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JUL 12 2010
CITY OF BURIEN

July 8, 2010

From: Standring Lane Home Owners Assoc.
12915 Standring Lane SW
Burien, WA 98146

To: Burien City Council

Cc: Burien Marine Homeowners Association

Subject: Proposed Shoreline Master Program (SMP)

This letter is in regards to the Shoreline Master Program update.

We are very concerned with elements of the proposed Shoreline Master Program update that the Burien City Council is currently considering.

Specifically we believe that:

1) There should be no designation of any existing structures as non-conforming, nor should replacement structures be designated non-conforming.

2) There should be no additional buffers or setback restrictions imposed.

3) There should be no restrictions or net-gain requirements imposed on reconstructions regardless of the percentage of damage suffered provided that the structure is reconstructed within its existing footprint.

Standring Lane residents, owners of twenty beach front lots, do not feel that the proposed designations or restrictions add value since the Burien shoreline is already fully developed and stable. We feel that the proposed SMP items will have a material negative impact on our property values, marketability, and reconstruction/remodeling efforts.

We look forward to the City Council removing these items from the SMP. We appreciate the efforts of the City Council in this matter.

Sincerely,

Larry Moonier
Standring Lane Homeowners Association

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CITY OF BURIEN

CITY OF BURIEN, WASHINGTON

Written Public Comments for ~~Public Hearing~~ of City council meeting July 19, 2010

For those who do not wish to speak, but would like to make comments, please use this sheet. Your comments will be summarized and become part of the permanent record for this Council meeting. You may leave your completed sheet with the City Clerk. Thank you.

According to the DOE, the most up to date research should be used to make decisions. Currently the EIS was done in 1997. This is not current!

Before any dicussions and decisions are made about public access to Lake Burien or 3 Tree Point, the EIS needs to be updated.

Please let the public know when the EIS will be updated. Thank you!

Name: Linda Plein

Address: 1600 SW 156th St

City / Zip Code: Burien 98166

Telephone: 206-248-0222

7/16/10

To the Burien City Council;

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have prefect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying the capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

Ruth Barnes.

We can't even protect our current parks see the included article.

CFTR: 08/02/10

5:33 pm
June 30, 2010
glasgow

New Member

posts 2

Quote and Reply

I am Deputy Michael A. Glasgow. I am a Deputy with King County Sheriff's Office and am assigned as a City of Burien Patrol Officer. I have been working here for 4 years and truly enjoy working here. Since I have worked here, I have noticed that the parks in the city have had a large amount of problems. Our parks are being terrorized by teenagers and young adults. Everything from vandalism, littering, alcohol consumption, drug use, to major assaults and robberies are occurring in our parks. I am tired of this and I want to make the parks in our city a place for families to take their children. I am actively working on these issues with my partners and the parks department. I am reaching out to the citizens in the community to help me with ideas and possible solutions to our problems. Please, post your thoughts, concerns, and ideas here. Please remember, that if you need a police officer, call 911. But if there is not an emergency that does not need immediate police action, i.e. you notice the same people loitering in a certain park at a certain time, post here. Post any and all ideas and suggestions and let's see what we can do to take our parks back!Thank you, Deputy Glasgow

CITY OF BURIEN, WASHINGTON

Written Public Comments For Meeting Of July 19, 2010

For those who do not wish to speak, but would like to make comments, please use this sheet. Your comments will be summarized and become part of the permanent record for this Council meeting. You may leave your completed sheet with the City Clerk. Thank you.

Please do not allow more public access for shoreline access and please allow us to rebuild if something happens to our property.

Also, please do not widen the road at 172nd

Thanks!

Name: Jana Kleitsch

Address: 3532 SW 172nd St.

City / Zip Code: Burien, 98166

Telephone: 206-244-7239

CFTR: 08/02/10

r:\cc\form\written citizen coments form

7.17.10

To the Burien City Council;

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

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Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

Homer E Lockett Resident 60 yrs.
Marcy E Lockett

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JUL 20 2010
CITY OF BURIEN

CFTR: 08/02/10

1/19/10

To the Burien City Council;

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Sincerely,

Winifred Deegman
1817 SW 152nd
BURIEN, WA
98166

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JUL 21 2010
CITY OF BURIEN

CFTR: 08/02/10

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

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JUL 19 2010
CITY OF BURIEN

BMHA
BURIEN MARINE HOMEOWNERS ASSOCIATION

Re: Memorandum Describing Existing Conditions of Burien Marine Shoreline

Honorable City Councilmembers,

I am a member of the Burien Marine Homeowners Association. Over the course of the last several months we have developed a detailed assessment of the Burien shoreline in which we have gathered factual information that is relevant to the City's update of its SMP. The attached memorandum is the result of hundreds of hours of work gathering data and synthesizing it for your consideration. Mayor McGilton welcomed this type of citizen-compiled scientific data at a recent Council meeting on June 14, 2010.

The information summarized in the attached memorandum is designed to supplement and correct the shoreline inventory prepared by the City's consultant, Grette and Associates (the "Grette Inventory"). The Grette Inventory is largely narrative in structure and fails to provide as much quantified detail as is required to understand existing conditions. A clear understanding of existing conditions is crucial to the City's update of its SMP because it is the standard from which no net loss is measured. Without a clear picture of the existing conditions of our shoreline that are provided in the attached memorandum, the City cannot determine what is required to ensure no net loss of shoreline ecology. It is our hope that the attached information will help the Council better understand the baseline from which no net loss should be measured.

In summary, and as is explained in detail in the attached memorandum the Burien nearshore is more fully developed than is suggested in the inventory prepared by Grette and Associates. Outside of Seahurst Park, the shoreline of Burien is almost as fully developed as the terrain will allow. Additionally, the attached memorandum demonstrates the following points:

- Almost 85% of the privately owned land within 65' of the OHWM (the area that would be within the proposed no-touch area) is already modified (i.e., it contains a primary structure, accessory structures, concrete patios, or landscaping. For the purpose of this memorandum we use the term landscaping to refer to lawns, flower beds, and small to medium sized ornamental shrubs and trees.
- Nearly 75% of the homes on waterfront lots would be non-conforming structures, due solely to their proximity to OHWM, if the 65' no-touch area were introduced. The nature of the existing parcels and surrounding terrain is such that few, if any, of these homes could be brought in to conformance even after total destruction of the home.
- Less than 7% of the land area in the SMP jurisdiction is privately owned and undeveloped. Most of this remaining area is judged to be unsuitable for new development due to naturally occurring constraints such as steep or unstable slopes.
- Privately owned waterfront properties are almost fully armored and the majority of these bulkheads experience significant wave energy for several hours every day.
- Natural conditions are found primarily on unbuildable land.

CFTR: 08/02/10

This information will help the City evaluate whether the proposed regulations are necessary to satisfy the no net loss standard. The introduction of large no-touch buffers is a common strategy to protect areas where there is existing habitat and natural function from impacts due to new substantial developments. The attached memorandum demonstrates that the Burien Marine shoreline is already highly altered and that this approach will not serve the goal of achieving No Net Loss. On the flip side, the proposed buffers will create a burden on owners of existing waterfront homes, rendering a vast majority of them nonconforming. In light of the burden this type of regulation will create on shoreline homeowners, the City must reject the buffer approach included in the regulations.

Additionally, the attached memorandum demonstrates that the proposed vegetation conservation buffer and associated regulations are overly restrictive and will require individual property owners to shoulder the burden of the City's restoration goals. The attached memorandum shows that significant portions of the shoreline in the M1, M3 and M4 reaches are very highly modified and have no native vegetation at all. The land is dedicated to structures and other hardscape or else to landscaping. The draft regulations, for example the regulation requiring revegetation of 75% of the portion of a lot in the vegetation conservation buffer, would functionally preclude any broadly defined "alterations" on the site. In light of the existing conditions described in the attached memorandum, these overly restrictive measures do not ensure no net loss and will create a significant burden on homeowners. We encourage the City to adopt more reasonable regulations governing shoreline vegetation conservation, such as those proposed in the BMHA's redline.

Finally, it is worth noting that the information we are providing reinforces the idea discussed in the recent public forums of using Seahurst Park as the best opportunity to realize gains to shoreline ecology. The work that Burien is doing in Seahurst Park is an exemplary effort that should be applauded. Even with the work that has already been completed, all of the scientific panelists that attended the City's forum on June 14 agreed that there was more to be done and that Seahurst Park presents the best restoration opportunities and should be the focus of any restoration plan. Additionally, if the City wants to generate gains to shoreline ecology that offset potential future losses in other areas of the Burien shoreline, Seahurst Park presents the best city-wide opportunity to ensure no net loss of shoreline ecology throughout the city.

We hope that this information is helpful as you craft regulations designed to ensure "no net loss" of shoreline ecology. We would be happy to meet with members of council, staff or the Department of Ecology at any time to clarify what we have done and to share any of the data we have collected and synthesized.

Sincerely,

Michael D. Noakes

Michael D. Noakes
Burien Marine Homeowners Association

Existing Conditions of Burien Marine Shoreline
Prepared on Behalf of the Burien Marine Homeowners Association

1. Introduction and Methodology

This memorandum describes the existing conditions of the Burien Marine Shoreline. It synthesizes information gathered through field investigations and analysis of maps and aerial photographs.

Field investigations included walking the entire length of the shoreline multiple times observing and noting existing shoreline conditions. Measurements of the existing current setbacks from OWHM, in accordance with RCW 90.58.030 where feasible or using the existing bulkhead where necessary, were taken using a laser range finder.

In addition to our field notes and surveys, we recorded our field data through hundreds of photographs of shoreline properties. Finally our field investigation includes interviews with shoreline property owners many of whom have lived here for decades and have significant knowledge of the history of shoreline development.

This evaluation also relies on high quality aerial images such as those available in Google Earth. Figure 1.1, which shows four waterfront homes and two undeveloped upland parcels on a steep slope along 30th Ave SW, provides an example of the level of detail that is readily available.

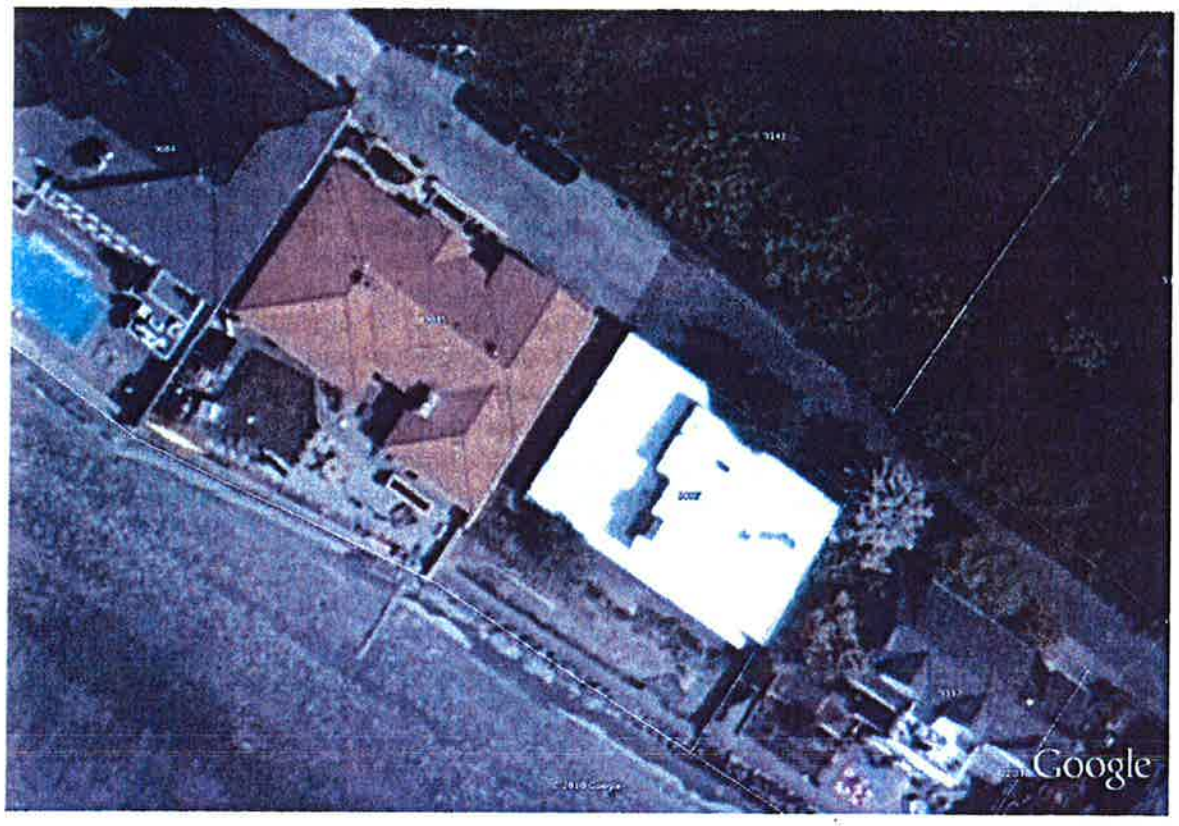

Figure 1.1: An aerial image of 6 properties along 30th Ave SW

Tools within Google Earth were used to map the boundaries of properties, homes, accessory structures, roads, lawns and ornamental shrubs, and regions of relatively natural tree growth and other vegetation. The physical surveys and extensive photographs were used to guide and validate this portion of the activity.

Computer programs were developed to evaluate and summarize the data that had been collected. Principal among these is a program that evaluates the regions that were mapped in Google Earth to estimate the area coverage along the shoreline. This program simulates the process of walking the line of OHWM one foot at a time. At each step a 200' sight line perpendicular to the shore is defined and the condition of the land is evaluated at every 1 foot step along this line. This process was repeated for the nearly 26,500 feet of the Burien Marine Shoreline to develop an estimate of the nature of the development for all 121 acres to a resolution of 1 square foot.

The condition of the land has been classified into three categories.

- Hardscape is impervious materials such as primary structures, accessory structures, patios, decks, roads and so on.
- Landscaping is lawns, hedges, flower beds, small to medium sized ornamental trees and shrubs, and so on.
- Natural conditions refer to clusters of natural growth trees, shrubs, and natural ground cover. There was no attempt to distinguish between native and non-native species.

King County Tax Assessor databases were accessed to determine the state of each tax parcel. This provided the ability to determine which parcels are privately owned, to determine when a number of small adjacent parcels have been collected by a single owner and are being treated as a single property, and most importantly to determine which parcels are judged to be unbuildable by the assessors office due to conditions including terrain, access, and slide history.

Properties are classified as waterfront or upland. Waterfront properties are those that include any land that reaches OHWM. In most cases these are properties with meaningful frontage on the shoreline but there are a few situations in which this is a narrow strip that is used to provide beach access to a home that it is substantially further back. Upland properties are those that do not have physical waterfront access. There are examples of both waterfront properties and upland properties that are partially within the SMP jurisdiction and partially beyond it.

2 Overall Characteristics and Observations

The City's Shoreline Inventory (the "Grette Inventory") and Draft SMP divide the Burien shoreline into four broad reaches: M1, M2, M3 and M4. During the field surveys it became apparent that the shoreline is more complex than the four large reaches suggest. For purposes of review and characterization, it is helpful to divide each reach into more discrete divisions or "segments" that are based on the terrain, conditions, and the patterns of development along the shoreline.

Table 2.1 summarizes this partitioning and the remainder of this section describes the distinct terrain in each segment and the resulting development patterns that were observed. The table indicates the length of each segment and its position along the shoreline relative to the boundary between North Burien and Seattle. All calculations are performed in feet; there may be small apparent discrepancies that result from rounding issues when converting these values to miles for display in this table.

Reach	Segment	Length (ft)	Start Point (mi)	Length (mi)	Area (acres)
M1	Seola/30th	1769	0.00	0.34	8.12
	Shorewood Drive	1806	0.34	0.34	8.29
	Standring Lane	2009	0.68	0.38	9.22
M2	Seahurst Park	4368	1.06	0.83	20.06
	25th Ave	1652	1.88	0.31	7.58
M3	149/150/151st	2371	2.20	0.45	10.89
	Start of Maplewid Ave	1654	2.65	0.31	7.59
	Sunset Trail	3815	2.96	0.72	17.52
	Three Tree Point Lane	836	3.68	0.16	3.84
M4	171st	1269	3.84	0.24	5.83
	172nd	1858	4.08	0.35	8.53
	Seacoma Blvd	446	4.43	0.08	2.05
	South Burien	2564	4.52	0.49	11.77
Total		26417	5.00	5.00	121.29

Table 2.1 A summary of the 13 Reach Segments along the Marine Shoreline

2.1 Reach M1

The M1 reach is divided into three segments described in further detail below.

Seola Lane and 30th Ave SW

This segment consists of 34 properties including waterfront properties along Seola Lane and 30th Ave and upland properties along Marine View Drive. Seola Lane and 30th Ave SW run roughly parallel to the shoreline and immediately behind the waterfront homes. Marine View Drive also runs roughly parallel to the shoreline but is further inland and on a bluff above 30th Ave.

Most of the developed properties are in a narrow strip of land along Seola Lane and 30th Ave SW between the OHWM and the toe of an increasingly steep bluff. A small number of upland homes sit at the top of this bluff along Marine View Drive with land that extends down the hill and into SMP jurisdiction along 30th Ave SW.

At the southwest end of this segment are two tract waterfront parcels that appear to be owned by a collective in the Shorewood neighborhood for their common interests. The grade of this land would impose a challenge to new development.

There are 6 privately owned parcels in this segment that have not been developed. All of these are on the steep slope upland of 30th Ave SW and appear to be unbuildable due to the terrain. The King County has assessed each of these parcels at between $1000 and $4500 which confirms this judgement.

The location of waterfront homes between the OWHM and upland bluff is a principal geographic feature in this segment that appears with some frequency throughout the Burien shoreline. Figure 2.1 is provided to help visualize an example of these features. This figure includes a depiction of the SMP jurisdiction in green and the proposed no-touch area in red.

Figure 2.1: A portion of 30th Ave SW

Shorewood Drive
This segment includes a stretch of Shorewood Drive that runs roughly parallel to the shoreline. The segment is dominated by a relatively steep hill that stretches from Shorewood Drive down to OHWM. At the north end of this segment the homes tend to be at the top of the bluff along Shorewood Drive. As one moves southwest along Shorewood the grade becomes less steep near OHWM and one begins to note homes within 50' of OWHM.

Standring Lane
This is a gated community of 24 homes along the waterfront on Standring Lane. Standring Lane is a private road. The land is relatively level at the north of this segment but a hill begins shortly thereafter upland of Standring Lane.

The single parcel that is upland of this stretch of Standring Lane is on a steep slope. The King County Tax Assessor reports the grade as close to 50% and has marked this property as unbuildable and assigned a tax value of less than $18,000.

This segment is 100% armored to protect the homes that tend to sit within 20 - 30' of the bulkhead. The water facing side of these bulkheads is beyond the current natural OHWM and they experience significant levels of wave energy for several hours at a time twice per day.

2.2 Reach M2
M2 has been divided in to two segments.

Seahurst Park
Over three quarters of a mile of beautiful public park that is being steadily restored.

25th Ave
A segment of 15 waterfront homes most of which are located at the top of an extremely steep bluff. The land along this steep slope is in natural condition. Eagle Landing Park is at the south end of this segment.

2.3 Reach M3
M3 is divided in to four segments

149th/150th/151st
This segment consists of 36 homes at the bottom of a steep hill. Most of the homes are between the base of the bluff and the OHWM with street access at the top of the bluff. Accordingly, several of these homes include private trams to provide access to the streets from the homes below.

Start of Maplewild Ave SW
A segment of 23 homes along the first 1/3 of a mile of Maplewild Ave SW. These parcels frequently stretch from the OHWM to Maplewild Ave SW. The terrain is generally quite steep and a good fraction of the homes sit at the top of the bluff rather than along the immediate waterfront. It is believed that the position of these homes is a consequence of the conditions of the terrain rather than owner preference. Waterfront homes become more prevalent towards the southwest end of this segment where the grade becomes less severe.

Sunset Trail
This is the longest developed segment defined in this memorandum. It includes 94 properties between Maplewild Avenue and the water. A small footpath, the Sunset Trail, runs parallel to Maplewild Ave and roughly bisects the length of this segment with homes on either side of the trail. The trail is relatively close to the water at the north end of the segment which has created relatively short parcels with homes constrained by the 20' setback line and the Sunset Trail. The terrain becomes steeper as one moves southward and the trail moves away from the water. At this point some homes are located along the trail at the top of a short bluff but a few homes have been constructed close to OHWM. As one continues along the trail the terrain becomes less severe and homes become more common adjacent to OHWM.

Three Tree Point Lane
The terrain becomes almost flat between the end of the Sunset Trail and the point at Three Tree Point. The 14 homes in this neighborhood tend to sit comparatively far back, the average setback is slightly over 65', and have fully landscaped backyards.

2.4 Reach M4
M4 is divided in to four segments.

171st
This segment contains 16 homes set between SW 171st St and the OHWM. These properties are fully developed with structures and fully altered landscaping.

172nd
This segment consists of a set of 51 parcels including a public street end. There are 41 homes located along the landward side of SW 172nd street. There is a steep hill immediately behind all of these homes. The waterward side of the street is fully hardscaped and this segment is almost completed armored.

Seacoma Blvd
This segment contains 12 private homes. Nine of these are located in a small development along Seacoma Blvd which is between SW 172nd St and OHWM. The remaining three homes are landward of SW 172nd St. These properties are generally short and narrow. This segment is fully armored and extensively hardscaped or landscaped.

South Burien
SW 172nd Ave moves sharply away from the water at the south end of the Seacoma Blvd segment due to a steep bluff. The parcels in the South Burien Segment are long and narrow and nearly all of them stretch from 172nd down to the water. Many of the homes are at the top of the bluff.

2.5 Development Metrics by Reach

Table 2.2 shows the number of properties within each Reach. Public or common land includes parks, street ends, and tract parcels that cannot be developed. The privately owned land is either waterfront, there is some frontage on Puget Sound, or upland. Private properties may be developed, exclusively with a Single Family Residence, or undeveloped. Review of the King County Tax Assessors database suggests that nearly every undeveloped parcel is judged to be unbuildable due to conditions such as steep slopes and frequent slides.

		M1	M2	M3	M4	Marine
Public/Common		2	3	4	2	10
Waterfront	Developed	66	12	112	101	291
	Undeveloped	1	2	8	2	14
Upland	Developed	17	0	44	14	75
	Undeveloped	9	0	0	2	11
Total		95	17	168	121	401

Table 2.2 The number of properties within each reach

Table 2.3 shows the percentage of the linear length of the shoreline that is protected by shoreline armoring and the type of armoring in use.

	M1	M2	M3	M4	Total
Rip Rap	58%	24%	42%	23%	37%
Concrete	35%	0%	35%	68%	35%
Wood	1%	2%	12%	3%	5%
Total	94%	26%	90%	94%	77%

Table 2.3 Level and Type of Armoring by Reach

Table 2.4 summarizes the percentage of land area within 200' of OHWM in each overall condition by reach. As will become clearer in the next section, on private property the Natural condition is strongly correlated with the presence of steep slopes where development is precluded.

	M1	M2	M3	M4	Total
Hardscape	22%	1%	24%	51%	25%
Landscape	24%	0%	30%	37%	24%
Natural	54%	99%	46%	12%	51%

Table 2.4 Area Occupied by Land Coverage

The nature of the terrain has a large impact on the location of the homes. Homes tend to be located relatively close to the water with a hill immediately upland, or else they are at the top of a bluff and are set back from the water. Table 2.5 indicates the number of waterfront homes that are located within 65' of OHWM. This is the depth of the no-touch area in the Burien SMP draft. If this regulation were adopted almost 75% of the waterfront homes would be lawfully non-conforming based solely on their proximity to OHWM. Furthermore the prevalence of steep slopes, as well as roads and foot trails, behind those homes means that few, if any, of the affected homes could be made conforming even if the home were completely destroyed.

	M1	M2	M3	M4	Total
Home < 65'	83%	8%	74%	76%	74%

Table 2.5 Percentage of homes that are within 65' by Reach

2.6 Summary

As described above the Marine Shoreline is almost as fully developed as conditions have allowed with the obvious exception of Seahurst Park. The marine shoreline is dominated by the presence of steep slopes which have strongly shaped the patterns of development.

In some areas the slope remains steep all the way to the OHWM and the homes are found at the top of the bluff. The steep slope tends to preclude development and the land between the home and OHWM is in a relatively natural state.

More commonly the slope is set back sufficiently to allow homes to be placed at the bottom of the hill with the slope immediately behind. In some cases the land is so narrow that residents rely on steep stairs or private trams to reach their homes. Otherwise there may be room for a walking trail or a limited access roadway before the bluff is encountered. These conditions tend to push these homes close to the current 20' setback requirement. In this case the slope behind the home tends to be in relatively natural conditions.

The majority of privately owned undeveloped parcels are found on these slopes and the parcels are usually flagged as unbuildable in the King County Tax Assessors database. Almost all of the remaining parcels are heavily discounted due to slide histories. It is estimated that perhaps 10% to 20% of the privately owned undeveloped land is likely to be developed in a 20 year planning horizon.

3. Development Conditions along the Marine Shoreline

The discussion of the conditions of the shoreline in terms of Reaches and Segments with those reaches helps to enhance one's intuition about the nature of the Burien Marine Shoreline but it may lead to erroneous assumptions about the true prevalence about certain features.

This section will present a more quantified review of conditions using a uniform measure of distance in feet along the shoreline and to a depth of 200' from OHWM. Recall that this area has been mapped in Google Earth and the conditions have been sampled at a resolution of 1 sq. ft. Results are then presented in terms of length, areas, and relative percentages of these. This eliminates misunderstandings that may occur when parcels of significantly different sizes are being implicitly compared.

3.1 Public and Private Land

Figure 3.1 shows the percentage of land area within the SMP jurisdiction that is in public vs. private ownership. For privately owned land this chart indicates whether the land is on a developed parcel or an undeveloped parcel.

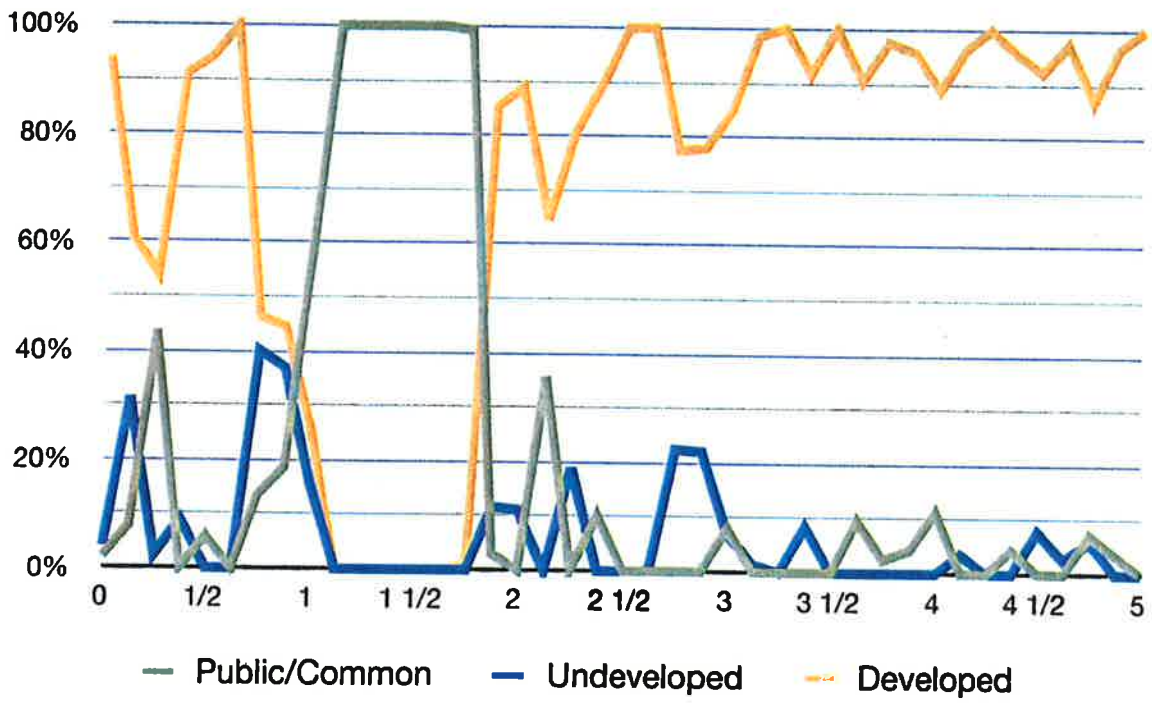

Figure 3.1 Public/Common vs Private land along the Shoreline

The x-axis represents distance, in miles, from the border between Seattle and Burien. The left end of the axis is Seattle and the right end is Normandy Park. The y-axis is the percentage of land area of each type as a fraction of the total area of the SMP jurisdiction. Seahurst Park begins at a little more than 1 mile from Seattle, and the remainder of the developed shoreline stretches from about 2.25 miles to Normandy Park.

The public/common land includes parks, street ends, and tract parcels. The first spike near Seattle is the two tract parcels at the southeast end of the Seola Lane / 30th Ave segment, the second major spike is Seahurst Park, the third spike is Eagle Landing Park, and the remaining spikes are street ends and minor tract parcels. Slightly over 20% of the total area is in the public trust. Almost all of this land is in a natural condition and it is unlikely that this land will become more fully developed in a minimum 20 year planning period. In fact this land provides the best opportunity for restoration activities.

Slightly less than 7% of the total SMP area is on properties that are privately owned but undeveloped. As has been discussed, the majority of this land is noted as unbuildable in the King County Tax Assessors database and much of the rest is heavily discounted due to access or slide history. For example the first two spikes near Seattle represent parcels on the steep slope behind 30th Ave SW and the third major spike around 3/4 of a mile from Seattle is a large unbuildable parcel behind Standring Lane. Queries of the tax database for each undeveloped property suggests that perhaps 1 or 2% of the total SMP area is both undeveloped and buildable. Nearly all of this land is in a natural condition.

3.2 Conditions on Privately Owned, Developed Property

Approximately 70% of the area is assigned to properties that have been developed exclusively with single family residences and their appurtenant structures; a priority use in the SMA. Figure 3.2 shows the patterns of use for the developed properties. A gap is shown for Seahurst Park.

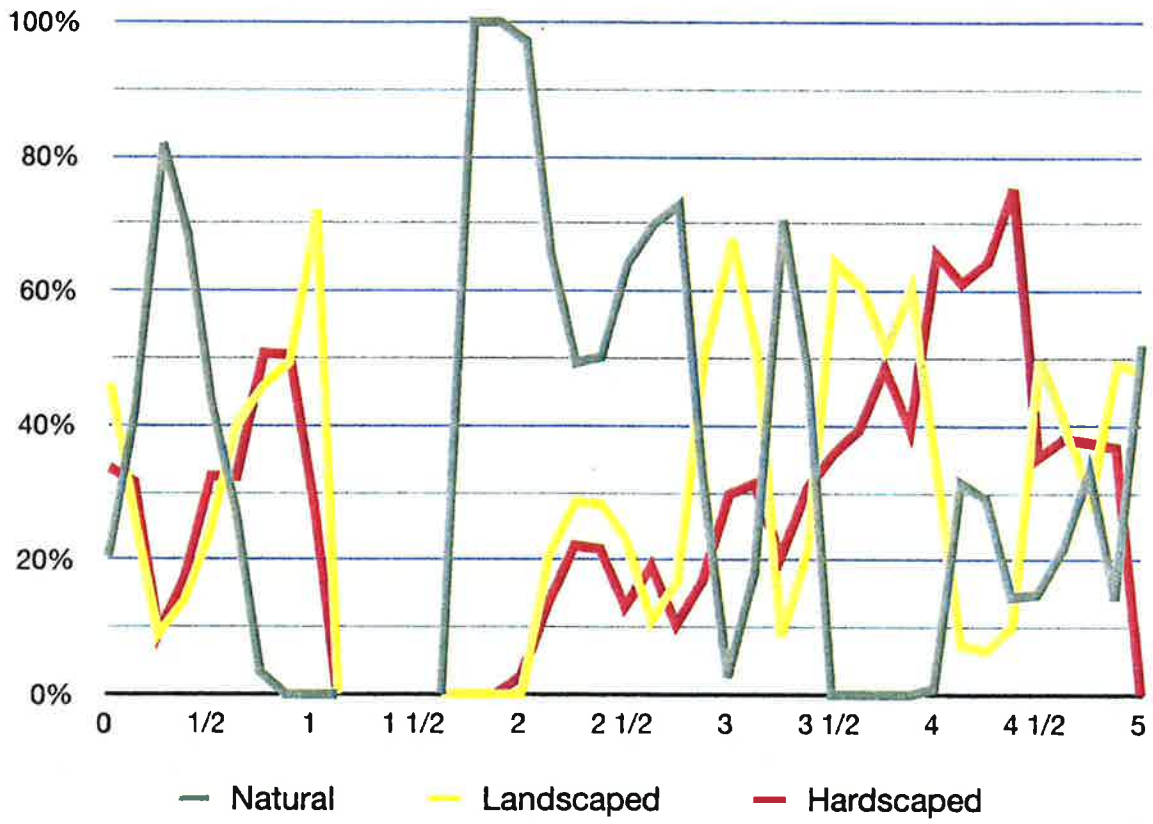

Figure 3.2 Conditions on privately owned developed properties

The total percentage of land coverage sums to 100% for most of this chart. The primary exception is the roughly 3/4 of a mile of Seahurst Park where there is no private property at all which is depicted as 0% for all coverage types.

For the Marine shoreline as a whole, the acreage of developed land within 200' of OHWM is approximately 1/3 natural, 1/3 landscaped, and 1/3 hardscaped. Although natural conditions exist on developed land throughout the shoreline it is particularly prevalent on steeper slopes.

The large spike of natural land in the first 1/4 mile corresponds to area in the vicinity of the tract parcels along 30th Ave SW. Most of the land in this area is in common ownership. The relatively small amount of privately owned land is located at the bottom of the steep bluff between Marine View Drive and 30 Ave SW which is then in a Natural state.

The second spike roughly 2 miles from Seattle corresponds to the steep slope to the southwest of Seahurst Park which is in a fully natural condition all the way to OWHM.

The remaining natural conditions are strongly correlated to bluffs along much of M3 and the south end of M4.

Figure 3.3 clarifies this point by focussing on the altered conditions within privately developed properties for the first 65' from OHWM. This is the area that is proposed as a no-touch area in the Burien draft SMP. Almost 85% of the private developed land within 65' of OHWM is already in an altered condition. There are significant sections of the shoreline where 100% of this area is altered. The first trough around 1/4 miles from Seattle is the steep slope along Shorewood Drive that has tended to force homes to the top of the bluff. The large trough at 1.5 miles is, of course, Seahurst Park which is publicly owned. The remaining peaks and troughs correspond almost perfectly to the position of the hill. The land is fully developed near OHWM when the slope allows and relatively natural when the home has been forced to the top of the bluff. This is the area that is currently proposed as a no-touch area in Burien draft SMP update.

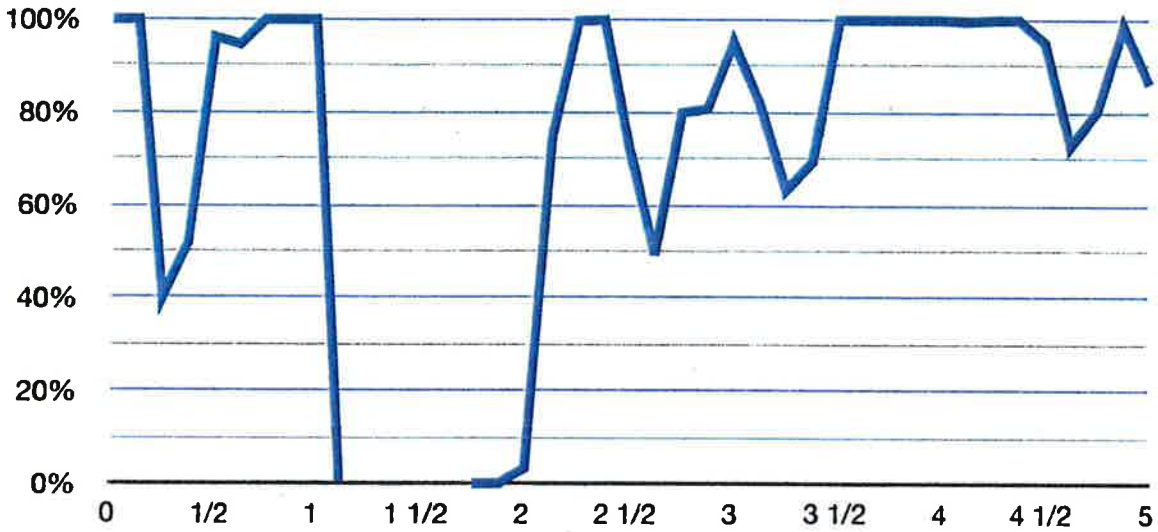

Figure 3.3 Altered conditions within the first 65' from OHWM

Figure 3.4 provides an indication of how altered the conditions are based on distance from OHWM. The red line (1%) indicates the distance where altered conditions are first encountered. The green line (100%) indicates the furthest point of altered land in SMP jurisdiction. Finally the yellow line (50%) indicates the distance travelled to cover half of the total altered land.

For much of the marine shoreline, altered conditions begin immediately at OWHM. Exceptions occur primarily where steep bluffs extend all the way to OHWM in which case the altered conditions are pushed up the bluff.

For much of the first 2.5 miles of shoreline, and ignoring Seahurst Park, the furthest point of altered land is around 100' to 125' from OHWM. The remaining distance is observed to be steep slopes that are in a largely natural condition.

One is more likely to find altered conditions within the full 200' as one continues south along the shore. The region near the tip of Three Tree Point, approximately 3.8 miles from Seattle, is highly altered for the entire 200' from OHWM. This is reflected in the figure with the 1% point at about 2', the 50% point at 100', and the far point at 200'.

The average distance to the start of the altered condition on privately owned land is 5', the average distance to the 50% level is approximately 75', and the 100% level averages approximately 145'. Note carefully that these averages disregard all public/ common land. This quantifies the intuition that the steep bluffs have tend to push the primary residence towards OHWM or else to the top of the bluff and outside of SMP jurisdiction. Outside M2, there is not an existing functioning riparian buffer for most of the shoreline. Defining a generic no-touch area of 65' will not change this and will not contribute to the No Net Loss standard in the SMP guidelines.

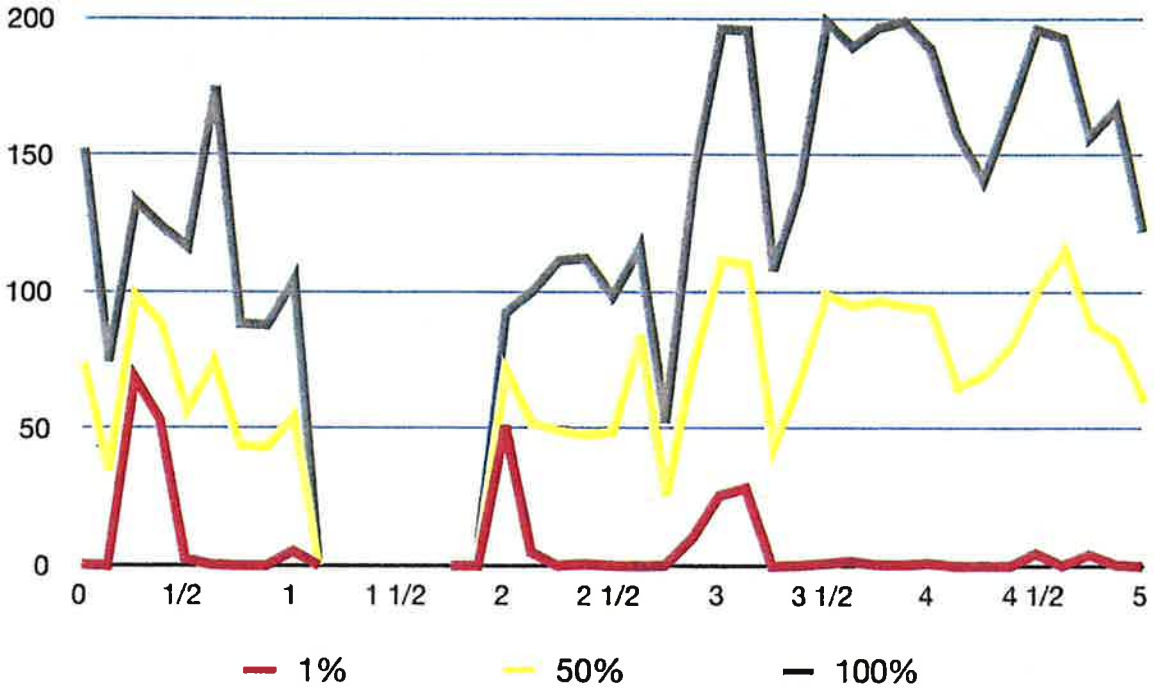

Figure 3.4 Distance Ranges of Altered Condition on Private Property

3.2 Shoreline Armoring

The plan has expressed a concern that new development near the shoreline will create a need for additional shoreline armoring. Figure 3.5 shows that the vast majority of the shoreline is almost completely armored; 95% or more by length. The significant exception is the 20% of the shoreline that includes Seahurst Park and the step bluffs immediately to the south.

The second dip depicted in the chart is in the Three Tree Point Lane segment of M3. As described in section 2.3, this is one of the few developed segments where the edge of the properties averages approximately 5' landward of the current OHWM. In sum, the buildable undeveloped lots that we are aware of are either at the top of a bluff or are already armored.

The majority of these bulkheads are now waterward of OHWM and the bulkheads are subject to significant wave energy, both natural and as a result of large container ships that travel to and from Tacoma, for several hours twice per day and protect homes that are commonly within 65' of the bulkhead.

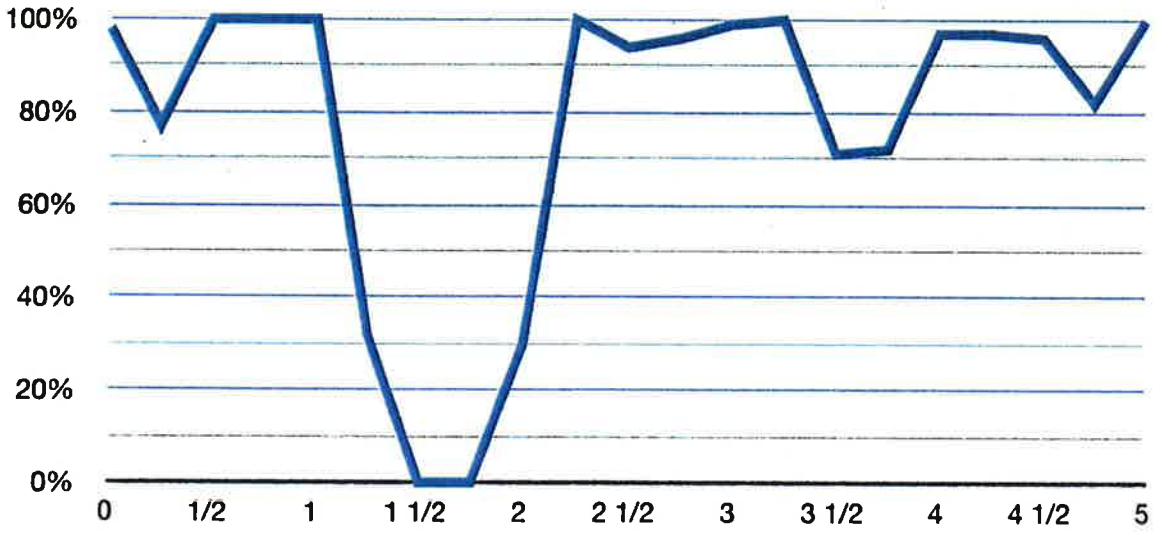

Figure 3.5 Presence of armoring along the Shoreline (mi)

3.5 Summary

This memorandum has demonstrated that the privately owned land within 200' of OHWM is highly developed.

Less than 7% of the total area is assigned to privately owned properties that are entirely undeveloped and most of this property is assessed by the King County Tax Assessors office as unbuildable. It is estimated that only 1% of 2% of the land is available for brand new development.

Slightly more than 20% of the total area is publicly owned and is not considered a candidate for new development in a 20 year planning period. Although this land is in a broadly natural condition this is the land where restoration efforts are most readily pursued.

A little over 70% of the total area is privately owned and contained by properties where a single family residence exists. Approximately 1/3 of this area is in a broadly natural condition and the remaining 2/3 is altered. Most of the homes are in generally good condition but there are a few homes that are candidates for significant reconstruction in the near term, and there is a reasonable expectation that others will require major rennovation in a 20 year planning period.

Development within the shoreline has been driven by terrain. There are steep bluffs along the majority of the shoreline. Homes are pushed close to OHWM wherever conditions allow but then return to the top of the bluffs where the hill is too close to the shore. The nature of the terrain and the desirability of living along OHWM means there is effectively no functioning riparian vegetation area adjacent to OHWM for the majority of M1, M3, and M4.

Lisa Clausen

From: Public Council Inbox
nt: Wednesday, July 21, 2010 11:24 AM
o: 'Clark Mounsey'
Subject: RE: Monday's (July 19) Council Meeting.

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

Lisa Clausen
Burien City Manager's Office

From: Clark Mounsey [mailto:clark@preferredpackagingllc.com]
Sent: Tuesday, July 20, 2010 3:35 PM
To: Public Council Inbox
Subject: Monday's (July 19) Council Meeting.

To Madam Mayor and other Council Members,

Just a note to thank each of you for the most constructive council meeting I have ever attended. It's interesting how initially the SMP process created so much angst and putting the stakeholders at odds with one another. And yet, we now seem to have migrated to an atmosphere of "working together". Of course there are issues still to be addressed, but a couple of comments were made by Council Members, that in some cases the SMP could use the term **"suggested"** vs. **"mandatory"**. Anything to reduce unnecessary regulations would obviously be welcome by the property owners and the city staff. But I also believe the property owners would be more than willing to accept **additional suggestions** not included in the current plan.....such as avoiding unfriendly soaps in washing their cars where the waste water flows into the storm sewers. The same could be true for any unfriendly lawn and plant fertilizers. I'm sure there are many more suggestions. As a property owner, I would like nothing more than all of us working together to, not just achieve a "no net loss", but to achieve a "real net gain". Enough of my thoughts. Again, I just wanted to say ....Thank You!

Best regards,

Clark Mounsey
Clark.Mounsey@Comcast.net
206-940-6520

OFTR: 08/02/10

Susan Coles

---

m:	Public Council Inbox
:	Monday, July 26, 2010 3:52 PM
To:	Susan Coles
Subject:	FW: Shoreline Management

fyi

From: David Engdahl [mailto:engdahld@seattleu.edu]
Sent: Monday, July 26, 2010 2:18 PM
To: Public Council Inbox
Subject: Shoreline Management

July 16, 2010

Dear City Council Members,

My husband and I attended the June 21st public forum for the Shoreline Master Program. During that forum Mayor Joan McGilton made comments about the shoreline homes in Burien, stating they "are certainly worth more than a million; we're looking at probably one to four million". She went on to opine "that these homes worth less than that don't fulfill the standards of our upscale Gold Coast folks, if those aren't tear down es."

A Gold Coast in Burien? Burien is not Mercer Island or Medina or Hunt's Point or Clyde Hill. Only a very small handful of Burien's shoreline homes are in that league. Most Burien waterfront homes are on small lots, 60' wide or narrower, and are built 10' or less from their neighbors. About half of them either have no street access except by long, steep stairway or by tram, or else abut perilously on a busy roadway. Most, however, have charm or some other points of appeal aside from their scenic location; and virtually all of them are quite ordinary people's homes. Most are proudly maintained – many by residents of long duration, and others by folk whose hard labors and hopes of finding and (sometimes barely) affording such a location have rather more recently been rewarded.

There are some costly homes here; but in almost all instances much more than half of the value is in the location. As we all know, prices and tax appraisal values have drawn closer together over the last few years. Declines in appraised values since 2008 as great as 34% to 45% are not uncommon among these shorefront properties. According to county records, the average appraisal on a waterfront home in Burien for tax assessment purposes in 2010 (for 2011 taxes) is $731,000, for lot and improvements combined. This sum would have to be exceeded by 37% to reach the $1,000,000 mark.

Within the four reaches of Burien's shoreline, current assessed values (land and improvements combined) range from a low of $45,000 to a high of $3,573,000. More precisely:

ch 1	high: $3,573,000
	low: $218,000
	average: $865,000

Reach 2	high: $1,250,000
	low: $636,000
	average: $771,000
Reach 3	high: $1,622,000
	low: $45,000
	average: $701,000
Reach 4	high: $1,640,000
	low: $360,000
	average: $674,000

These are not swanky new homes; 75% of the homes on Burien's waterfront were built before 1970, and more than a third of them before 1930. But these are not teardowns either: fully one half of the homes currently tax-appraised at or above $1M were built before 1970 – several of them before 1930. Burien's waterfront is home to a highly diverse array of persons of varying age, wealth, and taste, including some whose only significant asset is this location that they love, others enjoying after long effort the special place they have saved and stretched – and risked – to attain, others succeeding by good fortune to places their parents or grandparents had built up before them, and very, very few by any stretch deserving of the jealous disdain cast by the epithet "upscale Gold Coast folks."

The most expensive piece of property in Reach 1 (and on the entire Burien shoreline) is exceptionally costly because it is a compound that was originally six separate lots; together, it includes three houses and a cabana and occupies several hundred feet of waterfront. My husband and I own the "cheap seat" in Reach 1, and our sweet, well-kept little cabin is, in fact, about to become a tear down. We are on the verge of building a new home within 40 feet of the shoreline with a stable (and duly approved) steep slope behind. Lately we ask ourselves WHY we are planning to construct a new home, increasing our disproportionate contribution to Burien's tax coffers and in return acquiring the dubious distinction of being the newest nonconforming structure in town.

My 80-something parents have lived on Burien's waterfront for 26 years. Their home is a lovely, updated, well maintained 1960's era home. It was appraised at just over $1,600,000 in 2007, but their 2010 assessment is $749,000, and in today's market they would be fortunate to get $1,000,000 in a sale. However, they have no intention of moving : their house is not a tear down, it is their home. It is also their largest asset. It would be reasonable to assume there are many more homeowners situated just like them on this shoreline.

The most fortunate as well as the least fortunate of our citizens – and all of us in between – are equally entitled to respect and good will from those elected to fairly govern us all under the law. A lamentable arrogance is displayed when this principle is violated, whichever of the diverse individuals or groups comprising our community is disparaged.

Sincerely,
Diane M. Patterson
12237 Shorewood Lane SW

RECEIVED
JUL 28 2010
CITY OF BURIEN

To Burien City Council
To Burien Planning Department
Re SMP Draft
July 28, 2010

I am requesting that page III-4 of the SMP Draft be corrected to state what the development of the Burien Shorelines is **Low Density Development.** The SMP Draft states that they are currently developed at the level of Moderate Density. This is incorrect. Attached is the document prepared by the citizens on the marine shorelines as to the lot sizes and use. I have already submitted detailed figures from the King County records that shows that Lake Burien is currently developed at Low Density. Per the Marine Shoreline Home Owners research, the marine shoreline is currently developed at low density also. Please make this correction.

Sincerely,
Chestine Edgar

YAHOO! MAIL Classic

Re: conversation Tuesday, June 8, 2010 3:28 PM

From: "Michael Noakes" <noakes.michael@gmail.com>
To: "Chestine Edgar" <c_edgar2@yahoo.com>

I am amassing various tidbits of data though some elements are still a bit rough and it will be important to do more verification but these numbers should be pretty sound.

I started by collecting the assessor's data and maps for every "tax parcel". I dropped a few tiny tax parcels that represent small easements for city use and so focus on non-trivial parcels of land. A few tax parcels are being used as if they were one larger parcel for development purposes and I treat these as if they were just the one parcel. With these caveats

1) I count 413 tax parcels that have some non-trivial land within the SMP jurisdiction. I have recently computed a reasonably accurate 200' range line along the Marine shoreline. This line has allowed me to exclude a few homes that I had initially been including in my counts. It might drop by another one or two parcels as I complete my current evaluation.

2) There are 316 parcels that touch the water and 308 of these are in private hands, 3 are street ends and 3 are some other form of land being used for community purposes, and 2 are for Seahurst park. A few of these parcels are oddly shaped with a small access to the water and the bulk of the land 50 - 100' back from the water but the vast majority have a meaningful frontage.

3) We tend to focus on the waterfront properties as these are where the attention are for setback/riparian buffer concerns. Of the 308 parcels that are in private hands, 26 are vacant and the other 282 have homes.

4) Over all waterfront parcels, the average width is 81' and the average depth is 181'.

5) For M1 the values are (76' x 140'), for M3 (70' x 158'), and for M4 (56' x 185'). M2 quite different from M1, M3, M4 largely due to Seahurst park.

M1 = 10,640 sq ft
M3 = 11,060 sq ft
M4 = 10,360 sq ft
M2 = Urban Conserv.

Hope this helps,

RECEIVED
JUL 28 2010
CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have prefect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying the capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

Patty Arch
20725 3rd Ave S
Des Moines, WA 98198

CFTR: 08/02/10

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Sincerely,

BARRY CRITTENDEN
13919 6TH AV SW
BURIEN, WA.

CFTR: 08/02/10

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JUL 28 2010
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Sincerely,

Sue Morris
PO Box 938
Seahurst, WA 98062

I don't live on the lake, allowing public access to Lake Burien is not good.
CFTR: 08/02/10

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Burien Washington 98166

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Sincerely,

401 SW 152nd ST
BURIEN, WA 98166

CFTR: 08/02/10

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Sincerely,

Mary Kay Horton
455 SW 191st St.
Normandy Park, WA 98166

CFTR: 08/02/10

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400 SW 152nd St., Suite 300
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1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying the capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

Robert and Robbie Howell
Please don't destroy Lake Burien with Fecal Coliform and Eurasian Milfoil. If you permit Public Access it will happen within a year. It costs thousands to clean this stuff up and then you have to clean the lake over and over again because it get reinfected.

OTR: 08/02/10

To the Burien City Council;

RECEIVED
JUL 28 2010
CITY OF BURIEN

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have prefect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying the capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

Dave Miller —

I don't want Lake Burien to become a mess like Arbor Lake is as discussed in this article.

CFTR. 08/02/10

RECEIVED

JUL 28 2010

CITY OF BURIEN

Dear Burien City Council members,

This letter is submitted to you before you vote on the final Shoreline Master Plan in regards to Lake Burien. I ask that you do not allow physical public access to Lake Burien. There are many reasons that this would cause a devastation of the fragile ecosystem of Lake Burien. Small lakes like Hicks Lake and Arbor Lake are examples of what would happen to Lake Burien. Physical public access would have the following impact:

1. The introduction of invasive weeds can choke off the waterway thus destroying oxygen levels in the lake and destroying wildlife,

2. The introduction of inappropriate gas levels into the water column can damage water quality thus destroying wildlife and encouraging the growth of toxic plankton populations like a red tide,

3. The introduction of animal and human fecal matter into the lake will destroy water quality as well as wildlife and will encourage the growth of fecal coliform (Escherichia coli) bacteria and create a health and safety issue for humans,

4.The introduction of boating contaminates in addition to speed and density issues will create habitat destruction and traumatize wildlife as well as serving as a contaminator and spreader of infection and noxious weeds such as Eurasian milfoil to the lake and invasive animals and organisms such as quagga mussels, zebra mussels, New Zealand mudsnails, rusty crawfish, spiny water fleas, snail fever organisms and others,

5. By exceeding the carrying capacity of the land and water of Lake Burien by the introduction of large numbers of humans, their pets and their wastes and litter it will damage the fragile ecosystem of the lake, and

6. The sheer number of people granted public access will increase the turbidity of the water resulting in the degradation of water quality and the destruction of the habitat for spawning fish , nesting wildlife and other animal populations of the lake.

CFTR: 08/02/10

Research shows that small lakes that are opened to physical access, within two years of having physical public access granted, develop problems with invasive species and fecal coliform problems. These problems require chemical treatment and the poisoning of the lake waters in an attempt to correct what would have been avoided if public access had not been granted. Most cases have not been remedied without significant damage to the ecosystem. Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien now or at any time in the future.

There is another issue regarding Lake Burien that needs to be considered. After reading Deputy Michael A. Glasgow's letter in the Forum section of the BTown Blog another serious argument can be made against granting physical public access to Lake Burien. Deputy Glasgow is with the King County Sheriff's office and is assigned as a City of Burien Patrol Officer. In part he states that in the four years he has been on the job, parks in the city have had a large amount of problems. He states that they are being "terrorized" by teenagers and young adults and that vandalism, littering, alcohol consumption, drug use as well as major assaults and robberies are occurring in the parks. He further states that he and his fellow officers are actively working on these issues because he wants to make the parks safe for families and their children. He asks for citizens to report their observations as a uniform showing up has a chilling effect on criminal activity albeit temporarily. It appears that these officers have their hands full already with park problems. Why add another one to the list? Burien has many parks as it is to maintain and to patrol. I commend Officer Glasgow for having the courage to state publicly his concern about these problems. If the officers are concerned why shouldn't the residents around Lake Burien be concerned? Lake Burien is also home to a fragile population of youth at the Ruth Dykeman facility. A public access point/park near them or at any point around the lake could also have an extremely negative impact on the staff and residents. Do not allow physical public access to Lake Burien- now or at any time in the future.

Sincerely,

Rozella H. Gledhill July 28,2010 Rozella H. Gledhill

Sandy Gledhill-Young July 28,2010 Sandy Gledhill-Young

15705 13th AVE. S.W.
Burien, WA. 98166

May 24, 2010

Dear Burien City Council Members,

I would like to ask that the Burien City Council add the new "Species and Habitats of Local Importance" Section E-487 to the Shoreline Master Plan. This was adopted in October, 2008 as part of the King County Comprehensive Plan. This would replace the information included in your draft which is from 1994. It is important that the Shoreline Master Plan reflects the latest information and is in compliance with the latest King County Comprehensive Plan.

Additionally, I request that the Lake Burien habitat portion of the Shoreline Master Plan have the same language regarding the Bald Eagle as Seahurst Park and Eagle's Landing now has. It is my understanding that the members of the Burien City Council have been given a CD from Robbie Howell containing photos of some of these "Species of Local Importance" that live in the Lake Burien habitat.

Thank you in advance for your time that will be required to effect the change in the Shoreline Management Plan ensuring the City of Burien's compliance with the updated "Species and Habitats of Local Importance" section included in the King County Comprehensive Plan referenced above.

Sandy Gledhill

Sandy Gledhill

Species of Local Importance-Birds- Lake Burien (denoted by an asterisk *)

1. Western Grebe *
2. Great Blue Heron *
3. Hooded Merganser *
4. Barrow"s Goldeneye *
5. Common Goldeneye *
6. Osprey *
7. Band-Tailed Pigeon *
8. Belted Kingfisher *
9. Hairy Woodpecker *
10. Purple Finch *
11. American Bitern
12. Brant
13. Harlequin Duck
14. Wood Duck
15. Cinnamon Teal
16. Blue-Winged Teal
17 Surf Scoter
18. White-Winged Scoter
19. Black Scoter
20. Red-Tailed Hawk
21. Sooty Grouse
22. Ruffed Grouse
23. American Three-Toed Woodpecker
24. Olive-Sided Flycatcher
25. Mountain Chickadee
26 Western Meadowlark
27. Cassin's Finch

June 8, 2010

Dear Planning Commission Members,

I am here on behalf of my mother, who with my father, purchased Lake Burien property in 1952. They looked at other lakes but chose Lake Burien because there was no public access and the area was low density allowing for larger lots on which to build. Subsequently they built their home doing almost all of the work themselves. Five generations of my family have enjoyed this pristine lake spanning my grandparents, parents, myself, my children and grandchildren. I am requesting today the following from your commission:

Change the comprehensive land use map to match the policy description as low residential density to reflect the historical land use and policy designation. This has been the traditional designation for as long as my family owned this property.

In any future decisions regarding the map showing residential density around Lake Burien, it is important to rely on both best practices and the most recent scientific and ecological research and findings of fact from experts in these fields. This area qualifies as a critical area thus making it imperative that the low density designation is maintained. The Lake Burien homeowners have been good stewards of this fragile lake and surrounding ecosystem and its inhabitants. Increasing the residential density designation to moderate would surely risk damaging Lake Burien and its environment.

Thank you for your time and careful consideration of my family's requests.

Sincerely,

Sandy Gledhill

Sandy Gledhill

RECEIVED
JUL 29 2010
CITY OF BURIEN

SEATTLE *KingCounty* REALTORS

July 27, 2010

Dear Monica,

Enclosed is a letter for the Council regarding the Shorelines update.
It consists of two documents: A comment letter, and an accompanying White Paper which is attached.

I was going to scan these and e-mail them to you, but the gremlins got into my scanner, so I'm having to send a hard copy.

As long as I'm having to send hard copies, I thought it might be easier if I made the copies for you rather than having that burden fall on the Clerk's Office.

So, here are 10 copies, enough for:

- 7 for the Council
- 1 for the City Clerk
- 1 for the Planning Staff (Scott or David)
- 1 for the City Attorney's Office (since there's a fair amount of legal analysis in the White Paper).

Thanks for your help in distributing these, and for including them in the City's record on the Shorelines issues.

Kind regards,
SEATTLE *KingCounty* REALTORS®

Sam Pace

Sam Pace, JD, MBA, GRI, GC-RES
Housing Specialist

29839 - 154th Ave SE
Kent, WA 98042-4557

(253) 630.5541
SamPace@concentric.net

RECEIVED
JUL 29 2010
CITY OF BURIEN

July 23, 2010

Burien City Council
City of Burien
400 SW 152nd St., Suite 300
Burien, WA 98166

RE: <u>Shorelines Master Program</u>

Dear Mayor Mc Gilton and Members of the City Council,

I'm writing to you on behalf of the Association of REALTORS®[1] to offer written comments of record to supplement our prior verbal comments of record in connection with the Council's update of the City's Shoreline Master Program.

As you know, we participated in the June 14th, June 21st and July 19th Council meetings regarding the update of the City's Shorelines Program.

When I testified most recently on July 19th I indicated I would be:

- Providing the Council with a REALTOR® *White Paper* on the Shorelines issues (prepared by Attorney Charles A. Klinge of the Groen, Stephens and Klinge law firm); and
- Providing an indication of items that caught our attention in the Planning Commission Draft.
- Additionally, I indicated that although we had not yet had the opportunity to analyze the newly released staff proposal that recommends revisions to the Planning Commission draft, once we have completed our review of the proposed revisions we will share our observations about those with the Council.

As promised, I have attached the *White Paper* I referenced on July 19th and request that it be included in the record - along with these written comments - because it outlines what we believe are appropriate considerations for achieving the kind of balanced shorelines program required by state law.

---

[1] Our 6,000± REALTORS® on whose behalf these comments are submitted are members of the SEATTLE *KingCounty* REALTORS®, Washington REALTORS®, and the National Association of REALTORS®.

In addition, it also discusses in some detail the appropriate standards by which the City's plan must be evaluated. We trust you will find it helpful.

There were several items that caught our attention as we considered the Planning Commission's draft (together with the information provided by presenters, the public and city staff at the June 14th and June 21st meetings) based on the analysis and references in the attached *White Paper*:

1. Importance of Augmenting the City's Inadequate Shorelines Inventory

As noted by several speakers, the inventory prepared by the City's consultant (apparently based on the standards which existed prior to the changes in the state law) appears to fall short of satisfying the applicable requirements.

How should the City attempt to respond to this deficiency? As we understand the law, the City is expressly permitted to augment its existing inventory with:

- The additional environmental inventory and analysis submitted by the marine homeowners
- The additional anecdotal evidence provided by individuals who have spoken before – or written to – the Council (such as, but certainly not limited to - those who provided firsthand reports of underwater shoreline conditions based on their personal observations made while scuba diving Burien's marine shorelines), and
- An accounting of the City's investments and successes on shoreline-related improvements (as suggested by Deputy Mayor Clark).

In the absence of sufficient time and funding to re-do the inventory, the City should augment its inventory. We believe augmenting the inventory, and then having the Council fully consider the augmented information as required by the statute, are especially important for the following reasons:

A. Even though the state's Shorelines Act is a *top down* statute (as distinguished from GMA, which is *bottom up*), it does not support wholesale application or adoption of generic inventory or shoreline-condition information in-lieu of the kind of city-specific analysis required by the statute. Were that not the case, there would be no need for individual cities to do an individualized inventory of the extent and condition of their own shorelines, and they could instead simply adopt generic regional "science" proffered by the Department of Ecology or some other entity. But that is not what the law allows. And it does not satisfy what the law requires.

B. Unlike regulation of GMA critical areas, the state Shorelines Act explicitly requires a more balanced approach[2], and anticipates such an approach will be best-facilitated by a current city-specific shorelines inventory that accurately analyzes the extent and current

[2] Importantly, while there is some flexibility regarding what kinds of goals and values local governments may choose to balance under GMA, under the Shorelines Act the legislature has identified a minimum list of specific items the City is *required* to balance, and to protect, because those matters are deemed by state law to be ***preferred*** shoreline uses. One such use is single family homes.

conditions of shorelines in the City in order to facilitate doing no harm (as well as protecting the other preferred shoreline uses explicitly referenced in the state statute).

C. In the absence of an inventory that meets the applicable standards, the potential for the City's SMP to fail to satisfy the statute's mandate for a balanced approach becomes extremely problematic.

Why? Because (without legally sufficient, city-specific, inventory and shoreline condition information) the local government essentially defaults to a legally insufficient data vacuum that amounts to a "crap shoot" wrought with potential for a city to miss the mark, and likely to result in a city:

- Wrongly assuming that shoreline functions are degrading when they are not, and then proceeding to unduly over-regulate statutorily preferred shoreline uses (such as single family homes, which are expressly recognized in the State's Shorelines Act as a *preferred* use of shorelines) in a way that fails constitutional muster; or

- Wrongly assuming that shoreline functions are stable or improving when they are not, and then failing to ensure that the City's own investments, policies and regulations are sufficient to do no additional harm to shoreline functions as required by the statute.

2. Lack of Burien data in the City's Shorelines Inventory demonstrating continuing degradation to shoreline functions in Burien <u>below current conditions</u> means new prophylactic regulations on existing statutorily preferred shoreline uses (such as existing single family homes) would likely violate state law.

We are a bit puzzled by an aspect of the Update discussions that appears to be related to, but is separate from, the above-referenced concerns about the adequacy of the City's inventory of Burien's shorelines.

It involves proposals that would add new restrictions and regulations to existing statutorily preferred shoreline uses (such as existing single family homes) without a legally sufficient basis for doing so.

The City is required to ensure *No Net Loss* of shoreline functions from existing uses, including preferred shoreline uses such as single family homes. **<u>But in the absence of Burien data in the City's inventory demonstrating that existing Burien shoreline uses are continuing to degrade Burien shoreline functions below current conditions</u>**, adding new prophylactic regulations on existing statutorily preferred shoreline uses (such as existing single family homes) is simply untenable, especially given:

- The testimony of numerous speakers about the remarkable good health of Burien's shorelines, both along the marine shore, and at the lake. (The act expressly acknowledges the City's authority to rely upon such testimony.)

- The fact that neither the City's consultant, the Department of Ecology, nor anyone else, has provided <u>any</u> city-specific data demonstrating that Burien's existing shoreline uses – some of which have been in place for nearly 100 years - continue to produce <u>additional</u> widespread or significant degradation of shoreline functions below current conditions.

- The establishment of an initial baseline of data (in a City shorelines inventory) is just that: A Baseline. By definition, baseline data <u>does not</u> reflect *changes* to current conditions. At best, baseline data only identifies *current conditions.* As a result, relying upon such baseline data to justify the imposition of new regulations on existing shoreline uses does not pass muster. Baseline data simply does not provide a metric of changing conditions.

- The City is not permitted to merely assume continued degradation of shoreline functions below current conditions in the absence of Burien data in the City's inventory indicating such additional degradation is occurring from existing shoreline uses.

- Importantly, it appears (but so far as we are aware has not been formally acknowledged by the City) that advocates for additional regulations on existing shoreline uses *assume* – but have not demonstrated – that existing shoreline uses continue to result in additional degradation of the functions of Burien's shorelines below current conditions.

- Even in those situations where new regulations would be supported by an adequate record – and here they are not – the City must still meet constitutional *nexus* and *proportionality* standards in a way that would not be accomplished by the proposed new regulations which are generic and widely-applicable.

- The City is not permitted to impose an enhancement requirement on existing statutorily preferred shoreline uses.

We believe the key for understanding this aspect of the deficiency in the approach recommended by the Planning Commission requires coming to grips with the change in state law that <u>clearly differentiates</u> *Shoreline Regulations* under the Shorelines Act from *Critical Areas Regulations* under the Growth Management Act.

Stated simply, it's the difference between ***No Net Loss*** (do no *additional* harm) in the case of existing shoreline uses, and incorporating ***Best Available Science*** (which has the potential to result in remediation, mitigation and/or enhancements) under GMA.

The distinction is not only discussed in the *White Paper* we have provided, it has been noted as well in written comments the City has received from others.

Our puzzlement refers to statements made during the City's shorelines update process attempting to suggest there is some vagueness, or lack of clarity, about what *No Net Loss* means.[3] Those references to vagueness appear to be a bit of a "dust cloud" that has the effect of avoiding coming to grips with the following:

> In the absence of Burien-specific data in the City's shoreline inventory which demonstrates that existing statutorily preferred shoreline uses (such as single family homes) are continuing to degrade Burien shoreline functions *below existing conditions* in specifically discernable and quantitatively measurable ways, generic new regulations on existing shoreline uses are inappropriate.

3. Appurtenances & Bulkheads

We are concerned that the Planning Commission draft inappropriately distinguishes between single family homes on the one hand, and bulkheads or other appurtenances serving the single family home on the other hand, in a way that may not be permitted under the statute.

One of the issues that will be a focal point of our review of the modifications the staff has proposed involves the potential for disparate treatment of bulkheads and appurtenances as compared to single family homes, particularly with regard to:

- Acknowledging the important role of existing appurtenances for the function and utility of single family homes
- New regulations regarding maintenance of bulkheads absent some extreme emergency, together with regulatory impediments to protective repairs even in the event of an emergency and
- Disparate treatment between single family homes and appurtenances with regard to non-conforming use issues.

It is important that the City not impose any new requirements on existing appurtenance in a way that directly, or indirectly, minimizes the existing function and utility of appurtenances serving the home. Doing otherwise may have the effect of reducing the value of the home.
Why? Because the appurtenance is an asset that comprises part of the value of the home.
Typically, such appurtenances are designed and constructed with the intent that they be used by the homeowner. The value of the asset that is the appurtenance is included in the price of the home.

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[3] Our White Paper discusses some of the alternatives for applying *No Net Loss* with regard to new construction. But that issue is not the threshold question framed here that the Council needs to address. Granted, there are some nuances in the statute about how *No Net Loss* can be applied to allow additional development on the shoreline and in the upland shorelands. But the focus on those nuances appears to conveniently overstep coming to grips with the threshold question: **Does the City's shorelines inventory demonstrate continuing degradation from existing uses?**

But with new regulations on existing appurtenances, homes may be perceived in the marketplace as less valuable due to:

- Inability to use the existing asset (appurtenance) as fully as was previously allowed, and/or
- New restrictions on repair or maintenance of the existing appurtenance.

In fact, any new restrictions on use, repair or maintenance of existing appurtenances may result in the appurtenance becoming an eyesore, or an attractive nuisance, due to deferred (prohibited or discouraged) maintenance/repair, thereby also affecting the values of neighboring homes.

4. Buffers and Vegetative Buffers

As explained in some detail in both our *White Paper* and in other comments the City has received, the Shorelines Act does not allow the City to impose new regulations, or requirements for new exactions, on existing preferred shoreline uses, such as single family homes, absent some showing of continuing degradation of shoreline functions below current levels.

There are three "touchstones" that anchor the central legal challenges the City is confronting in this regard with respect to two related, but distinctly different, proposals:

- Expanding buffers from 20' to 65' (consisting of a 50' buffer, plus an additional 15' setback that effectively serves as a defacto "buffer of a buffer").
- New 150' Vegetative Buffers

The three primary challenges with regard to these two different proposals are as follows:

1. These proposals amount to widely-applicable uniform generic buffers. Recent case law in this state calls this approach into serious question in a way that creates the specter of financial liability for the City.[4]

It's a potential financial liability the City could – and should – avoid.

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[4] It is perhaps worth noting that earlier this month (on July 14th) in a case involving the *Florida Beach and Shore Preservation Act of 1961* a plurality of the United States Supreme Court opined in dicta that "Takings" liability under the United States Constitution should not be limited to actions of the executive and legislative branches of government, and thus, liability for unconstitutional takings could be imposed on a state court of final jurisdiction (i.e., a State Supreme Court). That case has not yet arrived, but given the signal sent by the plurality of U.S. Supreme Court Justices earlier this month, some state supreme courts may be significantly more leery of giving local governments 'a pass' in connection with actions alleged to have resulted in private property owners losing some of the rights to their property that the owners had previously enjoyed.

2. The proposal for a new 150' vegetative buffer (in addition to the new 65' buffer) is likewise problematic, but perhaps more so due to proposals for attendant new regulations and exactions that fare exceed those associated with the 65' buffer.

Here is just one of several examples of the problematic nature of the proposal for a new 150' vegetative buffer: Multiple speakers have identified the dysfunctional nature of the proposal due to high bank slopes landward of existing single family homes along the shoreline that would likely make compliance with the 150' requirement either not possible, or untenably expensive.

3. As discussed in some detail in our *White Paper*, the *Swinomish Indian* case highlights the legal problems resulting from jurisdictions seeking to establish "natural buffers" in areas where the natural features have already been substantially degraded or completely altered. Importantly, the information in the City's SMP Update record identifies (and discusses in some considerable detail) the fact that Burien's marine shoreline is already largely altered with single family homes, bulkheads, appurtenances and docks, except for the City's existing waterfront park property. Similarly, the lake's natural features have also been substantially altered and degraded compared to conditions existing prior to European settlement of the area.

5. Public Access

The City has appropriately recognized that the Shorelines Act identifies public access as an important goal. There are two cautionary notes that are appropriate for the Council to keep in mind as it moves forward on the issue of public access:

- The first involves the use of existing easements for purposes of implementing public access.

  We believe is would be unwise and problematic for the City to attempt to unilaterally convert existing easements that the City acquired for transportation or utility improvements into easements for public access to shorelines.

  If the City wants to expand the scope and uses allowed in its existing easements (which do not currently reference shoreline access in the terms of the grant of easement), it should do so through negotiations with property owners on whose property the easement is located, or through the condemnation process, in each case paying for the additional value lost by the property owner.

- The second involves Neighborhood Impacts

  One understandable concern that has been expressed to the City is the nature and magnitude of impacts on adjacent and neighboring properties resulting from City efforts to enhance public access. Allowing public access across City-owned property is perhaps the easiest

case. The more difficult kinds of situations involve neighborhood traffic impacts from the creation of new public access, as well as disproportionate impacts on property owners immediately adjoining the public access.

The cautionary note with regard to Neighborhood Impacts involves the adequacy of the City's SEPA analysis of such impacts, and the potential for any deficiencies in that SEPA analysis to result in an appeal to the growth boards, or perhaps result in judicial review.[5]

6. The Importance of Non-Regulatory Approaches

Most of our comments thus far regarding the SMP Update have focused on challenges associated with the City's proposals for new regulatory enactments.

But the Shoreline Act is clear that such regulatory enactments are only one of the approaches the City should pursue.

The Act specifically and expressly calls out the importance of municipal projects and investments. Such City actions are especially important because <u>it is with those actions that the City has the opportunity to pursue remediation and enhancement of Burien's Shorelines and Shorelands</u>.

The rub, of course, is that it costs money for the City to undertake such actions. Nevertheless, those actions are important. For this reason, we recommend a six-pronged approach as it relates to City action:

1. Clearly acknowledge the difference between the City's significant opportunities to achieve remediation and enhancement through its own investments, and the problems associated with attempting to secure enhancement or remediation from the owners of existing shoreline uses by shifting the community's costs for enhancements and remediation to a relatively small handful of property owners.

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[5] The City did not do a SEPA Threshold Analysis, or an EIS, in connection with the City's SMP Update. Instead, it appears the City prepared a two-page addendum to the environmental analysis for the City's 1997 Comprehensive Plan. There is no administrative appeal that we are aware of for such an addendum. As such, the normal SEPA appeal periods would not yet have begun to run (because the commencement of any appeal period has not yet been triggered due to the lack of a Threshold Determination, EIS Scoping, or the Issuance of a DEIS). It's our impression that some cities have attempted to suggest, but no court has yet supported the assertion, that there is *No Appeal of Any Kind* available for contesting the sufficiency of an addendum. Give the strong feelings that have already been voiced concerning potential neighborhood impacts associated with public access, the City may want to consider whether or not it wants to chart a course that could leave it in a position to be the "Test Case" on this SEPA issue. The logical extension of such an assertion (that there is *No Appeal of Any Kind* available for contesting the sufficiency of an addendum) is that by using addenda rather than Threshold Determinations, or Environmental Impact Statements, a jurisdiction could permanently insulate itself from any future challenges to the sufficiency of required environmental reviews. That notion could prove to be a very "tough sell" to the appellate courts of this state.

2. To the extent shorelines, fish and other marine and freshwater life continue to be a priority for the City, ensure that the City's process for development of its CIP is very intentional about the way "needed" shoreline enhancement and remediation projects are addressed.

3. With regard to what is "needed" (and for purposes of prioritizing expenditures as referenced in item # 4 immediately below), work to establish clearly defined ***Shoreline Functions in Burien***, together with ***Quantitative Measures of those Shoreline Functions***.

One of the rather disappointing and discouraging things that came to light in the scientific panel presentation on June 14th - and which was reinforced in the presentations on June 21st - is that DOE does not have any such definitions and metrics available. Instead, as their representative acknowledged on June 14th, they rely on substitute or "indicator" metrics – such as number of feet of bulkhead – which they are not able to directly correlate to shoreline functions. Nor are they able to quantify the magnitude of the shoreline functions gained or lost with the removal or construction of 100 feet – or 1,000 feet – of bulkhead.

4. Use the City's augmented shorelines inventory – together with the various additional data bases that will become available to the City over time – to:

- Conduct comparative analysis over time to identify any changes to shoreline functions, and to help identify the most important opportunities to make the biggest impact with regard to restoration and enhancement, and

- Be very specific and targeted in terms of maximizing the quality of shoreline functions with City investments.

The City's efforts will be far more effective if it moves beyond intuitive approaches, or DOE's approach of simply counting lineal feet of bulkhead because it's easy to measure, and is able to identify specific shoreline functions, the degree to which those are degraded or improving, <u>and the measure of the direct benefit to the specific shoreline function(s) that can be achieved by each proposed investment of City funds</u>.

We anticipate, but would not presume in the absence of the kind of data-drive analysis we have discussed, that the greatest opportunities to make a real and meaningful difference, and to enhance the functions of Burien's shorelines, will be at the City's marine park lands.

5. Several speakers have suggested that the greatest challenge to the functions of the City's shorelines lies in the uplands, rather than with what is happening with existing shoreline uses. In particular, they point to contaminated runoff from upland roadways that makes its way to Burien's marine waters.

One Councilmember, Gordon Shaw, has suggested that the opportunity to have the greatest impact on the quality and effectiveness of Burien's shoreline functions involves capturing (mechanically) the pollutants contained in the runoff from the uplands before those pollutants can reach the waters of Puget Sound.

One alternative he has suggested involves working cooperatively with property owners to place mechanical devices behind bulkheads in those areas where the risk is greatest that polluted runoff from the uplands could reach the waters of the Sound.

We think it's an idea the Council should take up. We don't pretend to be environmental engineers, but we know that there are a variety of techniques used to prevent polluted or turbid runoff from leaving constructions sites. We know that oil-water separators are a pretty well-developed technology. We know that cities have stormwater catch basins that collect pollutants and particulates that are then vacuumed out of the catch basins. We know that even some paint shops have separators or catch basins. The technology and mechanics required to implement such a solution are likely within reach.

The key to moving forward involves working cooperatively with shoreline property owners to gain their permission for the City to place such mechanical devices behind the bulkhead (or otherwise between the uplands and the marine waters) in priority locations. The financial burden for the cost of installing and maintaining the capital improvements to protect the shorelines from the upland polluted runoff should be placed where it belongs: spread broadly across the users of the portion of the upland that drains through the shorelands and shorelines to the waters of Puget Sound.

There are likely to be a variety of incentives (and in most cases those incentives are likely to be other than cash) that the City could use to secure the cooperation and permission of shoreline property owners for the placement and maintenance of the City's capital investments needed to protect the shorelines from upland runoff. In this regard, it is probably fortuitous that the BMHA members are already fully engaged with the City in the Shoreline Update process, and might well be open to an informal discussion with members of the Council (at a publicly-noticed meeting) about the kinds of non-cash incentives that they would find most encouraging.

6. In the absence of City funding to pay for acquisition of additional shoreline properties, easements, or the expansion of allowable uses of existing easements, the City may wish to move forward – slowly, but steadily, and in a very focused and intentional manner – to create a highly structured program to invite and facilitate *Planned Giving* that will allow property owners to donate shoreline property, shoreland property, easements and/or funding that will allow the City to obtain properties, increase public access and make capital improvements to shorelines and shorelands.

If it would be helpful to you, at a future time I'd be happy to share some detailed thoughts with the City regarding important considerations in structuring such a program, including sharing some of the insights I gained from serving on the King County Council's Property Expert Review Task Force, and also representing a non-profit organization that had received

several donated properties which created a variety challenges for them due to the lack of a structured program for dealing with such gifts and bequests.

Conclusion

As REALTORS® we are strong supporters of the environmental values embodied in the State's Shorelines Act.

As you may know, our local Association established the 'First in the Nation' **REALTORS'® Environmental Council** that not only provides environmental education and classes for REALTORS®, we also annually undertake a significant environmental remediation or enhancement project here in King County:

- During the last three years our REALTORS® from throughout King County have planted thousands of riparian and wetland plants, shrubs and trees; In fact, by the end of this year we expect the total will exceed 20,000 plantings.

- Our efforts have remediated and enhanced locations as diverse as the Hylebos in Federal Way, the Mercer Slough and wetland areas of Kelsey Creek Farm in Bellevue. This year, on October 15th, we will undertake a planting project at Seward Park in Seattle.

Updating the SMP is a difficult job. It's not one the City requested, but instead is one that was given to you by the state.

It's a job made all the more difficult because (even though it involves environmental issues), it requires an approach that is significantly different from the GMA context that usually frames the Council's consideration of such matters.

We are very appreciative of the way the Council has been willing to immerse itself in these issues in a genuine and diligent effort to try to truly understand both the update process, and the options available to the Council given the considerable leeway afforded the City under the statute.

We have likewise been impressed by the effort put forth by City staff (and in particular the hard work of Scott, David and Mike).

We also appreciate the opportunity to offer these comments, as well as the way the Council has sought to ensure early and continuous public participation in the update process. As difficult as the additional work of accommodating and facilitating such public involvement may be, it is one of the very best efforts at civic engagement we have seen on SMP update issues…and by far the best attended in the county.

We look forward to completing our review of the recently released proposals for modifications to the Planning Commission's draft. We will attempt to have written comments on those proposed revisions to you prior to the Council's public hearing in August.

Thank you again for the opportunity to offer these comments.

Sincerely,
SEATTLE *KingCounty* REALTORS®

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A Background Paper on the Shoreline Master Program Updates

April 2010

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The purpose of this paper is to set forth background principles that underlie the Shoreline Master Program (SMP) update process in Washington State. Much more could be written on this subject, but this paper is limited to providing background principles and other information. Endnotes are used to provide specific citations with less interruption to the reader.

I. BACKGROUND AND PLANNING PRINCIPLES

A. Background and Relationship of SMA, and Comparison to GMA

The background and relationship of the Shoreline Management Act (SMA) and the Growth Management Act (GMA) is important to any discussion about updating the SMP. The SMA was enacted by a vote of the people as Initiative 43B in 1971. "The vote reflected the decision of the voters choosing between a citizen initiative and the legislature's alternative."[1] *Id.* As such, "[t]he SMA embodies a legislatively-determined and voter-approved balance between protection of shorelines and development."[2] In balancing these goals, local jurisdictions containing "shorelines of the state" must prepare a SMP setting forth desired goals, and use and development regulations for shoreline areas, and must in doing so follow the current guidelines promulgated by Ecology.[3] The SMP is defined as the "comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020."[4] The SMA also requires local governments (cities and counties) to periodically update their SMPs and many local government are currently in the update process required by state law.[5]

Under the SMA, regulation of shorelines of the state, "is done [by the state] in coordinated fashion, in conjunction with local governments."[6] Specifically, once a local jurisdiction approves a SMP, it must be approved and adopted by Ecology before it is effective.[7] Preparation of a SMP requires each local jurisdiction to employ "the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern," including an inventory of the local jurisdictions' shorelines.[8] For any "shorelines of statewide significance," the local jurisdiction must also establish shoreline designations that give preference to the uses enumerated in the SMA, namely public access, recreational use, single-family residences, and protection of property rights, among others.[9] Only after Ecology reviews the proposed SMP for compliance with the SMA and approves the SMP, do the shoreline regulations become valid state regulations governing the use and development of shoreline property.[10]

Compared to the SMA, which was enacted in 1971, the GMA is a relative newcomer. The GMA was enacted in 1990 and 1991 (with almost annual amendments) to manage "uncoordinated and unplanned growth...[via] comprehensive land use planning."[11] The GMA imposes a general obligation to adopt comprehensive land use regulations, including critical areas regulations, by balancing various expressly non-prioritized planning goals and requirements, including, in relevant part, designating and protecting critical areas while protecting private property rights.[12] Local jurisdictions that are subject to the GMA must periodically review and, if necessary, update their comprehensive plan and development regulations.[13] The jurisdictions must designate and protect critical areas by including "best

available science" in its record and developing locally appropriate regulations based on local circumstances and the Act's various planning goals and requirements.[14]

Unlike the SMPs, which require state approval via Ecology, the GMA is premised upon local control.[15] A recent decision by the Washington State Supreme Court assists in drawing the stark differences at the core of the SMA and GMA:

> The GMA has substantial requirements when actions might affect areas defined as "critical areas." RCW 36.70A.172(1). Among other things, the GMA was amended in 1995 to require local governments to designate and protect critical areas using the "best available science"—a benign term with often a heavy price tag. **The SMA, with its goal of balancing use and protection, is less burdensome.**[16]

The SMA recognizes and accepts development of shorelines within the system coordinated planning in shoreline areas:

> [T]he SMA does not prohibit all development in the shoreline. Rather, its purpose is to allow careful development of shorelines by balancing public access, preservation of shoreline habitat and private property rights through coordinated planning, i.e., shoreline master plans which must be approved by DOE.[17]

In this regard, the SMA mandates that shoreline property owners have the right to certain permissible uses of property and/or priority shoreline development.[18]

B. Reviewing Available Science, Public Input, and Making Reasoned Decisions

The Shoreline Guidelines provide the foundation for updating the SMP and frequent return to those Guidelines is strongly encouraged. The Shoreline Guidelines implement the SMA's requirement to utilize science in developing updated SMPs.[19] The Guidelines carefully describe the utilization of science and technical information in the update process, but also clarify that information from every source should be reviewed, and that the local jurisdiction retains the authority to make final decisions regarding conflicting data.

The Shoreline Guidelines summarize the utilization of science by stating that local jurisdictions shall, "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available."[20] The entire Guidelines provision is similar to, but not identical to, the GMA requirement to include "best available science" or "BAS" when designating and protecting critical areas under the GMA jurisdiction.[21]

At the same time, the Shoreline Guidelines recognize and respect that other information may be very important in adopting an updated SMP. The same provision of the Guidelines states as follows:

> The requirement to use scientific and technical information in these guidelines **does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties** as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201(3)(b).[22]

The Guidelines then clarify the role of the local jurisdiction in sorting through all the information collected, including the "information, experience, and anecdotal evidence provided by interested parties." Namely, the local jurisdiction is to make a "reasoned, objective evaluation" of the conflicting data:

> Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.[23]

This decision making process is similar to the inclusion of BAS in the GMA context, namely that the local jurisdiction is **not required** to "follow" BAS when reliance on other reasonable factors is established: "Moreover, the GMA does not require the county to follow BAS; rather, it is required to 'include' BAS in its record." "Thus, the county may depart from BAS if it provides a reasoned justification for such a departure." *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd*, 161 Wn.2d 415, 430 (2007) (citing *Ferry County v. Concerned Friends,* 155 Wn.2d 824, 837-38 (2005)). The similar requirements stated in the Shoreline Guidelines indicate the same rule for updating the SMP—the City must review and consider available science but then shall make reasoned decisions about conflicts in all the data, including the science and other information.

C. No Net Loss of Ecological Functions: Protection and Restoration

The Shoreline Guidelines implement a standard of "no net loss of ecological functions" referring to "no net loss" based on current conditions. The Guidelines seek to implement this standard through protection and restoration of shoreline resources.

As a preliminary matter, the Guidelines are clear in distinguishing **policies and nonregulatory programs** from **development regulations,** and the SMP is to include both. For example, the Guidelines set forth as another Governing Principle that:

> The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, **only one of which is the regulation of development.** Other means, as authorized by RCW 90.58.240, include, but are not limited to: The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public

> or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.[24]

The next Governing Principle emphasizes the importance of these other means of implementing the planning policies and that careful implementation of development regulations is necessary to protect private property rights:

> The policy goals of the act, implemented by the planning policies of master programs, **may not be achievable by development regulation alone.** Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights [with reference to the Attorney General's publication on avoiding Unconstitutional Takings].[25]

In other words, development regulations serve an important role, but must be utilized in a manner to protect property rights. The SMP should give significant attention to other means of protecting and restoring the shorelines—other local government programs for improving habitat.

The "no net loss of ecological functions" concept is stated as one of the "Governing Principles" of the Guidelines. The Governing Principles are comprehensive in nature but the basic principle states: "Local master programs shall include **policies and regulations** designed to achieve no net loss of those ecological functions."[26] A later provision provides more definition to the concept and recognizes that the purpose is to protect existing environmental conditions, but also recognizes that development can and will occur:

> **The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist**. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020 [including priority for single family uses and recreational moorage], master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before

> implementing other measures designed to achieve no net loss of ecological functions.[27]

Thus, the "no net loss of ecological functions" applies to no net loss of existing conditions through sequencing applied to authorized new development to ensure that the end result maintains existing conditions—sequencing refers to avoid, minimize, mitigate in that order.

The Guidelines then apply this "no net loss" standard to new development or redevelopment as follows:

> (i) Local master programs shall include regulations and mitigation standards ensuring **that each permitted development** will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.
>
> (ii) Local master programs shall include regulations ensuring **that exempt development in the aggregate** will not cause a net loss of ecological functions of the shoreline.[28]

Thus, the Guidelines specifically impose a "no net loss" standard on new development or redevelopment, but distinguish "permitted development" from "exempt development." That difference is reviewed later in this report.

Next, the Guidelines address "restoration" and distinguish "restoration" from the "no net loss" standard applied to development. The Guidelines explain that restoration of areas with impaired ecological functions is an important goal of the SMA as follows:

> For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals.[29]

However, the Guidelines then make it clear in the same provision that **the SMP is to implement nonregulatory policies and programs to achieve restoration**, and **not to use SMP development regulations** to directly impose restoration requirements as a condition of new development:

> These master program elements regarding restoration **should make real and meaningful use of established or funded nonregulatory policies and programs** that contribute to restoration of ecological functions, and should appropriately

> consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.[30]

Some restoration may indirectly flow from regulations and mitigation, but restoration cannot be mandated as a condition of new development. "No net loss" encompasses "protection of existing," but does not mandate restoration or enhancement. The definition of "restoration" is "the reestablishment or upgrading of impaired ecological shoreline processes or functions" and the definition goes further to state that: "Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions."[31] In short, "restoration" means "enhancement" in the practical sense and does not require environmental perfection or a "turning back the clock" attempting to recreate the same natural shoreline that existed 200 years ago.

In this way, the SMA and Shoreline Guidelines follow the GMA in requiring new development to protect existing conditions, but not to mandate restoration or enhancement. The Supreme Court's clear 8-1 decision in the *Swinomish Indian* case also made this point in relation to the GMA requirement that critical areas be protected.[32] The Tribe argued that: "where an area is already in a degraded condition, it is not being protected **unless that condition is improved or enhanced.**"[33] The Supreme Court rejected the Tribe's position that enhancement was mandatory and held that the county's "do no harm" standard met the statutory requirement because it "protects critical areas by maintaining existing conditions."[34]

The Shoreline Guidelines are even more explicit by defining the "no net loss" standard and requiring new development to protect existing conditions, but not to affirmatively restore or enhance the shoreline as a condition of construction. Importantly, the Guidelines also recognize and encourage regulatory incentives for new development and other voluntary methods to achieve restoration and protection:

> The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.[35]

The intent of the Guidelines is clear. The SMP must regulate new development and redevelopment to ensure "no net loss of ecological conditions," but "no net loss" does not mean "no development" or "no impact." Rather, the SMP must balance competing objectives. New development and redevelopment in the shoreline area is expected to occur based on, for example, the SMA's priority for single family uses and recreational moorage. At the same time, the SMP must endeavor to avoid, minimize, and mitigate shoreline environment impacts caused by that new development or redevelopment. The regulation should accomplish this on a project by project basis when shoreline permits are required, and on an overall, aggregate basis for projects exempt from shoreline permitting. In addition, the SMP should promote restoration efforts through nonregulatory programs and through promotion of voluntary actions by property owners proposing new development.

D. Early Attempts to Integrate the SMA and GMA Originally Resulted in an Erroneous Conclusion that All Shorelines of the State Were Critical Areas Under the GMA

In 1995, the Legislature partially integrated the SMA and the GMA by adding the SMA's goals and policies as an additional GMA planning goal and transferring jurisdiction for appeals of shoreline master programs from the shorelines hearings boards to the growth management hearings boards.[36] However, this partial integration lead to confusion regarding the regulation of shoreline areas as critical areas, which affected all jurisdictions with regulated shorelines since all cities and counties were required to adopt critical area regulations under the GMA even if not subject to the GMA comprehensive planning requirements.[37] A controversial Growth Board decision ("Everett Decision") concluded, in the words of Justice Chambers that, "shorelines of statewide significance under the SMA were categorically critical areas under the GMA, and thus, shoreline management often had to comply with both acts."[38]

E. Despite Controversy Over the Timing, The Updated SMP Will Govern Critical Areas Within the Jurisdiction of the SMP

The Growth Board Everett Decision "so conflicted with the law and the established practices that the Legislature acted the next session by enacting a law explicitly rejecting that board's interpretation."[39] The amended law, also commonly known as the "Everett Fix Bill," unequivocally stated that critical areas located within shorelines are to be regulated exclusively under the SMA:

> The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act.[40]

However, controversy developed regarding whether critical area updates adopted after 2003 would apply in shoreline areas, or whether changes to shoreline regulations could only be done through the SMP Update process in compliance with the regulatory requirements established by the Department of Ecology (known as the Shoreline Guidelines or Guidelines).[41] Put another way, there was controversy about what rules applied **during the interim period** until the updated SMPs were adopted and approved by Ecology.[42] The Supreme Court issued a split decision in the *Futurewise* case in 2008, and now that case has been followed up by other cases that are subject to different interpretations and new legislation.[43]

Despite that controversy, there has been no dispute that **updated SMPs** would exclusively govern critical areas that were located within the jurisdiction of the SMA. The primary decision of Supreme Court stated that in ESHB 1933, "the legislature meant what it said....critical areas within the jurisdiction of the SMA are governed *only* by the SMA."[44] The dissent did not disagree with that principle, but believed that the time when that occurred was when Ecology approved a new SMP: "The 2003 legislature intended to transfer protection of the relevant critical areas from the GMA to the SMA as municipalities enact, and Ecology approves, new shoreline master programs."[45] Thus, despite controversy over the timing, there is no dispute

that the protection of critical areas within shoreline jurisdiction must be encompassed within the updated SMP.

In addition, the Growth Board has made it clear that existing critical area rules cannot be blindly incorporated into the updated SMP. Rather, existing critical area rules must be re-evaluated for compliance with the Shoreline Guidelines and must be subject to full public participation before incorporation of any part of the existing rules into an updated SMP. The Growth Board quoted directly from the Shoreline Guidelines and ruled that the public was, "entitled to 'an opportunity to participate in the formulation of the regulations' including 'their incorporation into the master program.'"[46] This approach only makes sense to ensure that rules for critical areas in shoreline areas comply with the Shoreline Guidelines and to ensure that the public fully participate in the making of an updated SMP.

F. The Updated SMP Protects Only Those Specific Areas Located Within Shorelines That Qualify for Critical Area Designation

The GMA requires designation and protection of critical areas, which are defined to include the following: wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.[47] Thus, according to the GMA, shorelines are not defined to be critical areas simply because they are shorelines governed by the SMA.

Whether shorelines were automatically critical areas was another issue involved in the Growth Board Everett Decision, which held that "shorelines of statewide significance are critical areas subject to both the GMA and SMA."[48] As previously indicated, ESHB 1933 was enacted to respond to the Everett Decision that, "so conflicted with the law and established practices that the legislature acted the next session by enacting a law explicitly rejecting the board's interpretation." The Legislature adopted a provision in ESHB 1933 that was directly counter to this conclusion. Namely, ESHB 1933 included RCW 36.70A.480(5), which reads as follows:

> **Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by [GMA]** and have been designated as such by a local government pursuant to [GMA].[49]

By requiring that the designation of shorelines as critical areas be limited to "specific areas," the Legislature unequivocally rejected the notion that blanket designations of all shorelines of the state as critical areas was acceptable.

The Growth Board confirmed this understanding in the Whatcom County SMP decision.[50] The Growth Board referenced the parties, including even the Department of Ecology, and said that: "The parties are in agreement that shorelines of the state are not automatically critical areas and the Board concurs." The Growth Board ruled that it was improper to designate all shorelines as critical areas, "without consideration of whether those shorelines qualified as critical areas." Whatcom County designated the waters as critical areas—the marine waters and

shoreline lakes and rivers, and the Growth Board upheld this designation despite contrary evidence. Thus, the local government may choose not to designate the entirety of the waters where local circumstances and evidence warrant.

The SMP Update process involves review of the entire area under the jurisdiction of the SMA, which is generally all regulated lakes and rivers, plus the adjacent upland within 200 feet of the ordinary high water mark (OHWM). The SMA calls that upland area "shorelands" or "shoreland areas."[51] The statutory reference that "shorelines of the state" are not automatically critical areas must be viewed based on the term "shorelines of the state," which defined to mean the entire area under the jurisdiction of the SMA. The critical areas most at issue in this regulated area are fish and wildlife habitat conservation areas (FWHCA) and wetlands. FWHCAs are defined to include the waters (whether marine, lakes, or streams), and are not defined to include the upland areas—the "shorelands" in SMA terminology. Thus, it is important to ensure that local governments designate only the waters as FWHCAs, and possibly not even all waters. Then, the SMP Update process must determine the appropriate measures to ensure protection for these critical areas, which should include local government sponsored restoration programs in addition to regulations.

G. Shoreline Critical Area Buffers, One Size Fits All, and Property Rights

Although a GMA case, the Supreme Court's 8-1 decision in the *Swinomish Indian* case is also instructive on the important issue of buffers for shoreline critical areas. The Court addressed the conflict between encouraging agriculture and protecting critical areas since both are goals of the GMA. Specifically, the case involved the vast productive agricultural lands in the Skagit and Samish River Deltas which were identified as the "most significant watershed in Puget Sound" with protection of fish important under both the Endangered Species Act and as the resource for the fishing industry. As discussed above, the county adopted a "no harm" standard that was similar to the same as the "no net loss" standard of the Shoreline Guidelines. The county also concluded that mandatory buffers were not required to achieve the "no harm" standard, and that conclusion was challenged and decided by the Supreme Court in the *Swinomish Indian* case.

The Supreme Court's observations are pertinent here. The Court carefully described the competing issues by starting with an explanation of buffers: "Buffers are strips of land contiguous to a watercourse, usually containing indigenous shrubs and trees." These natural buffer areas are often protected as Native Growth Protection Areas such as City of Bellevue's requirement that such an area is to be "kept free from all development and disturbance" to preserve "native vegetation, existing topography, and other natural features."[52] Skagit County determined that the natural environmental was substantially impaired, and that, "the vegetation that had made up the riparian buffers along streams and rivers was cleared long before there was a legal impediment to doing so." Based on that fact, the County reviewed the BAS but decided not to impose mandatory buffers. As the Court explained: "Here, the county justified its decision to not require mandatory riparian buffers on the basis that doing so would 'impos[e] requirements to restore habitat functions and values that no longer exist.'" The Supreme Court upheld the County's decision not to impose mandatory buffers under those circumstances, and explained that imposing buffers:

> would impose an obligation on farmers to replant areas that were lawfully cleared in the past, which is the equivalent of enhancement. Without a duty to enhance being imposed by the GMA, however, we cannot require farmers within Skagit County to replant what was long ago plucked up. The county need not impose a requirement that farmers establish riparian buffers.[53]

The same principle applies to the "no net loss" standard of the Shoreline Guidelines.

The *Swinomish Indian* case highlights the inherent problem of seeking to establish "natural" buffers where the natural features have been substantially "degraded" or completely "altered." For example, the Shoreline Inventory utilized by Whatcom County for its SMP Update makes it clear that much of Lake Whatcom is developed with dense and moderately dense urban area, while other areas have medium to low-density development. Whatcom County's Shoreline Inventory recognized that another area was within the urban growth area (subject to annexation by the City of Bellingham), and that the area included single and multi-family residential development and industrial/commercial development (cement plant and fish processing). Yet, the CAO incorporated into the SMP imposed a 150 foot buffer for all these areas. In the City of Bellevue, the City's own reports demonstrate that the shorelines of Lakes Washington and Sammamish have been subject to extensive development, legally accomplished, that has fundamentally and permanently changed the "ecological functions" occurring on the shorelines. For example, the City report states as follows:

> The riparian shoreline of Lake Washington is highly altered from its historic state. Current and likely future land-use practices preclude the possibility of the shoreline functioning as a natural shoreline to benefit salmonids.[54]

Yet, the City of Bellevue seeks to incorporate its CAO with a 25 foot buffer and an additional 25 foot building setback for all these shorelines.

As discussed above, the Shoreline Guidelines require regulation of new development that achieves "no net loss" of existing conditions, but without requiring new development to go beyond "protection" in order to achieve affirmative "restoration" of shorelines. The *Swinomish Indian* case demonstrates that mandatory buffers may also not be required to protect shoreline critical areas given the highly degraded existing conditions. Put another way, mandatory buffers would constitute an improper mandate for restoration or enhancement of upland areas that long ago were legally converted to, for example, residential uses with homes, docks, and landscaped yards.

The Shoreline Guidelines make it clear that SMPs "shall contain requirements for buffer areas zones around wetlands" within shoreline jurisdiction, but the Guidelines contain no such mandatory requirement applied to "critical freshwater habitats," including lakes that so qualify.[55] Another general requirement for SMPs is "Vegetation Conservation," but the Guidelines specifically recognize that such provisions cannot be fairly applied to existing development: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures."[56]

Another concern is that mandatory buffers and vegetation requirements would interfere with property rights protected by state law and constitutional principles. The Shoreline Guidelines expressly require that local governments recognize and protect property rights by first citing the principle in the SMA:

> (h) **Recognizing and protecting private property rights.**
>
> **RCW 90.58.020:**
>
> *"The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;. . .and, therefore coordinated planning is necessary. . .while, at the same time, recognizing and protecting private rights consistent with the public interest."*[57]

The Guidelines go further to specifically reference protection of property rights through the limitations set forth in RCW Chapter 82.02, namely RCW 82.02.020, and through the need to avoid unconstitutional takings.[58]

The key rule in state law holds that local government has the burden of demonstrating that conditions imposed on development must be, "reasonably necessary as a direct result of the proposed development." RCW 82.02.020. While cities and counties have authority to impose conditions on development, the Court in *Citizens Alliance for Property Rights v. Sims*, made it clear that: "Washington courts have allowed such conditions only where the purpose is to mitigate problems caused by particular development."[59] The cases make it clear that: "The burden to prove that a condition is reasonably necessary as a direct result of the proposed development is on the governmental entity imposing the requirement."[60] Finally, these rules constitute statutory implementation of the nexus and rough proportionality requirements imposed under the Takings Clause of the state and federal constitutions.[61]

The "one-size-fits-all" approach in buffer requirements and conditions on development may run afoul of these requirements. Specifically, the *Citizens Alliance* court said:

> Our supreme court has repeatedly held that this statute [RCW 82.02.020] requires 'that development conditions must be tied to a specific, identified impact of a development on a community.' The plain language of the statute does not permit conditions that are reasonably necessary for *all* development, or *any potential* development. Rather, the statute specifically requires that a condition be 'reasonably necessary as a direct result of *the proposed* development.'[62]

The regulation reviewed in the *Citizens' Alliance* case was, "a uniform requirement for cleared area on each lot, unrelated to any evaluation of the demonstrated impact of the proposed development," and thus, the condition was not "impact specific" and violated the "necessary proportionality that is required to fulfill the statutory exception."[63] The cities and counties must ensure that any regulations in the updated SMPs comply with this standard.

II. PREFERENTIAL USES AND EXEMPTIONS

As explained above, the SMA seeks to balance development of shorelines with protection of shorelines. The SMA recognizes that development of shorelines will occur and gives priority to single family residential uses with appurtenant structures and docks. The SMA also limits intrusive requirements on these uses by providing important permitting exemptions for single family homes, docks, and bulkheads. The SMA also protects existing uses by exempting all maintenance activities from permitting requirements.

A. Single Family Residential Uses Are A Priority Use in the SMA

The SMA does not prohibit development in the shoreline areas and the SMA is not neutral about the preferred development that should occur in those areas. Rather, the SMA contemplates development and sets forth certain priorities. The SMA identifies "single family residences and their appurtenant structures" as priority uses in the shoreline areas.[64] The Shoreline Guidelines describe this concept as, "Preferential accommodation of single-family uses."[65]

B. Bulkheads To Protect Single Family Residences Are Also a Priority Use

The SMA includes within the priority for single family residences protection of those homes from shoreline erosion with bulkheads or other structural and nonstructural shoreline protection methods.[66] Specifically, the SMA says:

> Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.[67]

The Shoreline Guidelines reflect this priority as well.[68] Clearly, if the SMA priority for single family residences is going to have meaning, then property owners must be able to protect those residences from erosion. The SMA recognizes this necessary accommodation by mandating standards allowing protection from erosion with bulkheads or other shoreline protection methods.

C. Residential Docks Are Also A Priority Use of Shorelines

The SMA recognizes that recreational uses including piers or docks are a priority use of the shorelines.[69] Special consideration is given to private noncommercial docks used for pleasure craft.[70] Docks are an integral part of shoreline living for single family residences and the SMA recognizes recreational docks as a priority to ensure the continued enjoyment of lakes by the citizens through recreational boating.

D. SMA Exemptions Must Be Respected in New SMPs

The SMA governs "development" within shoreline jurisdiction, namely along marine shorelines plus major lakes and rivers and on the uplands, called shorelands, defined as the land within 200 feet of shorelines. Development is defined broadly but with a limit:

> "Development" means a use consisting of the construction or exterior alteration of structures; . . . filling . . . bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.[71]

The SMA regulates development and requires a shoreline substantial development permit for certain activities considered "substantial development," but with numerous exemptions. The SMA defines substantial development and the relevant exemptions as follows with a bracketed shorthand reference to the exemptions:

> "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. . . .The following shall not be considered substantial developments for the purpose of this chapter:
>
> (i) **[Maintenance or repair]** Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
>
> (ii) **[Bulkheads]** Construction of the normal protective bulkhead common to single family residences;
>
> . . .
>
> (vi) **[Single family residences]** Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

> (vii) **[Docks]** Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars;[72]

Development, including development defined as exemptions, must comply with the rules in the SMP, but cannot be subjected to discretionary permitting review encompassed within the substantial development permit process.[73]

This distinction is an important one. The SMP must identify standards, or safe harbors, governing "development" including the exemptions, and cannot impose discretionary permitting requirements on those uses. This system ensures protection of the shoreline, but without imposing unnecessary burdens on preferred minor uses. The exemptions are next reviewed further.

E. Non-Development and Exemption for Minor Development

The wording of the SMA definition of "development" encompasses most, but not necessarily all, typical activities in the shorelines, namely construction or exterior alteration of structures, filling, bulkheading, driving piles for docks, and especially any project interfering with use of the waters. Ecology long ago adopted regulations related to permitting and included additional definitions governing these issues.[74] Those Permitting Regulations include definitions for structure, fair market value and a number of definitions related the height limit of 35 feet (height, average grade level, natural or existing topography).[75] In particular, the definition of "structure" states:

> "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;[76]

Thus, the SMA governs all activities in the shorelines including shorelands, and those activities which rise to the level of "development" must comply with the SMA and the local SMP.[77] For example, house painting is an improvement that would not constitute "development" (it is not an exterior alteration) and may proceed without worrying about compliance with the SMP. Other similar activities would fall below the definition of development.

Certain activities that otherwise qualify as "development," i.e. construction or exterior alteration of structures, are considered "minor development" that is defined to be too insubstantial to require permitting, namely any development that does not exceed $5,000 in fair market value indexed for inflation (currently $5,718). These "minor development" projects on upland can be regulated, but cannot be required to go through shoreline permitting—in other

words, a building permit may be required, but not a shoreline permit (which requires planning and environmental evaluation). Thus, any small building project or exterior alteration that does not exceed $5,718 in value must comply with standards in the SMP, but cannot be required to apply for permits to review impacts on the shoreline; rather, the standards, or safe harbors, must be clearly stated in the SMP.

F. Exemption for Maintenance and Repair

The SMA contains a clear and straight forward exemption for normal maintenance and repair: "Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements."[78] The Ecology Permitting Regulations go further in defining "normal maintenance and repair," which could be interpreted in a manner conflicting with the statute:

> Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment.[79]

The regulation goes on to address replacement structures:

> Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;[80]

Clearly, maintenance or repair of existing structures and developments requires sensitive treatment in the SMP since these activities, maintenance and repair, will generally not create any new impacts that need to be mitigated.

G. Exemption for Single Family Residences

The SMA contains an exemption for owner occupied single family residences on the shorelands (uplands).[81] The Ecology Permitting Regulations go further in defining "single family residence" and allowed appurtenances:

> "Single-family residence" means a detached dwelling designed for

> and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.[82]

Thus, the house and all structures normally included as part of the home are exempt from permitting. This exemption clearly implements the priority and preference in the SMA for single family uses in the shorelines areas.

H. Exemption for Bulkheads To Protect Single Family Residences

The SMA contains an exemption for "construction of normal protective bulkhead to protect single family residences."[83] The Ecology Permitting Regulations go further in defining the exemption:

> Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and

> when the project has been approved by the department of fish and wildlife.[84]

Thus, bulkheads designed to prevent erosion of single family residences and appurtenant structures are exempt. The Ecology Permitting Regulations contain qualifications to the general rule in the SMA: cannot have purpose to create dryland, limit on backfill, repaired existing vertical walls to be no further waterward than necessary, and certain deteriorated bulkheads must be moved back. This exemption clearly implements the preference in the SMA for single family uses in the shorelines areas by ensuring that these uses can be protected from typical erosion problems. Nevertheless, even if these situations are consider beyond normal and thus beyond the exemption, the SMA still requires standards in the SMP to ensure protection from erosion for single family residences and appurtenant structures.[85]

The Shoreline Guidelines impliedly accept the exemption for pure repair of bulkheads, but then provide special standards for replacement situations that might be considered repair.[86] Plus, the Guidelines define replacement as not including any addition or increase to a bulkhead, and thus, forces any such project into the tougher standards for new bulkheads.[87] The Guidelines treatment of replacement as requiring a showing of demonstrated need (and excluding additions) may be interpreted in a manner that is in conflict with the Permitting Regulations which can allow replacement with comparable structures as an exempt repair.

It should be noted that any work on bulkheads involving work in the water, or even some work that affects the water, is regulated by the strict requirements of the Washington State Department of Fish and Wildlife (WDFW) under Hydraulic Project Approvals (HPA). The HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. Some work on bulkheads is also regulated by the federal government through the Army Corps of Engineers (Army Corps) implementation of the Clean Water Act.

I. Exemption for New or Expanded Docks

The SMA contains an exemption for certain docks for pleasure craft.[88] The Ecology Permitting Regulations mimic state law:

> Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:
>
> (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
>
> (ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior

> construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.[89]

Maintenance and repair of existing docks falls under the exemption for maintenance and repair. However, any expansion of existing docks would fall under this exemption. Use of this exemption has become limited in recent years due to the increased costs of construction, but still needs to be considered especially for minor expansion projects.

However, any dock construction faces additional regulations and permitting requirements by WDFW, the Army Corps, and Ecology. Specifically, the HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. The Army Corps regulates all dock construction and maintenance under the Rivers and Harbors Act and Clean Water Act, with additional Ecology certification (approval) of all Clean Water Act permits.

CONCLUSION

This paper ends at this point although many other important topics merit further discussion. This paper is intended as a general background paper and not a comprehensive review of the entire subject of Shoreline Master Programs. In particular, this paper does not address Engrossed House Bill 1653 adopted during the 2010 legislative Session, which affects the rules and process applicable during the interim period prior to adoption of new SMPs.

We hope this paper assists property owners and others to be effective advocates in the Shoreline Master Program Update process by providing them with important background principles and other information.

ENDNOTES

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[1] *Biggers v. City of Bainbridge Island,* 162 Wn.2d 683, 697 (2007)
[2] *Id.*; *see also* RCW 90.58.020
[3] RCW 90.58.080, Chapter 173-26 WAC
[4] RCW 90.58.030(3)(b)
[5] RCW 90.58.080(4)
[6] *Biggers v. City of Bainbridge Island,* 162 Wn.2d 683, 687 (2007)
[7] *See* RCW 90.58.090
[8] WAC 173-26-201(2)(a), WAC 173-26-201(3)(c)
[9] RCW 90.58.020, WAC 173-26-251(3)(c), RCW 90.58.100
[10] RCW 90.58.090(7); WAC 173-26-030(2)
[11] RCW 36.70A.010
[12] RCW 36.70A.020; *see also Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424-25 (2007)
[13] RCW 36.70A.130
[14] RCW 36.70A.172(1) 320, RCW 36.70A.3201; *Swinomish*, 161 Wn.2d at 426
[15] *See Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 125-26 (2005) "the GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs." *See also* WAC 365-195-010(3) (The GMA "process should be a 'bottom up' effort...with the central locus of decision-making at the local level.").
[16] *Futurewise v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 242, at 244 (2008) *reconsideration denied* (2009) (emphasis added)
[17] *Overlake Fund and City of Bellevue v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 761 (1998) (citing RCW 90.58.020)
[18] *See Biggers*, 162 Wn.2d at 686, 706 (affirming a right to certain shoreline development as recognized in RCW 90.58.020 and RCW 90.58.100)
[19] RCW 90.58.100(1), WAC 173-26-201(2)
[20] WAC 173-26-201(2)(a)
[21] *Compare* WAC 173-26-201(2)(a) *with* RCW 36.70A.172
[22] WAC 173-26-201(2)(a) (emphasis added)
[23] WAC 173-26-201(2)(a)
[24] WAC 173-26-186(4) (emphasis added)
[25] WAC 173-26-186(5) (emphases added)
[26] WAC 173-26-186(8)(b)
[27] WAC 173.26-201(2)(c) (emphasis added)
[28] WAC 173-26-186(8)(b) (emphasis added)
[29] WAC 173-26-186(8)(c)
[30] WAC 173-26-186(8)(c) (emphasis added)
[31] WAC 173-26-030(27)
[32] 161 Wn.2d 415 (2007) (interpreting RCW 36.70A.172(1))
[33] *Id.* at 427 (emphasis added)
[34] *Id.* at 430
[35] WAC 173-26-186(8)(e)
[36] Laws of 1995, ch. 347, § 108, amending RCW 36.70A.280
[37] RCW 36.70A.060(2).
[38] *Futurewise*, 164 Wn.2d at 249 (Chambers, J., dissenting) (citing *Everett Shorelines Coalition v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 17 [Corrected Final Decision and Order, Jan. 9, 2003])
[39] *Futurewise*, 164 Wn.2d at 244 (citing Engrossed Substitute House Bill 1933 or "ESHB 1933")
[40] RCW 90.58.030 (Findings–Intent No. 3), Laws 2003, ch. 321, § 1(3)
[41] WAC Chapter 173-26
[42] The only issue is whether the legislature meant the GMA to apply to critical areas in shorelines covered by shoreline master plans until Ecology has approved a new or updated shoreline master plan. *Futurewise*, 164 Wn.2d at 245.
[43] Engrossed House Bill 1653, adopted during 2010 legislative session.

[44] *Futurewise*, 164 Wn.2d at 244-45
[45] *Id.* at 251 (dissent)
[46] *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009) (citing WAC 173-26-191(2)(b))
[47] RCW 36.70A.030(5) and .170
[48] *Everett Shorelines Coal. v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 11 (Corrected Final Decision and Order, Jan. 9, 2003)
[49] RCW 36.70A.480(5) (emphasis added)
[50] *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009)
[51] RCW 90.58.030(1)(f)
[52] City of Bellevue Land Use Code Section 20.25H.030.B.2
[53] *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd*, 161 Wn.2d 415, 430-431 (2007)
[54] 2005 Best Available Science (BAS) Review, § 7.2.1, pp. 7-5 to 7-7, § 7.2.2, pp. 7-7 to 7-9 (similar statement for Lake Sammamish) § 7.2.3; *see also* Draft Shoreline Analysis Report § 5.1.3, page 79 (same statement for Lakes Washington and Sammamish).
[55] *Compare* WAC 173-26-221(2)(c)(i)(B) *with* -221(2)(c)(iv)
[56] WAC 173-26-221(5)(a).
[57] WAC 173-26-176
[58] WAC 173-26-186(5)
[59] *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 664 (2008) *review denied* (2009) (citing *Isla Verde Intl. Holdings v. City of Camus*, 146 Wn.2d 740 (2002))
[60] *Citizens' Alliance,* 145 Wn. App. at 657
[61] *Id.* at 657, 664 (citing *Trimen Dev. Co. v. King County*, 124 Wn.2d 261, 274 (1994) [citing *Dolan v. City of Tigard,* 512 U.S. 374 (1994)])
[62] *Citizens' Alliance,* 145 Wn. App. at 665 (citations to *Isla Verde* omitted)
[63] *Id.* at 668
[64] RCW 90.58.020
[65] WAC 173-26-176(3)(i)
[66] RCW 90.58.100
[67] RCW 90.58.100(6)
[68] WAC 173-26-176(3)(i)
[69] RCW 90.58.020
[70] RCW 90.58.030(3)(e)(vii)
[71] RCW 90.58.030(3)(d) (relevant part)
[72] RCW 90.58.030(3)(d)
[73] RCW 90.58.140(1), (2)
[74] WAC Chapter 173-27
[75] WAC 173-27-030
[76] WAC 173-27-030(15)
[77] WAC 173-27-040(1)(b)
[78] RCW 90.58.030(3)(d)(i)
[79] WAC 173-27-040(2)(b)
[80] WAC 173-27-040(2)(b)
[81] RCW 90.58.030(3)(d)(vi)
[82] WAC 173-27-040(2)(g)
[83] RCW 90.58.030(3)(d)(ii)
[84] WAC 173-27-040(2)(c)
[85] RCW 90.58.100(6).
[86] WAC 173-26-231(3)(a)
[87] WAC 173-26-231(3)(a)(iii)(C)
[88] RCW 90.58.030(3)(d)(vii)
[89] WAC 173-27-040(2)(h)

Lisa Clausen

From: Public Council Inbox
To: Jessica D. Roper
Subject: RE: Comments on City Council Draft SMP for August 2, 2010 Public Meeting

Thank you for your message. It will be included in the Correspondence for the Record for the next City Council meeting.
L. Clausen
Burien City Manager's Office

From: Jessica D. Roper [mailto:jroper@GordonDerr.com]
Sent: Wednesday, July 28, 2010 4:22 PM
To: Public Council Inbox
Cc: Tadas Kisielius; David Johanson
Subject: Comments on City Council Draft SMP for August 2, 2010 Public Meeting

Burien City Council Clerk,

Attached is a comment letter related to the City Council Draft SMP. Please include this in the Council's packet for the upcoming public meeting on August 2, 2010. Thank you.

Jessica Roper
Legal Assitant

2025 First Avenue, Suite 500
Seattle, WA 98121-3140
Phone: 206.382.9540
www.GordonDerr.com

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CFTR: 08/02/10

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July 28, 2010

VIA EMAIL and U.S. MAIL

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

Re: Comments on City Council Draft SMP for August 2, 2010 Public Meeting

Honorable Councilmembers:

We represent the Burien Marine Homeowners Association (BMHA). We are writing in advance of the Council's upcoming meeting on August 2, 2010, at which Council will discuss the most recent draft Shoreline Master Program ("Draft SMP") and direct staff to make any necessary changes to the current draft.

We appreciate staff's revisions in the most current Draft SMP, but staff's revisions do not go far enough. More needs to be done. In this letter, we do not repeat our earlier comments and will focus on those issues raised by staff's new draft as well as issues that staff's new draft does not address. The redline that the BMHA provided on June 4, 2010 remains the most comprehensive source of revisions that are recommended to address the BMHA's concerns.

1. Adopt 20 foot Shoreline Buffer.

We request that **Council direct staff to establish a 20 foot buffer** for the portions of the marine shoreline that are in the residential environment with no additional setback. As indicated in the BMHA's memorandum describing existing shoreline conditions, these residential areas are almost completely developed with homes, yards, and hardscape. A wider buffer as is currently proposed in the current Draft SMP will have a significant and detrimental impact on homeowners, will have no appreciable ecological effect and is not warranted under the no net loss standard.

2. Amend Staff's New "Conforming Structure" Provisions in 20.30.007 for Clarity and Consistency.

We appreciate staff's efforts to address homeowners' concerns by designating existing structures within the buffer "conforming." We recommend several changes to eliminate ambiguity and inconsistencies.

3. **Adopt Revisions Requiring City Planning Process Before Developing Specific Public Access Opportunities and Amenities.**

Staff's revisions in the current Draft SMP do not address the concerns the BMHA raised regarding the public access provisions. The City's broad policies and regulations authorizing use of public rights of way for physical and visual access are expansive and beyond the authority of the SMA. They do not adequately consider impacts on the surrounding community and private property owners.

Accordingly, **the BMHA asks Council to direct staff to propose language that would require the City to go through a planning process before staff could create or develop specific access opportunities on existing rights of way or other public lands.** The planning process would need to identify and mitigate impacts on surrounding neighborhoods (including screening and parking issues) and would ensure that the specific use for access and any planned amenities and infrastructure are consistent with the underlying dedication or easement. The BMHA's revisions are in the June 2010 Redline at sections 20.20.015, 20.20.020, 20.30.035, and 20.30.085

The BMHA's proposed approach is consistent with the shoreline regulations that require a planning process to identify and evaluate specific opportunities for access. WAC 173-26-221(4)(c). The planning process must "comply with all relevant constitutional and other legal limitations that protect private property rights." *Id.* The staff's efforts to-date do not reflect that process. Moreover, the BMHA's proposed approach is consistent with good planning principles. The planning process proposed by the BMHA would allow the city to evaluate impacts to adjacent property owners on a site-specific basis. It would also allow evaluation of whether the planned use of the right of way is consistent with the underlying dedication or easement. This is a significant concern because the draft language in 20.35.035(2)(c) acknowledges that the City's planned use for access may be inconsistent with the underlying dedication. That draft section specifically purports to require re-dedication of unused rights of way for public access purposes, implying that the City's use of a right of way for access may be inconsistent with the underlying dedication. Such a use of a right of way should not be encouraged.

4. **Revise Vegetation Conservation Standards to Apply to New Development that Removes Existing Vegetation.**

Staff has suggested several positive changes to the shoreline vegetation conservation standards, including an amendment to eliminate an onerous condition that purported to require revegetation of 75% of the vegetation conservation buffer. Nevertheless, more revisions are necessary for consistency with the SMA guidelines and to protect property owners from vague regulations.

The BMHA's redline includes the comprehensive revisions proposed by the BMHA. Notably, **Council should direct staff to restrict the vegetation conservation standards only to new development that results in removal of existing vegetation.** Currently the regulations apply to the more-broadly defined "alterations." The efforts in the existing draft to regulate "alterations" far exceed Ecology's shoreline vegetation conservation provisions which apply to *new development. See* WAC 173-26-201(3)(d)(viii) ("new development"); WAC 173-26-

We appreciate this opportunity to provide public comment.

Very truly yours,

GORDONDERR LLP

Tadas Kisielius

RECEIVED
JUL 29 2010
CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have prefect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
5. exceeding the carrying the capacity of the land and water by the introduction of thousands of humans, their pets and their wastes/litter to the delicate lake ecosystem, and
6. the increased turbidity to the water by just the sheer number of people entering it which results in degradation of water quality and destruction of habitat for spawning fish, nesting wildlife

Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

[illegible] 25th Ave S
Burien WA 98166

CFTR: 08/16/10

RECEIVED
JUL 29 2010
CITY OF BURIEN

To: The Burien City Council
400 SW 152nd St., Suite 300
Burien Washington 98166

As a citizen, I am requesting the Burien Shoreline Master Plan clearly state that there will be no **Physical Public Access to Lake Burien.**

Physical Public Access to Lake Burien by thousands of people will irreversibly damage this lake. We have prefect examples of the kind of irreversible damage that occurs in small lakes by simply looking at Hicks Lake and Arbor Lake - neighboring lakes and numerous other small lakes in King County.

Physical Public Access, by thousands of people using a small lake, brings these ecologically damaging issues with it:

1. the introduction of invasive weeds that choke off the waterway, destroy oxygen levels in the lake and destroy wildlife,
2. the introduction of inappropriate gas levels into the water column that damages water quality, destroys wildlife and encourages the growth of toxic (like red tide) plankton populations,
3. the introduction fecal (poop) material to the lake that destroys water quality, destroys wildlife, encourages the growth of fecal coliform bacteria and creates a health and safety issue for humans,
4. introduced boating contamination, speed and density issues that create habitat destruction and trauma to wildlife as well as serve at contaminators and spreaders of infection and noxious weeds(Eurasian Milfoil, etc.) to the lake and animals (quagga mussel, zebra mussel, New Zealand mudsnail, rusty crawfish, spiny water flea, snail fever organism, etc.),
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Research shows that small lakes that are opened to physical access, within two years of having physical public access, have problems with invasive species and fecal coliform problems. These are problems that require chemical treatment and poisoning to lake waters to attempt to correct. In most cases they cannot be remedied without significant damage to the ecosystem. **Lake Burien is the last healthy small lake along the Urban Corridor. Do not allow this to happen to it. Do not allow physical public access to Lake Burien.**

Sincerely,

It would be a travesty to ruin Lake Burien, Burien's last fresh water sanctuary for wildlife, because of a few inconsiderate people that don't care anything about the ecology of the Lake. People will trash the Lake!

Greg R Deisne
533 S. 165th St
Burien, WA 98148

CFTR: 08/16/10

Lisa Clausen

rom:	Public Council Inbox
o:	Cyndi Upthegrove
Subject:	RE: Why the weir?

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

L. Clausen
Burien City Manager's Office

From: Cyndi Upthegrove [mailto:cyndiu@comcast.net]
Sent: Sunday, August 01, 2010 2:13 PM
To: Public Council Inbox
Subject: Why the weir?

CFTR: 08/16/10

July 31, 2010

To: Burien City Council

From: John Upthegrove
1808 SW 156th

Re: Why the weir?

While attending a meeting of the SMP Advisory Committee in the fall of 2009, I overheard a strange conversation. The committee was beginning its review of the flood section in the draft SMP. Don Warren asked what areas of the city were considered flood problems. David Johanson listed the areas, none of which included the Ruth Dykeman Center.

Mr. Warren then asked why this section contains the following language, "The City of Burien will maintain the Lake Burien weir." In other words, what does the Lake Burien weir have to do with flooding? At this point Mr. Warren recommended the language be removed from the draft.

One member of the committee, who was also a member of the Planning Commission, asked if the Lake Burien Shore Club was willing to assume liability for the weir? She further opined that the shore club would need a permit to maintain the weir. Mr. Warren pointed out that the shore club has cared for the weir for almost 80 years and that inquiries to the state have determined no permit is necessary. **It was discussed and also noted that other than Mr. Warren, no Advisory Committee member, city staff member or consultant knew the location of the weir or what it is for.** However, Mr. Warren's request to remove this language from the SMP was denied. Within a week or two Mr. Johanson went to the Ruth Dykeman Center, asked to see the weir and photographed it. According to their staff he left the impression that there was some sort of liability attached to caring for the weir.

At this point I began inquiring as to *who* initially introduced the weir language into the draft plan. No one can tell me. Staff, consultants and SMP Advisory Committee members said they did not know. Interestingly, as the draft plan passed from the Advisory Committee to the Planning Commission, the language was changed. It now reads, "the weir will be maintained," with no reference to *who* will maintain it or *how* it will be maintained. The unusual aspect of this is that it was not discussed or recommended either by the Advisory Committee or the Planning Commission. The decision-making has not been transparent on this issue.

I have asked David Johanson, Councilmember Bennet and Mr. Martin who introduced the weir language and no one can give me an answer. If none of these people know why it is there, or who placed it there, let's simply remove the language. **If the city didn't put it there in the first place, I fail to see its necessity.** Please remove this superfluous language from the Shoreline Master Plan.