters of code compliance, with little or no discretion involved. If the Applicant allows the vested application to lapse or makes major Project modifications, then new submittals and updated environmental review would be required, consistent with the current City of Burien requirements. While the Project is vested to the earlier proposal to access the site from 12th Avenue SW and SW 134th Street, that option was not analyzed in this EIS. Therefore, such a change to Project access would require additional review under SEPA.