

from Greg Anderson

173-26-090

Periodic review — Public involvement encouraged — Amendment of comprehensive plans, development regulations and master programs.

Each local government should periodically review a shoreline master program under its jurisdiction and make amendments to the master program deemed necessary to reflect changing local circumstances, new information or improved data. Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.

In developing master programs and amendments thereto, the department and local governments, pursuant to RCW 90.58.130 shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program.

Counties and cities planning under chapter 36.70A RCW, shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments of the comprehensive plan and development regulations relating to shorelines of the state will be considered by the local governing body consistent with RCW 36.70A.130. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-26-090, filed 9/30/95, effective 10/31/96.]

173-26-100

Local process for approving/amending shoreline master programs.

Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal. Recognizing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented that insure early and continuous public participation consistent with WAC 365-195-600.

At a minimum, local government shall:

- (1) Conduct at least one public hearing to consider the draft proposal;
- (2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:
 - (a) Reference to the authority(s) under which the action(s) is proposed;
 - (b) A statement or summary of the proposed changes to the master program;
 - (c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and
 - (d) Reference to the availability of the draft proposal for public inspection at the local government office or upon request;
- (3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state;
- (4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions;
- (5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of community, trade, and economic development of its intent to adopt shoreline policies or regulations, at least sixty days prior to final local approval, pursuant to RCW 36.70A.106;
- (6) Comply with chapter 43.21C RCW, the State Environmental Policy Act; and
- (7) Approve the proposal.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-26-100, filed 9/30/96, effective 10/31/96.]

CFTK: 06/07/10

RECEIVED

JUN - 7 2010

CITY OF BURIEN

Ted and Helen Fosberg
2841 SW 172nd Street
Burien, WA 98166
206-242-2560
fosberg@msn.com

June 7, 2010

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

Dear Mayor McGilton,

We are writing to express our overwhelming concern about the negative impact of the Shoreline Management Program (SMP), as presently drafted, on the Citizens of the City of Burien.

This Shoreline Management Program represents de facto taking of property by eminent domain by the City of Burien.

Definition: Right of Eminent Domain – The power of the City of Burien to acquire private land without the consent of the owner. The City of Burien is required by law, however, to pay the land owner the fair market value.

Our observations relative to the present draft of the SMP are as follows:

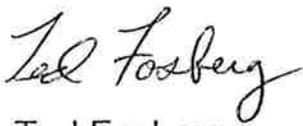
1. The 65 foot setback from mean high tide along with associated provisions will effectively, over time, cause the removal of all structures within this area of the marine shoreline in the City of Burien.
2. This will result since the value of structures will be lost due to natural disasters (storms, earthquakes, etc.), normal wear and tear, decay and fire to a point where rebuilding is not feasible or prohibited.
3. In many instances, the structures will include the primary residence of the property owners.

CFTR: 06/21/10

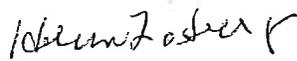
4. With their primary residence gone and without the ability to rebuild, the property will become vacant, worthless and title will revert to the City of Burien for non-payment of property taxes with no compensation to the land owner.
5. Consequently, the City of Burien will be acquiring private land without the consent of the owner.
6. It is recognized this process will be over a long period of time, perhaps 50 to 100 years, but the present SMP would set in motion an action which will be taking all affected properties, a little at a time, starting the very day the SMP is approved.
7. Since this is tantamount to the City of Burien exercising its Right of Eminent Domain, the City of Burien, by law, must begin compensating land owners at time of approval.

We are deeply concerned about the significant financial burden this will place on the citizens of our City. Consequently, we urge the City of Burien to craft the SMP in a way as to protect property rights of its Citizens by including provisions to recognize existing legal improvements and to make it feasible for all property owners to maintain, remodel, and rebuild their homes regardless of the value of the structure at the time of reconstruction.

Sincerely,



Ted Fosberg



Helen Fosberg

Cc: Mr. Michael Martin, City Manager

RECEIVED

JUN - 7 2010

CITY OF BURIEN

June 7, 2010

Honorable Mayor and Council Members

Our names are Robert and Robbie Howell
We live at 15240 20th Ave SW
Burien, WA. 98166

The Purpose For This Letter

As citizens we were not given an adequate opportunity for input to the adoption of the Critical Areas Ordinance. We do not want that to happen again in the adoption of the Shoreline Master Plan.

Critical Areas Ordinance Review

As I wanted to clarify in my own mind the events that led up to 2010 SMP I decided to research the city records pertaining to the Critical Areas Ordinance (CAO) and review what had taken place. I would like to share with you the results of my inquiry. Statements taken directly from the City records are shown in "quotes" our comments are shown in (*italics*).

When the city staff was defining the Critical Areas Ordinance No 394 in 2003, they held 5 public hearings. *This appears very good in print, as the hearings are all listed on the first page of Ordinance No 394. Yet when I looked into the records, I discovered the public did not attend the hearings. This was probably because they didn't see the notice or understand the implication of the Ordinance being considered.*

Let us review the following events.

The first public notice was published in the Seattle Times on February 24, 2003 for a Planning Commission hearing March 11, 2003 at 7:00 p.m. at Burien City Hall.

It was intended "to receive public comments on" the proposed "Amendments to Burien Municipal Code Chapter 19:40-Critical Aquifer Recharge Areas."

"The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical aquifer recharge areas."

Note: Other than the general public notice, citizens living in the affected areas were not contacted. The notice was published in the Seattle Times. At that time Burien Residents were still expecting public notices in the Highline Times. Only recently were we told at a city council meeting that public notices are now being published in the Seattle Times

March 11, 2003, Burien Planning Commission Meeting

CFTR: 06/21/10

“A. PUBLIC HEARING: AMENDMENT TO THE CRITICAL AQUIFER RECHARGE AREA ORDINANCE”

Besides the Planning Commission members, Pat Smith, planner, Ann Root and Amy Dearborn of Adolfsen Associates, Jon Sondergaard of Associated Earth Sciences along with Gerry Lindsay, recording secretary were present.

The Meeting Minutes State: “Mr. Smith noted that the proposed critical aquifer recharge areas ordinance had been revised in accordance with direction given by the Planning Commission, and to show which aquifers are recommended along with an explanation of why.” And “Mr. Smith said the ordinance was revised to make the hydrogeologic assessment report optional for applicants. The report would be required only where an applicant disagreed with the location of a critical aquifer recharge area, or if they have a use that is otherwise not permitted, that they believe can be planned for the site to be compatible with the recharge area. The ordinance also was revised with regard to radioactive substances used for minor medical purposes.”

(There was considerable discussion about aquifers.)

To which Mr. Sondergaard added; “when it comes to creating protective regulations, some of the unknown is removed by choosing to protect the areas that appear to be the most sensitive based on geology and hydrogeology.”

“Commissioner Robison asked if existing businesses within one of the critical areas would be required to do anything special. Mr. Smith said they would not unless seeking to expand or using lots of hazardous materials.”

They opened the public hearing and there were no comments. The Commission felt the prudent approach would be to continue the public hearing to the next meeting on March 25, 2003.

(There was another public hearing that night which was not covered by the hearing notice.)

B. PUBLIC HEARING: AMENDMENT TO THE WETLAND ORDINANCE

“Mr. Smith, planner, said it is important to protect both the wetlands themselves and the buffers surrounding them. The buffers are a crucial part of the wetlands systems by providing the initial filtering of sediments and other pollutants in run off water. He explained that the major changes to the existing ordinance are focused on the buffer widths.” More discussion about buffers followed.

When a question was posed concerning the Category of the area around a lake, Ms Root of Adolfsen Associates said; “A lake shoreline could be a Category 1 wetland, and it might not be. Lakeshores are regulated under the Shoreline Management Act.”

There was some informative conversation about Category 3 wetlands having a 50' buffer. "Commissioner Robison asked if a buffer with minimal vegetative cover would indicate a less valuable wetland. Ms. Dearborn said that could be the case in certain instances. Ms. Root said increasing the buffer where there is minimal vegetative cover is necessary in order to increase the function of the wetland buffer."

Mr. Robinson voiced suspicions regarding Best Available Science. "He said that he would like to see a provision that would allow for some averaging of the buffer in Category 3 down to 25 feet, perhaps with a non-building exclusion for the other 25 feet."

*The public hearing was open and there were no public comments.
They extended the public hearing to March 25, 2003.*

March 25, 2003, Burien Planning Commission Meeting

PUBLIC HEARING NUMBER TWO: AMENDMENT TO THE CRITICAL AQUIFER RECHARGE AREA ORDINANCE

"Pat Smith, planner, noted that the changes to the ordinance previously recommended by the Commission had been made with the exception of the section referring to the use of radioactive substances in clinics and doctor's offices. He said with regard to the later that staff was still working on the language."

"Chair Pierce reopened the public hearing continued from March 11."

"There were no people present to offer testimony."

A motion to recommend approval of the proposed amendment was passed unanimously.

PUBLIC HEARING NUMBER TWO: AMENDMENT TO THE WETLAND ORDINANCE

"Chair Pierce declared the public hearing open."

"There were no people present to offer testimony."

"Chair Pierce continued the public hearing to the April 8 meeting of the Commission."

April 8, 2003, Burien Planning Commission Meeting

PUBLIC HEARING NUMBER THREE: AMENDMENT TO THE WETLANDS ORDINANCE

“Chair Pierce reopened the public hearing which had been continued from the March 25th meeting.”

Mr. Smith told the Commission about how the ordinance language had been revised since the last commission meeting. Among the revisions that had been made “the ordinance also was revised in the approach to wetlands associated with Lake Burien. The proposal is to treat them as type IV wetlands with a 30 foot buffer.”

(Note: Before Burien was Incorporated, King County had designated Lake Burien as a Category 2 wetland with a 50 foot buffer.)

“Mr. Smith noted that there is a sewer that rings Lake Burien that is 30’ from the lake, effectively prohibiting any type of development within that distance. In addition to the 30’ buffer a 15’ setback is recommended.”

“Mr. Smith said the rationale for classifying Lake Burien area as a Class IV wetland is based on the fact that the development around the lake has already degraded the wetland areas. Larger buffers are needed for more pristine wetlands in undeveloped areas.”

(Note: I could find no scientific evidence that development around the lake had already degraded the wetlands to a Class IV.)

After further conversation the hearing was closed and there were no public comments.

A public notice was published in the Seattle Times on April 28, 2003 for a Planning Commission hearing May 13, 2003 at 7:00 p.m. at Burien City Hall.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Streams and Wildlife Conservation Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical wetland areas.”

Note: No hearing was found in the city records for May 13, 2003 and it was not mentioned in the 2003 Critical Areas Ordinance # 394 list of public hearings.

The second Public Notice was published in the Seattle Times on July 24, 2003 for the 4th hearing to be held August 12, 2003.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical areas throughout the city.”

(Note: Again no invitations were sent to the residents that live in the critical areas. No invitations were sent to community clubs in the city. The notice was published in the Seattle Times instead of the Highline Times.)

August 12, 2003, Burien Planning Commission Meeting

There were three public hearings that night.

A. PUBLIC HEARING ON PROPOSED COMPREHENSIVE PLAN AND ZONING
Seventeen people commented at this hearing.

B. PUBLIC HEARING ON ZONING STANDARDS FOR NORTHEAST
REDEVELOPMENT AREA (SPA-4)

Only Ms Barbara Rudge, senior planner for the Port of Seattle commented. She wanted the hearing to be extended because she did not have ample time to review the Standards.

C. PUBLIC HEARING ON ALL CRITICAL AREA ZONING CODE AMENDMENTS
AND TREE RETENTION

There were no comments from the people who live around Lake Burien or along Puget Sound.

“Teresa Vanderburg of Adolfson Associates provided the Commission with an introduction to the Fish and Wildlife Habitat conservation portion of the critical areas ordinance update. She noted that the codes of many jurisdictions in the past have not included fish and wildlife habitat conservation areas; the update is being made to bring Burien’s code into compliance with the Best Available Science.”

As there were no comments from the Public there was consensus to continue the public hearing to August 26, 2003.

August 26, 2003, Burien Planning Commission Meeting

DISCUSSION AND RECOMMENDATION ON ALL CRITICAL AREA ZONING
CODE AMENDMENTS

(Public Comment Item.)

“Mr. Gary Hoffman, South King County manager, Master Builders Associations, called attention to the section of the proposed critical areas ordinance that allows a 100 percent increase in the wetland buffer. He provided the commissioners with copies of a letter in which he outlines alternatives that have been implemented in Snohomish County.” (See attached letter.)

D. Discussion and Recommendation on all Critical Area Zoning Code Amendments

“Mr. Smith commented that over the past year the focus has been on moving some of the sensitive area sections of the ordinance from Chapter 18 to 19. That process has included the incorporation of the Best Available Science. Over the past year there have been five public hearings: three on wetlands, one on critical aquifer recharge areas, and one on the full package. Two planning firms have been retained by the City to ensure that the Best Available Science Principles are being incorporated.”

“Commissioner Williams asked what sources are being documented as being the basis for the Best Available Science used in revising the buffer widths. Mr. Sondergaard answered “that the literature does not give a single recommended buffer width; there is a range that varies widely depending on specific conditions and functions. All that must be balanced against other objectives, such as economics and growth management. The science is clear that the larger the buffer the more the protection, and that larger buffers are needed in more rural areas.”

The motion to recommend approval of the proposed critical areas zoning code ordinance, including the change to Section 19.40.220.2.H.ii.c, was carried unanimously.

The only public comment was from the Master Builders Assn..

The third Public Notice was published in the Seattle Times on September 1, 2003 for the City Council hearing to be held September 15, 2003.

It was intended “to receive public comments on” the proposed “Amendments to Burien Municipal Code Chapter 19:40-Critical Areas.”

“The goal of the amendments was to comply with the Growth Management Act by adopting regulations to protect critical areas throughout the city.”

(Note: No invitations were sent to the people who live in the critical areas on Lake Burien or along the sound. No invitations were sent to the Lake Burien Shore Club.)

Note: On September 8, 2003

Adolfson Associates, Inc provided the City of Burien with a CAO Update, Wetlands, Streams, and Fish and Wildlife Habitat Conservation Areas designating Lake Burien a Category 2 wetland.

September 15, 2003, City Council Meeting

“9. BUSINESS AGENDA”

“a. Public Hearing to Receive Citizens’ Comments on Motion to Adopt Ordinance No. 394 Amending BMC Titles 18 and 19 (Zoning Code) Relating to Critical Areas.”

“Planner Pat Smith said the current regulations governing critical areas are included in Chapter 18 of the zoning code. The current update includes moving the regulations to Chapter 19. **He said the Growth Management Act requires all cities to incorporate Best Available Science when revising their critical ordinances. To ensure the incorporation of Best Available Science as required, the City contracted with two consulting firms, Adolfson, Associates, and Associated Earth Sciences.**”

“Continuing, Mr. Smith said the state defines six critical areas.

- First is geological hazard areas for which the Council has already adopted regulations.
- Second is flood areas; that ordinance will be moving in its entirety from Chapter 18 to Chapter 19.

There are current regulations for the next three critical areas.

- Wetlands, streams, and fish and wildlife-but they are proposed to be changed somewhat.
- The critical area, critical aquifer recharge areas, will be addressed by a new chapter in the zoning code; **Best Available Science has been incorporated resulting in non-substantial changes.**”

“Mr. Smith said **The Council will need to adopt the critical areas map along with the ordinance.** He said the map has been drawn as accurately as possible, but due to budget limitations **the critical areas have not been field verified; the map information was drawn from King County sources.**”

Mr. Smith continues, “Following the public hearing the Council has two discussion meetings scheduled. Adoption of the ordinance is slated for October 20, 2003. **The Planning Commission has had eleven study session meetings and five public hearings over the last year on the critical areas ordinance. Very few public comments were received during the public hearings, even though notice of the proposed changes was widely disseminated.**”

(Comment: Invitations were not sent to the residents in critical areas. The Lake Burien Shore Club was not notified. The notice was published in the Seattle Times rather than the Highline Times..)

“**The Planning Commission and staff are proposing a 100 percent increase in wetland buffer size and recommending that the stream buffers remain unchanged. A sliding scale for wetland mitigation is being proposed based on wetland quality.** There is also a proposal to require an environmental review for uses with a significant amount of hazardous material near critical aquifer recharge areas.”

Mayor Woo opened the public Hearing

There were two comments.

Greg Anderson of 15451 11th Ave SW who voiced concerns over recording critical areas on title reports, *an excellent comment from this builder.*

Garrett Huffman, Master Builders Association of King and Snohomish Counties
Mr. Huffman voiced concern about the 100 percent wetland buffer area increase proposed. He said the Master Builders Association would prefer to see the buffer area requirements remain as they are currently. The Association would also like additional information for why the recommendation is to increase the wetland buffers to such a large degree. *(See attached letter dated Sept. 15, 2003 from Garrett Huffman to Mayor Woo.)*

There being no other comments, Mayor Woo closed the public hearing.

(Note: Except from Greg Anderson there were no comments from the people living around the lake or on the sound.)

The City Council then began a discussion on Ordinance No. 394 Amending BMC Titles 18 and 19 (Zoning Code) Relating to Critical Areas

Asked to respond to Public Comments Mr Smith explained to Greg Anderson about which title reports would have to record that the property was in a critical area.

Then he explained to Mr. Huffman that the 100 ft buffer is in keeping with Best Available Science. He said he would seek additional information from the consultant and have it available for the next study session.

There was considerable discussion about eagles and “Councilmember Lamphear said there are other endangered species that are not listed at all. **Mr. Greenberg noted that section 19.40.290 essentially designates any area with endangered, threatened or sensitive species listed by federal or state authorities as a fish and wildlife conservation area.** That even includes species for which there are not specific management recommendations.”

September 15, 2003

Garrett J. Huffman of the Master builders Association gave a letter to Mayor Wing Woo regarding the motion to Adopt Ordinance No. 394 Amending BMC Titles 18 and 19.

A partial excerpt is inserted here, “Specifically, the Washington State Court of Appeals has clearly held the “Best Available Science” rule in the Growth Management Act (GMA) does not require that critical area standards be based only on whatever science says may be the most protective standard.

While the City must consider 'Best Available Science,' it is required to also consider and implement the other goals of the GMA, including encouraging growth in urban areas, encouraging the availability of affordable housing, encouraging economic development and protecting private property rights. The proposed City ordinance proposes environmental protection as the primary goal of GMA, rather than one goal that must be considered and balanced against others. As a result the proposed 100% increase in wetland buffers is excessive and not necessary."

The MBA strongly urges the City Council to take a flexible approach to critical area approach to critical area zoning to help meet GMA housing targets and maintain Burien's ability to accommodate viable, quality design standards."

September 29, 2003 Two things happened

1. The City of Burien issued a "Determination of Nonsignificance (DNS), WAC 197-11-970" for the "Zoning Code Amendments: Critical Areas" which reads as follows:

"The lead agency for this proposal has determined that the proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW43.21C.030(2)(c) **This decision was made after a review of a completed environmental checklist and other information on file with the lead agency.**"

"This Determination of Nonsignificance is specifically conditioned on compliance with the applicable regulations set forth in the Burien Municipal Code."

"All information relating to this proposal is available to the public on request."

"Responsible Official: Patrick Smith, AICP"

(Note: The environmental checklist prepared by Pat Smith, city planner, shows most of the information for the questions as N/A (not available) and mentions the consultants will take care of these things. They did not talk to any of the people who live on Lake Burien or contact the Lake Burien Shore Club regarding the fish and wildlife on the lake. They decreed that the lake was dead rather than validating the Fish and wildlife that are supported in its ecosystem. At the September 15th hearing there was no hearing or discussion about the Fish and Wildlife on Lake Burien. The residents had no clue what was happening to them or the lake.)

2. *The City of Burien sent the following letter to the Department of Ecology.*

"Department of Ecology
Environmental Review
PO Box 47703

Olympia, WA 98504-7703

To Whom it may Concern:

The City of Burien has issued a Determination of Nonsignificance for the enclosed draft critical area ordinance. Enclosed is a copy of proposed Burien Zoning Code amendments, the DNS, the environmental checklist, memorandum from Adolfson detailing how they have used Best Available Science in this process, and finally the schedule of public review. Because this is not a mitigated DNS, **I do not think a public comment period is required. However, due to the importance of the critical area regulations on the environment, staff is distributing the DNS to all parties on our SEPA mailing list.** If you have any questions or comments, please contact me at (206) 439-3152

Sincerely

Patrick Smith, AICP”

See attached DNS mailing list.

(Note: Because Lake Burien, according to the planners, had no fish and wildlife, the city told the Department of Ecology that no mitigation was necessary. Patrick graciously let the Department of Ecology know that due to the importance of the critical area regulations on the environment that staff is distributing the DNS to all parties on their mailing list.)

When you look at the list you will see that SEPA included a list of 33 entities or citizens. The Seahurst Community Club, the Shorewood Community Club and the 3 Tree Point Community Association were included but the Lake Burien Shore Club was excluded. Only 4 citizens were mailed to and none of them lived on Lake Burien. All the rest of the mailings went to government agencies or businesses.

SUMMARY

At the August 12 hearing, “Teresa Vanderburg of Adolfson Associates provided the Commission with an introduction to the Fish and Wildlife Habitat conservation portion of the critical areas ordinance update. She noted that the update is being made to bring Burien’s code into compliance with the Best Available Science.”

It seems evident the City ignored the consultants advise and declined to investigate the fish and wildlife on Lake Burien however they did validate fish and wildlife on Puget Sound. The City declined to use Best Available Science for Lake Burien. Instead they chose to follow the advise of the Master Builders Association to encourage higher density in a critical area that supports Federal and State Listed and Candidate Species.

Also on **September 8, 2003 Adolfsen Associates, Inc** provided the City of Burien with a CAO Update, Wetlands, Streams, and Fish and Wildlife Habitat Conservation Areas **designating Lake Burien a Category 2 wetland.**

Amazingly when the Burien 2003 Critical Areas Ordinance No. 394 went into law, the city planners had covertly changed Lake Burien from a Category 2 to a Category 4 Wetlands, reduced the buffer from 50' to 30' supposedly under the auspices of using Best Available Science.

CONCLUSION, We do not want this repeated in the SMP

LAKE BURIEN WILD LIFE

During the September 15, 2003, City Council Meeting
"Mr. Greenberg noted that section 19.40.290 (of the zoning code) essentially designates any area with endangered, threatened or sensitive species listed by federal or state authorities as a fish and wildlife conservation area."

Had the City investigated (or inquired) they would have found the lake is a hunting ground for the Eagle, Osprey and Great Blue Heron. It is also home to numerous migrating birds and year around residents.

In 2003 Lake Burien had, and still has in 2010, Eagles, Osprey, and Great Blue Heron. The lake also has lots of migrating birds including at least 10 species of local importance: Western Grebe, Great blue Heron, Barrow's Goldeneye, Common Goldeneye, Cinnamon Teal, Osprey, Banded-tailed pigeon, Belted kingfisher, Hairy Woodpecker and Purple Finch.

Recently some of the Bird lovers living on Lake Burien talked with the Audubon Society. We had just started collectively identifying birds and taking pictures of some of them, if they weren't to fast for us. Together we have identified 87 species of birds that we see on the lake and the list is growing.

The lake is also home to fish, turtles, frogs, crawfish and bats.

The lake is classified as Category 1 for Water Quality as defined in the Coastal Atlas and is free of Eurasian Milfoil. The shore club members and waterfront owners are careful to not use toxic chemicals in their yards or boats that have been in another lake. Gasoline powered outboards are not used on the lake. The residents are taught to keep it a really "GREEN" lake.

David Johanson

From: DW Sykes [sykesdw@hotmail.com]
Sent: Tuesday, June 08, 2010 4:02 PM
To: David Johanson
Subject: Definition of Priority Species in Draft Burien SMP

Greetings, per the city announcement request for input and questions for the upcoming public forums,

What is the definition of " **priority species**" in regards to the SMP? Reference SMP Definitions 20.40.035
Critical saltwater habitat means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which **priority species** have a primary association

Thanks for your help on this.

Wayne Sykes
206 248 2017

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. [Get busy.](#)

David Johanson

From: DW Sykes [sykesdw@hotmail.com]
Sent: Tuesday, June 08, 2010 4:23 PM
To: David Johanson
Subject: Bulkhead designs in SMP

Casual observation over the years along the Burien area waterfront shows that otters have found the bulkheads assembled with large rock and associated voids to be a favorable nesting area. Those types of bulkheads also provide extensive habitat for shellfish and other marine organisms that would be poorly represented on sand, mud, or cobble beaches. I know of one otter clan that lives under a bulkhead where the home actually extends over the bulkhead as the bulkhead was replaced after an erosion event. Should the SMP promote "loose" structured bulkheads a preferred method of armoring when existing homes need protection? Is there science that supports the use of some types of bulkheads to provide marine habitat in urban environments?

Wayne Sykes
206 248 2017

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David Johanson

From: DW Sykes [sykesdw@hotmail.com]
Sent: Tuesday, June 08, 2010 4:07 PM
To: David Johanson
Subject: SMP questions on Aquaculture

Greetings, per the city announcement request for input and questions for the upcoming public forums,

SMP section 20.30.065 Aquaculture appears to discourage the development of aquaculture in the Burien area. As encouragement of filter feeders such as mussels and various seaweeds is becoming an accepted means of improving water quality in areas impacted by urban growth, should the SMP promote or at least not discourage the potential for use of aquaculture as a tool to improve the aquatic environment?

Please reference <http://www.jstor.org/pss/4314491> for an example of research on bioremediation using mussel farming.

Thanks for your help on this.

Wayne Sykes
206 248 2017

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David Johanson

From: DW Sykes [sykesdw@hotmail.com]
Content: Tuesday, June 08, 2010 4:05 PM
To: David Johanson
Subject: SMP and private mooring bouys

Greetings, per the city announcement request for input and questions for the upcoming public forums,

Casual observation from years of kayaking is that mooring buoy lines rapidly become havens for native filter feeders, (e.g. mussels) seaweeds, and a wide variety of marine organisms. Encouragement of filter feeders such as mussels and various seaweeds is becoming an accepted means of improving water quality in areas impacted by urban growth. Since mooring buoy lines increase the density of beneficial marine life, should the SMP promote or at least not discourage the installation of private mooring bouys?

Please reference <http://www.jstor.org/pss/4314491> for an example of research on bioremediation using mussel farming.

Thanks for your help on this.

Wayne Sykes
206 248 2017

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JUN 09 2010

Ted Fosberg, P.E., Ph. D.
2841 SW 172nd Street
Burien, WA 98166
206-242-2560
fosberg@msn.com

CITY OF BURIEN

June 9, 2010

✓ Mr. David Johanson
City of Burien Senior Planner
400 SW 152nd Street, Suite 300
Burien, WA 98166

Dear Mr. Johanson,

This letter is in response to the request for submittal of questions in advance for the Shoreline Master Program Public Forums scheduled for June 14 and June 21, 2010. The following questions are for your consideration.

Questions:

1. What process will the City of Burien use to verify that the "No Net Loss Standard" of the Shoreline Master Program (SMP) is being met?
2. What major parameters will be tracked to assess the ecological condition of the shorelines?
3. How does the City of Burien plan to adjust for the effect of storm water runoff and sewage treatment plant effluent when verifying that the "No Net Loss Standard" is being met?

Thank you for the opportunity to submit these questions.

Sincerely,



Ted Fosberg

Cc: Mr. Michael Martin, City Manager

Lisa Clausen

n: Public Council Inbox
.t: Thursday, June 10, 2010 9:58 AM
To: 'Ryan, Andrew F'
Subject: RE: Questions for SMP Public Forums.doc

Thank you for cc'ing the Burien City Council on your message. This will be included in the Correspondence for the Record for an upcoming Council meeting.

L. Clausen
City Manager's Office

-----Original Message-----

From: Ryan, Andrew F [mailto:andrew.f.ryan@boeing.com]
Sent: Thursday, June 10, 2010 9:42 AM
To: David Johanson
Cc: Public Council Inbox
Subject: Questions for SMP Public Forums.doc

David, please find attached some questions in response to the recent City correspondence mailed out regarding the upcoming public SMP forums and request for advanced questions.

Thank you
Andy Ryan

CFTR: 06/21/10

Questions for SMP Public Forums

What is the scientific support for making private residents non-conforming ?

What are the financial implications of:

- Making structures non-conforming

- Limiting use of 20 foot zone parallel to the shoreline (due to vegetation requirement)

- Requirement to remove waterward appurtenances due to exterior renovations (20.30.095)

- Elimination of lawns and non-native vegetation (resulting from modification to primary residence)

- Restitution for private property owners resulting from taking of property rights

What is the scientific support of requiring appurtenances that are located waterwards of the primary structure to be removed if modifications are made to the primary structure (20.30.095)

There seems to be a lot of conflicting data regarding vegetation buffer zones. Please discuss and substantiate req'ts as defined in proposed BMC 20.

As part of the discussion, please address how level areas between bulkhead and the foot of sloped lots play into the erosion and runoff mitigation, benefits of shading in a salt water marine environment, shoreline residential runoff impacts vs upland surface drainage (i.e – storm drains), justification for req't for emphasis on vegetation requirements for 20' area parallel to the shoreline (which potentially removes ability of property owner to use area along shoreline)

Regarding Shoreline Vegetation Conservation (20.03.040) please discuss rationale for requiring city oversight of noxious weed removal, rationale for limitations on pruning w/o vegetation management plan (especially since Wa State DOE defines acceptable pruning methods), limitations of only native plants (which removes property owners ability to plant fruits, vegetables, or ornamentals)

Science regarding bulkheads to include:

- Impact to Littoral drift (20.30.070 (2)f)- our beaches change elevation significantly during the year which would tend to indicate significant littoral drift occurs

- Rationale for limit of bulkhead height to 4' over OHWM (20.30.070 (2)i) – especially since FEMA and City flood documentation (CITY OF BURIEN Technical Report entitled COASTAL FLOOD HAZARD ZONE DELINEATION dated June 29, 2007) identify storm surge w/ heights of 2 - 3 meters and freighter wakes regularly exceed 4 feet.

Rationale for bulkheads to be built to minimal standards (20.30.070 (2)h)

Bulkhead design that “blends in w/ natural surroundings” (20.30.070 (1)b)

Rationale for bulkheads replacement only being allowed to protect primary structures, but not for appurtenances, other (20.30.070 (2)c)

Impact to marine life (including discussion apparent discrepancy of stated neg bulkhead impacts vs, for example, loss of eel grass around Blake Island which has no bulkheads)

Conflicting scientific reports regarding bulkhead environmental impact (numerous referenced studies indicate possible negative bulkhead impacts to marine life, plus at least two studies indicating no negative correlation (Harm to Near Shore Development Almost Zero, by Donald F. Flora) and Dr. Peter Ruggiero, Dept. of Geosciences, Oregon State University (link attached)

<http://bainbridgeshorelinehomeowners.wordpress.com/2010/06/03/theres-no-proof-that-bulkheads-harm-beaches/>

Flood impact as outlined in City scientific study (Grette Associates Shoreline Analysis and Characterization report)

Appears to be conflicting information in the city’s scientific report regarding the impact of bulkheads on erosion. Erosion of feeder bluffs is identified as beneficial to the shoreline (which bulkheads eliminate) but at the same time vegetation buffers are identified as beneficial because they diminish erosion (as do bulkheads). Please clarify

Discussion regarding overwater structures (20.30.075):

Personal observation is that marine life tends to concentrate under piers and floats yet these structures are deemed non-desirable

Discussion regarding significant restrictions on vegetation type, pruning, etc and demonstrated environmental impact

Alternative fertilizers and weed killers that are environmentally friendly (if any)

Impact of > than 250M gallons per day (sum of data from on-line fact sheets for local King County Waste Water Treatment Facilities) of partially treated sewage dumped in Puget Sound in King County alone – discuss in relativity to surface runoff and shoreline private property runoffs, vegetation buffers, etc.

Legal issues associated w/ taking of property rights based on potential harm to the environment as opposed to demonstrated damage (ref **BIGGERS v. CITY OF BAINBRIDGE ISLAND No. 77150-2**)

Lisa Clausen

n: Public Council Inbox
: Friday, June 11, 2010 11:49 AM
To: 'Linda Hall'
Subject: RE: Shoreline Master Program Update

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

L. Clausen
City Manager's Office

-----Original Message-----

From: Linda Hall [mailto:lhall@gsklegal.pro]
Sent: Friday, June 11, 2010 10:41 AM
To: Public Council Inbox
Cc: groen@GSKlegal.pro
Subject: Shoreline Master Program Update

Members of the Burien City Council:

Please see attached letter from John Groen for property owners in the Three Tree Point area.

Linda Hall, Legal Secretary to
John M. Groen
Groen Stephens & Klinge LLP
0 NE 8th Street, Suite 750
Bellevue, WA 98004
(425) 453-6206

CFTR: 06/21/10



GROEN
STEPHENS & KLINGE LLP
ATTORNEYS AT LAW

11100 N.E. 8TH STREET, SUITE 750
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN
RICHARD M. STEPHENS
CHARLES A. KLINGE
SAMUEL A. RODABOUGH
BRIAN D. AMSBARY

TELEPHONE
(425) 453-6206
FACSIMILE
(425) 453-6224

June 11, 2010

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

Re: Shoreline Master Program Update

Dear Council Members:

This letter is sent on behalf of property owners in the Three Tree Point area along SW 172nd Street. Those property owners have a number of concerns regarding the draft Shoreline Master Program, particularly with respect to public access and impact on private property rights.

This letter will first set forth the factual background and key principles of law that should provide sufficient context for the specific line by line suggested edits that will follow.

Factual and Legal Background

First, Burien should understand that the shorefront property owners along SW 172nd are the fee owners of the tidelands. While the State in many areas of Puget Sound decided to retain the ownership of the tidelands for the public, the State in this particular vicinity sold the tidelands to the waterfront owners. There is no dispute that the tidelands were sold by the State beginning in about 1902 and are now included within the legal title held by the adjacent waterfront owners. The deeds typically are stated with language such as "Together with all tidelands of second class to extreme low tide fronting said lot" If necessary, Burien can confirm this through a title company.

For purposes here, it is important for Burien to understand that the shoreline is not public property, it is private property. Accordingly, there is no public shoreline to which Burien can legally provide public access.

Second, Burien should understand the legal status of the unused portion of the right of way that is SW 172nd Street. The right of way was dedicated in the Sunkist Plat and was for an 80 foot wide right of way called Seacoma Boulevard (now SW 172nd Street). Of course, the "as built" road is far less than 80 feet wide. Some City staff or council members may believe that that the unused portion of the right of way can now be used for whatever purposes the City desires, including as a public park. That notion is not correct.

Washington has long recognized that a public road dedicated in a plat is merely an easement and the fee title to the land remains in the adjoining landowner.

When an easement is taken as a public highway, the soil and freehold remain in the owner of the land encumbered only with the right of passage in the public; ... in the case of streets and alleys, the proprietors of adjacent lots own the soil to the middle of the street, subject only to this right of passage in the public; and upon discontinuance of such street or alley, the adjacent owners of lots on each side take the soil to the middle of the street.

Burmeister v. Howard, 1 Wash. T. 207, 2111 (1867). *Accord Rainier Avenue Corporation v. City of Seattle*, 80 Wash.2d 362 (1972); *Finch v. Mathews*, 75 Wash.2d 161 (1968); *City of Seattle v. P.B. Investment*, 11 Wash. App. 653, 657 (1974). Thus, where there is a dedicated public right of way, the fee title remains with the adjacent owner. The fee title is merely subject to the purposes for which the right of way was established.

From this well established doctrine, Washington law recognizes two corollary principles of property law. First, the owner of the adjoining parcel may utilize the unused easement area in any manner that does not materially interfere with the easement purposes. Second, any attempt by the City to use the right of way for purposes other than as originally intended, *i.e.* as a road, will be a use beyond the scope of the intended easement and therefore constitute a taking for which compensation must be paid. The law in back of each of these principles is set forth below.

First, in *Nystrand v. O'Malley*, 60 Wash.2d 792 (1962), the Washington Supreme Court held as follows:

The law in this state is well settled that the fee to the street rests in the owner of the abutting property. *Northwest Supermarkets, Inc. v. Crabtree*, 54 Wash. 2d 181, 338 P.2d 733 (1959); *Simons v. Wilson*, 61 Wash. 574, 112 P. 653 (1911); *Gifford v. Horton*, 54 Wash. 595, 102 P. 988 (1909). **The owner of the abutting property may use the street area, to which he holds the fee, in any manner not inconsistent with the easement in the public for street purposes.** *James v. Burchett*, 15 Wash.2d 119, 120 P. 790 (1942). In the instant case, the road was unopened and unusable as a street for travel. The use by plaintiffs, in extending their garage onto the area, planting the trees and hedge and constructing the bulkhead, was not inconsistent with the public's easement since the right to open the street for the public's use had not been asserted by the city.

Nystrand, 60 Wash.2d at 795 (emphasis added). The Court likewise ruled in *Thompson v. Smith*, 59 Wash.2d 397 (1962) as follows:

As to the portion of the [concrete] slab lying within the ten feet 'reserved for road purposes,' our view is that Smith is entitled to make use of the property **until** it is used for the purpose reserved.

... [T]he owner of the property has the right to use his land for purposes not inconsistent with its ultimate use for the reserved purpose during the period of nonuse. The rule is that where a right of way is established by reservation, the land remains the property of the owner of the servient estate and he is **entitled to use it for any purpose that does not interfere with the proper enjoyment of the easement.**

59 Wash.2d at 407-08 (emphasis added). The Court continued:

There is no evidence that the south ten feet of Smith's property has ever been used for a road, and no evidence that it will be used as such in the immediate future. It would not be proper at this time to prevent Smith's use of a concrete slab for parking an automobile or other appropriate use, until such time as the ten-foot strip may be required for road purposes.

Id. at 409.

This law is directly applicable to the unopened portion of the right of way for SW 172nd Street. Specifically, there is no indication that Burien has any intention to use the unopened portion of the right of way for road purposes. Accordingly, the use by the abutting owners is lawful and may continue.

Regarding any attempt by Burien to convert the use of the right of way from road purposes to public park purposes, the Washington Supreme Court has established that compensation to the abutting landowners will be required. In platting this property in 1919, the owners dedicated Seacoma Boulevard (now SW 172nd Street) to the public "for public highway purposes." Plat of Sunkist Beach, Plats Vol. 23, page 12, May 19, 1919. For your convenience, a copy of the plat with the dedication language is attached. This limitation "for public highway purposes" is consistent with Washington law. *State ex rel. York v. Board of Commissioners of Walla Walla County*, 28 Wash.2d 891 (1947). In these situations, secondary uses of the right of way for such uses as water mains, gas pipes, and telephone lines are permissible "only when not inconsistent with the primary object of the highway." *Id.* at 898. In a right of way for a public highway, Washington will allow incidental uses "suitable to public thoroughfares" that include the transmission and conveyance of people, commodities and intelligence. *Id.* at 903. Of course, electric power lines, telephone lines, sewer and water pipes and similar uses are incidental secondary uses that do not interfere with the primary purpose as a highway. In contrast, use as a public park would not be a secondary or incidental use, but would be a new primary use of the land. As such, it is beyond the scope of the existing easement and would be a new burden on the abutting fee title owners and thus be a taking requiring payment of just compensation. *Id.* at 904.

The fact that a public park might be a desirable or convenient thing does not insulate Burien from having to pay compensation.

Numerous instances of conveniences immediately occur to any one considering the matter which the public might enjoy using upon the public streets, but the fact that they are convenient and might generally be used by the public gives no right to impress that use upon the fee owned by the abutting owner without compensation to him.

Motoramp Garage v. City of Tacoma, 136 Wash. 589, 593 (1925).

In *Lawson v. State*, 107 Wash.2d 444 (1986), the Court again recognized that where a public easement for a right of way is used differently than the original purpose of the easement, the new or changed use is actually an imposition of a new easement for which compensation must be paid. *Id.* at 450. In *Lawson*, an easement for a railroad right of way was converted for use as a public recreation trail. The Court found that this change in use was not encompassed within the original grant of the right of way easement for a railroad and compensation was therefore required. *Id.* at 451.

A third salient fact that must be understood with respect to SW 172nd Street is that even if the unopened portion of the street could be converted to a park (with payment of just compensation) such park still cannot provide legal public access to the shoreline. Although surveys have not been done, it is believed that in various locations there is a strip of upland located between Seacoma Blvd. and the ordinary high water mark. The result is that there can be no public access to Puget Sound. Accordingly, that strip of land would have to be purchased as well as the tidelands themselves. Of course, in a condemnation action to acquire these lands, Burien would also have to pay severance damages for the lost value to the remaining private property that was not taken.

Finally, Burien should ensure that its policies and regulations comply with constitutional limitations on attempts to exact public access from private property owners. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the United States Supreme Court ruled that the coastal commission could not demand dedication of public access along the private beach where there was no showing that the landowners' project detracted or adversely impacted existing public access rights. *Id.* at 837-39. Lacking such a showing, the Court ruled the exaction was not mitigating an impact of the project, but was an "out and out plan of extortion." *Id.* at 837. Washington cases follow this precedent and also apply similar principles under RCW 82.02.020. *Sparks v. Douglas County*, 127 Wash.2d 901 (1995); *Isla Verde v. City of Camas*, 146 Wash.2d 740 (2002). Moreover, the law places the burden of proof on the government entity to show that the exaction mitigates a specific harm that would be caused by the proposed project. *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

Suggested Line by Line Edits to Draft SMP

In light of the above legal principles, and with a perspective that Burien seeks to avoid future litigation, the following suggested edits are provided as a way to meet the state guidelines for updating the SMP while also avoiding conflict with individual rights in real property.

Using the DRAFT SMP dated March 30, 2010, suggested edits are as follows:

1. Page II-2.

In section 20.20.015, edit the Goal PA by inserting the term “publicly owned” before the word “shoreline” so that the sentence reads: “Increase and enhance public access to publicly owned shoreline areas, consistent with ...”

In section 20.20.015, Pol PA 1, insert the term “existing” so that the sentence reads: “Developments, uses, and activities on or near the shoreline should not impair or detract from existing public access to water.”

In section 20.20.015, Pol. PA 3, edit the term “City’s” to remove the possessive, and insert the term “owned” so that the sentence reads as follows: “Public access to the City owned shorelines should be designed to ...”

2. Page II-3.

In section 20.20.015, Pol. PA 6, insert the phrase “except as provided for in RCW 35.79.035” so that the sentence reads: “The vacation or sale of street ends, other public right of ways and tax title properties that abut shoreline areas shall be prohibited except as provided for in RCW 35.79.035.”

In section 20.20.015, Pol. PA 7 and PA 8 should both be **deleted in their entirety**. The reason for deletion is because the City should not restrict its future decisions by adopting a broad policy to pursue waterfront street ends as public parks. The City should retain flexibility to pursue such objectives on a case-by-case basis, recognizing that policy considerations may vary between particular parcels and neighborhoods. One of those considerations will be whether a particular proposed conversion of right of way to park use would violate the constitutional protection against takings without just compensation. The next policy, PA 9, is sufficient to meet whatever future direction the City might want to take with respect to any particular waterfront street end, and to do so in conjunction with the affected neighborhood.

In section 20.20.015, Pol. PA 10, the word “the” should be deleted and the term “publicly owned” should be inserted before the term “shoreline” so that the sentence reads: “The City should disseminate information that identifies all locations for public access to publicly owned shorelines.”

3. Page II-4.

In section 20.20.015, Pol. PA 11 should be edited by inserting the phrase “on public property” at the end of the sentence, so that it reads: “The public’s visual access to the City’s shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced on public property.”

In section 20.20.015, Pol. PA 12 should be deleted in its entirety as it is repetitive of Pol. PA 11.

In section 20.20.015, Pol. PA 13 should be edited by inserting at the beginning of the sentence the phrase "Using publicly owned property," and by inserting the term "public," and by adding a new sentence so that the policy reads as follows: "Using publicly owned property, promote a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and public shoreline access points that increase the amount and diversity of opportunities for walking and chances for personal discovery. This policy recognizes that private property owners are not responsible for meeting this public objective."

4. Page II-6.

In section 20.20.020, Recreation Element, Pol. REC 4, the text provides "*Examples*" that include specifically identifying SW 172nd Street as a potential Special Use Park. The *Examples* should be **deleted entirely** because there has not been a public process where a specific proposal is made and then followed by due consideration of whether a special use park should be established at that specific location, particularly in light of neighborhood impacts, budget costs, and constitutionally required compensation where private property rights are impaired. By including "*Examples*" the implication is that Burien has already determined that the identified examples are in the public interest to pursue.

5. Page IV-8

In Chapter 4, section 20.30.035, subsection 2 c should be deleted in its entirety. This requirement that unused right of way shall be dedicated as open space/public access is illegal under Washington law and its implementation would constitute a taking without just compensation in violation of constitutional protections. The easement for a right of way is for highway purposes, not as open space and public parks.

Section 20.30.035, subsection 2 d should be edited by inserting the phrase "Subject to constitutional limitations" at the beginning of the sentence so that it reads: "Subject to constitutional limitations, public access shall be required for ..."

Section 20.30.035, subsection 2 e should be edited so that it reads: "Public access to shoreline areas shall only be required where it is demonstrated to be compatible with uses, safety, security and constitutional and other legal limitations that may be applicable." This edit is to reflect that the burden of proof to justify the imposition of a mitigating condition is upon the regulating agency, not the property owner.

Burien City Council
June 11, 2010
Page 7 of 7

GROEN STEPHENS & KLINGE LLP

There may be other specific suggested edits that will become apparent as the public process of review and deliberation continues. The property owners in the Three Tree Point area along SW 172nd Street appreciate your careful consideration of these comments and suggestions.

Sincerely,

GROEN STEPHENS & KLINGE LLP

John M. Groen by CAK

John M. Groen

groen@GSKlegal.pro

JMG:lch
Attachment

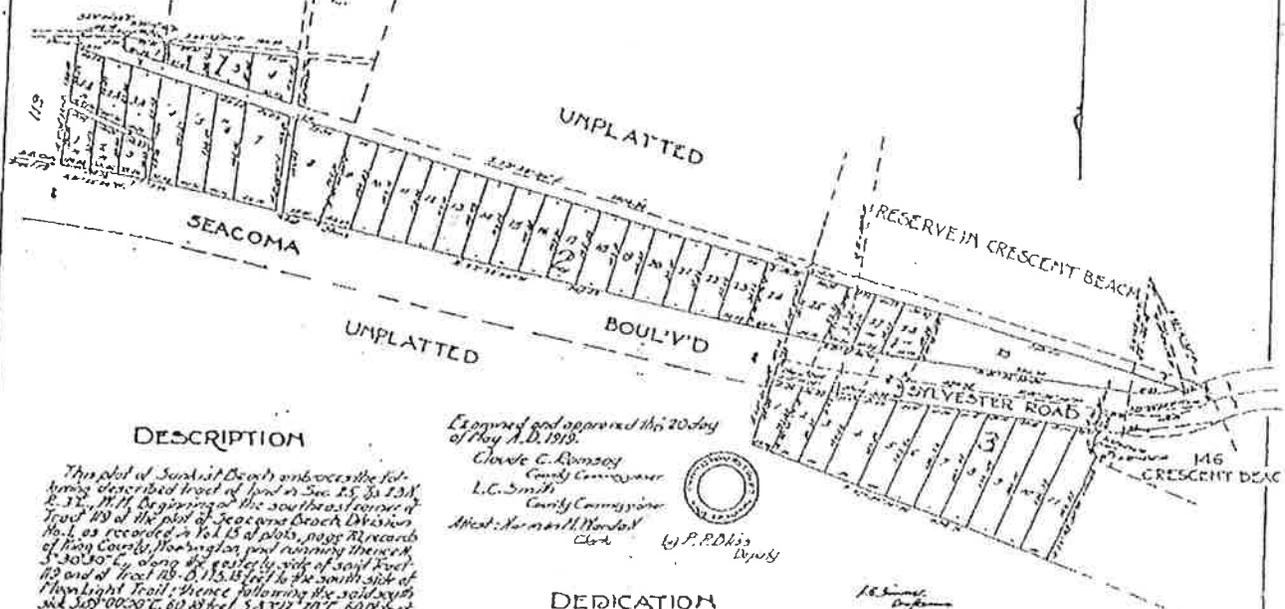
SUNKIST BEACH

Scale: 1" = 100'

Gardner, Gardner & Fischer, Inc.
Engrs. - Seattle.

April 1919.

SEACOMA BEACH
DIV. NO. 1. SEACOMA BEACH
DIV. NO. 2.



DESCRIPTION

This plot of Sunkist Beach embraces the following described level of land in Sec. 15, T. 33N., R. 3E., N.W. 1/4 beginning at the southeast corner of Tract 10 of the plot of Seacoma Beach, Division No. 1, as recorded in Vol. 15 of 1915, page 7, records of King County, Washington, and running thence S. 30° 30' E. along the easterly side of said level 119 and of Tract 10, 0.115.13 feet to the south side of Mainlight Trail; thence following the said level and S. 89° 00' 30" E. 60.49 feet, S. 83° 31' 10" E. 60.01 feet and S. 88° 25' 30" E. 150.01 feet to the northeast corner of Tract 114 in the recited portion of the plot of Seacoma Beach, Division No. 1, as recorded in Vol. 11 of 1910, page 21, records of King County, Washington; thence S. 3° 10' 30" E. 64.85 feet along the easterly line of said Tract 114, thence S. 21° 33' 30" E. 134.36 feet to the northeast corner of Sylvester Road; thence S. 15° 18' 15" E. 50.00 feet to the center line of the said road; thence along same to the right hand corner of 180.89 feet, thence center of this point bears N. 19° 16' 15" E. a distance of 176.10 feet; thence N. 01° 16' 40" E. 25.33 feet thence S. 72° 05' 30" E. 44.04 feet to a point which bears N. 61° 58' 10" E. 19.40 feet from the center of the curve of radius 129.40 feet, as shown in Tract 116 of the plot of Crescent Beach, as recorded in Vol. 11 of 1910, page 44, records of King County, Washington; thence along said curve to the left a distance of 17.85 feet; thence S. 12° 05' 30" E. 80.39 feet; thence N. 67° 54' 10" E. 43.76 feet to a point on the southerly projection of the westerly line of the reserved portion of said plot of Crescent Beach; thence along the said westerly line N. 41° 30' E. 137.14 feet to the north eastern corner of Seacoma Boulevard; thence along the said boulevard S. 17° 11' 30" W. 905.01 feet and N. 01° 12' 30" W. 110.13 feet to the place of beginning, excepting therefrom portions occupied by King County for road purposes, being a portion of the recited portions of the subdivisions of Seacoma Beach, Division No. 1 and Division No. 2 and of the Reserve and of the recited portions of Seacoma Boulevard, in the said plot of Crescent Beach.

All distances are as shown on this plot in feet.

Examined and approved this 19th day of May A.D. 1919.
by C. P. Howry Deputy
by Samuel J. Howry County Examiner

Examined and approved this 20th day of May A.D. 1919.

Claude C. Ramsey
County Commissioner
L. C. Smith
County Commissioner
Attest: Samuel M. Marshall
Clerk by P. P. Davis Deputy



DEDICATION

Know all men by these presents that the Seacoma Beach Improvement Company, a corporation organized under the laws of the State of Washington, does hereby dedicate to the use of the public forever all streets, avenues, roads, roads and alleys, or whatever public property there is shown on this plat and the use thereof for city and all public purposes and accessories thereto the use thereof for public highway purposes, also the right to make of necessary changes for cuts or fills upon the lots, blocks and tracts shown on this plat in the reasonable original grading of all the streets and avenues shown thereon.

Samuel M. Marshall, President of the said corporation has caused its corporate name to be hereunto subscribed by its President and Secretary and its corporate seal to be hereunto affixed this 19th day of May A. D. 1919.

Seacoma Beach Improvement Company

by A. H. Brooks
its President

by L. I. Gregory
its Secretary

C. J. Taylor



CERTIFICATE

We hereby certify that the plot of Sunkist Beach is based upon an official survey and subdivision of Sec. 15, T. 33N., R. 3E., N.W. 1/4, that the distances and courses as shown thereon are correct, that monuments have been set and the lots and blocks here stated on the ground.

Gardner, Gardner & Fischer, Inc.
by A. H. Fischer

ACKNOWLEDGMENT

State of Washington } This is to certify that on
County of King } this 19th day of May, A. D.
1919, before me the undersigned, Notary Public in and for the State of Washington, duly commissioned and empowered, personally appeared C. J. Taylor, and A. H. Brooks, President, and L. I. Gregory, Secretary of the Seacoma Beach Improvement Company, known to be the individuals who executed the foregoing instrument and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed. C. J. Taylor for himself, and A. H. Brooks and L. I. Gregory for the said corporation, for the uses and purposes herein mentioned, A. H. Brooks and L. I. Gregory or each stated that they were authorized to execute said instrument and that the said instrument is the corporate seal of the said corporation.

In witness whereof, I have hereunto set my hand and official seal this 19th day of May, 1919.



W. B. Macomber
Notary Public in and for the State
of Washington, residing at Seattle.

130,9045

Filed for record of the register of King County, Wash. at the office of the County Auditor, King County, Wash., May 10, 1919, of 48 pages, page 37, and recorded in Vol. 23 of plats, page 12, records of King County, Washington.

by O. P. Howry Deputy

Wroll Map Co.
Portland, Ore. Seattle

1919 APR 23 1919

Lisa Clausen

From: Public Council Inbox
Date: Monday, June 14, 2010 9:38 AM
Subject: RE: comments on Shoreline Master Program

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.

L. Clausen
City Manager's Office

From: Tony Halstead [mailto:tonyhalstead@comcast.net]
Sent: Friday, June 11, 2010 5:01 PM
To: Public Council Inbox
Subject: comments on Shoreline Master Program

Dear City Council:

In Burien, most of the waterfront homes are several decades old; thus, over the next few decades houses would be torn down and rebuilt. However, under the SMP's current proposal, the normal course of upkeeping and protecting property values will not happen because owners will not have an incentive to invest much into a flawed structure. This would result in our waterfront slowly becoming a shantytown whose residents would have the concern about that which we're trying to protect and be appealing for everyone's enjoyment. It would result in lowered property values and a shifting of property tax burden from waterfront owners to other Burien residents. So, who would benefit from this SMP proposal?

If the City proceeds with this extreme "down-zoning" would homeowners be compensated? The only fair option is to retain the allowance of existing homes to be rebuilt as long as it does not exceed their current footprint and height. We also urge Burien City Council to actively involve Burien Marine Homeowners Association to help ensure that all aspects of this problem are considered in order to optimize the long-term future of our waterfront.

Sincerely,

William Halstead and JoEllen Kuwamoto
12705 Standing Lane SW, Burien, 98146
206.935.6655

JPTL: 06/21/10

David Johanson

From: Public Council Inbox
Date: Wednesday, June 16, 2010 3:12 PM
To: 'Ryan, Andrew F'
Cc: David Johanson; Scott Greenberg
Subject: RE: Burien SMP conversation

Mr. Ryan:

Your email will be included in the next Council agenda packet as Correspondence for the Record.

Janet S.

-----Original Message-----

From: Ryan, Andrew F [mailto:andrew.f.ryan@boeing.com]
Sent: Wednesday, June 16, 2010 2:44 PM
To: ktay461@ecy.wa.gov
Cc: Public Council Inbox
Subject: Burien SMP conversation

Dr. Taylor, thank you for supporting the Burien City meeting last Monday.

I'm the fella that had the buffer question and spoke w/ you after the mtg. You mentioned during our conversation that there was a lot of literature regarding the benefits of woody debris, vegetative matter, etc that enters the marine environment in natural settings from live growth along the shoreline. If I understood you correctly, development precludes this from happening and thus one of the reasons for the desire to develop buffer zones along the shoreline. If one were to start w/ the assumption that we're not going to tear down all the residences along the shoreline (I hope this is a valid assumption), and therefore never regain the target buffer that the scientific community desires, are there alternative ways to create these same functions?

Currently, the majority of us dispose of grass clippings and woody yard debris through a variety of different ways (landfills, compost, mulch, burn, etc). Would a better alternative be to dispose a portion of that on the beach? I shred a large portion of my prunings and use it for mulch on the hillside, but that is "small woody debris". I cringe at that suggestion as I've always been rather anal about making sure none of my yardwork ends up on the beach and have had words with a few previous neighbors who did dispose of clippings on the beach. Would something like that make up for the loss of the natural process?

We briefly discussed shade, filtering of pollutants & runoff, and halting use of pesticides & herbicides, are there other alternatives to working through the other of the 7 buffer functions you mentioned? Another thing you, and the other panel members mentioned, (at least I interpreted it that way) is that the functions are site specific and a one size fits all regulation would not be appropriate.

It bothers me that we waterfront property owners are being put in an adversarial role w/ ecology, because the majority of us are highly supportive of ecological causes, but the current regulations Burien is proposing are hazardous not only to our financial well being, but also our abilities to use our properties for personal enjoyment and water related uses. As an example, on my bulkhead area, which is the only level area on my whole property, under several scenarios, I would have to tear down my boathouse, plant native vegetation in densities that mimic natural conditions, and essentially lose usage of that entire piece of my property. As such, I'm highly motivated to explore other solutions.

Wish we could have heard the rest of your presentation and had more dialogue. Thanks again

Sincerely
Andy Ryan

David Johanson

From: Public Council Inbox
t: Wednesday, June 16, 2010 3:18 PM
cc: 'c_edgar2@yahoo.com'
Cc: David Johanson; Scott Greenberg
Subject: FW: Monday Night Presentation by the Science Experts-June 14, 2010
Attachments: FW Science&Small Buffers Recom 10Mar[2].pdf

Ms. Edgar:

Your email and attachment will be included in the next Council agenda packet as Correspondence for the Record. It has also been forwarded to David Johanson for distribution to the Planning Commission.

Janet S.

From: Chestine Edgar [mailto:c_edgar2@yahoo.com]
Sent: Wednesday, June 16, 2010 2:33 PM
To: Monica Lusk
Subject: Monday Night Presentation by the Science Experts-June 14, 2010

To Monica Lusk-please forward this on to:

To the Burien City Council
the Burien Planning Commission

This last Monday, I attended the City Council Shoreline Management Program Forum and was somewhat disappointed by the lack of scientific vigor that the scientists demonstrated on their topic areas. I was particularly concerned by the presentation by Carl Hadley. There were two concepts that Carl Hadley, Biologist, Cedarock Consultants left the audience with that are **clearly not correct or scientifically accurate**. Those concepts were about buffer/setbacks and developing land. His position was that buffers in urban setting have no value and that all pieces of land can be developed and mitigated anywhere a citizen wants them mitigated.

To correct the record on Hadley's presentation:

1. Current Science/Best Available Science shows that buffers and setbacks are of value even in greatly degraded areas, and
2. Contrary to Mr. Hadley's statement, all pieces of land cannot be developed and mitigation will not take care of any draw backs due to critical areas issues.

It appeared to me that the audience as well as the City Council were even more confused after the meeting than prior to the meeting about these concepts.

Therefore, I am attaching a very good and easily readable paper. This is written in pretty much common person language and should give the Council members a good background on how buffers work. It has good scientific citations about research, if a person wants to go into these topics in depth. I believe it could end some confusion the topic of buffers for the general audience.

Please take the time to read it.

Sincerely,
Chestine Edgar

Note: this document will be updated with additional science citations in the future, please check our website for the current version

Introduction

In the course of reviewing Shoreline Master Programs (SMPs), Futurewise has seen several proposals for small buffers in areas of existing development. Some of these proposals seem to be based on the belief that, if a small buffer is established based on existing development patterns, unlimited new development (including redevelopment, expansion, and more intensified uses) outside that small buffer will have no additional impacts to shoreline ecological functions, and thus no mitigation is necessary. This paper shows that there is no scientific basis for such a strategy, and provides a recommended strategy for the acceptable use of small buffers in existing intensely developed areas which we believe allows for reasonable development while also having a reasonable chance of protecting the existing shoreline functions, as the Shoreline Management Act and the Shoreline Master Program Guidelines require.

Purpose of Regulatory Buffers – Avoiding & Minimizing Impacts

The Shoreline Management Act (SMA) policy statement in RCW 90.58.020 lists the primary policy objective of the act [with emphasis]: “This policy contemplates protecting against adverse effects to the public health, *the land and its vegetation and wildlife, and the waters of the state and their aquatic life*, while protecting generally public rights of navigation and corollary rights incidental thereto.” In addition, the SMA policy provides that “[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to *minimize*, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”

To implement these policies to protect the ecology and to minimize damage, as well as other policies of the SMA, the SMP Guidelines require **no-net-loss of ecological functions**, stating specifically: “Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.”¹

This is accomplished through **mitigation sequencing**,² whereby the first task of mitigation is avoidance of impacts, the second task is minimization of impacts, and the third is compensation for remaining impacts. Stated another way, allowing development to impact the shoreline is supposed to be the last option, not the first option. Impacts should only be allowed to the extent that it is not practical to avoid damage to the environment and the

¹ WAC 173-26-186(8)(b) under Governing Principles of the Guidelines relating to ecological functions; and implemented in WAC 173-26-201(2)(c) under Basic Concepts. Despite being called ‘Guidelines,’ the SMA, in RCW 90.58.080(1), requires that shoreline master programs shall be consistent with the SMP Guidelines.

² WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

public's use of the water, and then the development should minimize and compensate for those impacts.

Designing an SMP to achieve no-net-loss of ecological functions is largely a scientific exercise, and the SMA is specific in its requirements to use science in developing the SMP. It requires using "a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts."³ This science requirement is similar to the Growth Management Act's "Best Available Science" requirement. While each has its own terminology, these two science requirements are functionally the same in that they require the use of current up-to-date science.

The science literature on the impacts of development near water bodies provides the basis for jurisdictions to accomplish mitigation sequencing for shoreline waters (streams, lakes, wetlands, marine waters, etc.) and adjacent shorelands. One essential strategy for protecting the functions and values provided by intact riparian vegetation is using a regulatory buffer (or a setback and vegetation retention area) of a width supported by science. An adequate buffer can provide many important functions and help protect water quality and water resources. While an adequate buffer can accomplish much, it cannot mitigate everything, especially impacts from degraded upland areas and the broader watershed – for example stormwater, erosion, habitat loss, etc. Other regulations are needed to deal with such impacts, including those areas outside shoreline jurisdiction.⁴

An adequate regulatory buffer can do much to provide mitigation sequencing:

- (1) It helps accomplish the first task of mitigation sequencing – avoidance. *But this is only the case if the buffer is intact*. An adequate buffer will help protect a large percentage of the functions that riparian vegetation provides, and will encompass the most important riparian habitat areas.
- (2) While an adequate buffer can do much, it can't accomplish everything. Thus, an intact buffer can be a first step in minimizing the adverse impacts of development to functions that extend outside the buffer. It also reduces or helps minimize those repeating or ongoing impacts from adjacent development, such as water quality, glare, and noise impacts, by filtering pollutants, screening glare, and reducing noise transmission.
- (3) For both degraded and intact areas, a science-based regulatory buffer also identifies an area within which new development will cause impacts that need compensation. In addition, when buffers are degraded, they provide a location where any impacts of the development can be compensated for by enhancing the degraded functions.

Even when science-based buffers are degraded, they can still perform functions at a dampened level, depending on the amount of degradation. Even heavily degraded shorelines will perform

³ RCW 90.58.100, with emphasis added.

⁴ For example, to maintain the health of streams and salmon habitats, rivers basins should limit effective impervious surfaces to no more than ten percent and forest cover to no less than 65 percent. Derek B. Booth, *Forest Cover, Impervious-surface Area, and the Mitigation of Urbanization Impacts in King County, Washington* p. 16 (University of Washington, Seattle Washington: September 2000). Accessed on March 10, 2010 at: <http://depts.washington.edu/cuwrm/research/forest.pdf>

functions at a very low level. This is specifically stated in the SMP Guidelines,⁵ and documented in the science literature (including those footnoted below) that compares developed and undeveloped sites. For example, even lawns can provide better animal feeding, runoff treatment, and other functions than paved surfaces and structures. New impervious surfaces and more intensive use will degrade these even further. Thus, if the regulatory buffer is not of adequate width to avoid and mitigate impacts, as is the case when using small buffers, new development outside the small buffer will still cause new impacts.

Vegetative Buffer Areas Perform Many Functions

The peer-reviewed scientific evidence has been reviewed and synthesized in several documents that show that intact buffers of adequate width are needed to mitigate the impacts of adjacent development on lakes, rivers, streams, marine waters, and wetlands.⁶ An item of particular

⁵ WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions.

⁶ **Lakes:** Karen Capiella and Tom Schueler, *Crafting a Lake Protection Ordinance*, Urban Lake Management, Watershed Protection Techniques 3(4) (2001). Accessed on March 10, 2010 at: http://www.cwp.org/Resource_Library/Center_Docs/special/lakes/ulm_lakeprotectionord.pdf. Widths - p. 756; Functions - pp. 752-754.

Lakes: S. Engel and J. L. Pederson Jr., *The construction, aesthetics, and effects of lakeshore development: a literature review* (Research report 177, Wisconsin Dept. of Natural Resources, 1998). Accessed on March 10, 2010 at: <http://digicoll.library.wisc.edu/cgi-bin/EcoNatRes/EcoNatRes-idx?id=EcoNatRes.DNRRep177>. Functions - pp. 9-24; widths not addressed.

Streams, Lakes, and Marine: National Marine Fisheries Service - Northwest Region, *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document - Puget Sound Region* (Sept. 22, 2008). Accessed on March 10, 2010 at: [https://pcts.nmfs.noaa.gov/pls/pcts-pub/biop_results_detail?reg_inclause_in=\('NWR'\)&tidin=29082](https://pcts.nmfs.noaa.gov/pls/pcts-pub/biop_results_detail?reg_inclause_in=('NWR')&tidin=29082). Widths - pp. 222 - 223; Functions and development impacts: pp. 24 - 150.

Streams and Lakes: Spence, B. C., G. A. Lomnický, R. M. Hughes, and R. P. Novitzki, *An Ecosystem Approach to Salmonid Conservation*. (ManTech Environmental Research Services Corp., Corvallis, OR, Doc.#: TR-4501-96-6057, available from the National Marine Fisheries Service, Portland, Oregon, 1996). Accessed on March 10, 2010 at: <http://www.nwr.noaa.gov/Publications/Reference-Documents/ManTech-Report.cfm>. Widths - pp. 215-230 (esp. p. 229); Functions - pp. 51-55.

Streams: K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* (Wash. Dept. Fish and Wildlife, Olympia WA, 1997). Accessed on March 10, 2010 at: <http://wdfw.wa.gov/hab/riprfinal.pdf>. Widths - p. 87; Functions - pp. 19-38.

Wetlands: D. Sheldon, T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* (Washington State Department of Ecology Publication #05-06-006, 2005). Accessed on March 10, 2010 at: <http://www.ecy.wa.gov/biblio/0506006.html>. Widths - all of Chapter 5 & p. 5-55; Functions - All of Chapter 2 & parts of Chapter 3 and 4.

Marine: EnviroVision, Herrera Environmental, and the Aquatic Habitat Guidelines Working Group, *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* (October 2007). Accessed on March 10, 2010 at: http://wdfw.wa.gov/hab/nearshore_guidelines/. Widths - pp III-38 to III-41; Functions - pp. II-38 to II-46.

Marine: J. S. Brennan, and H. Culverwell, *Marine Riparian: An Assessment of Riparian Functions in Marine Ecosystems* (Washington Sea Grant Program, University of Washington, Seattle, 2004). Accessed on March 10, 2010 at: <http://www.wsg.washington.edu/research/pdfs/brennan.pdf>. Widths - p. 16; Functions pp. ii-iii & 3-14.

NOTE: If some links do not operate, removing the last item on the link may provide an alternate access path. Otherwise perform a search on that website or the internet in general.

note is that some studies⁷ found that riparian vegetation performed similar functions for all types of water environments. Indeed, many of the science articles seeking numerical values for buffer widths are not based on any particular type of water feature (stream v. wetland, etc.). The buffer widths recommended to protect the wide variety of ecological functions in these synthesis studies are summarized in the following table. Specific functions are described in more detail below the table.

Science Review Source	Recommended Vegetated Buffer Width			
	Stream	Wetland	Lake	Marine
Cappiella and Schueler, <i>Crafting a Lake Protection Ordinance</i> (Review of Lake Ordinances)			Range from 50-150'; Septic 100'+	
Engel and Pederson, <i>The construction, aesthetics, and effects of lakeshore development</i>			Only functions listed	
National Marine Fisheries Service, <i>ESA Consultation Biological Opinion for NFIP in Wa. State</i>	Greater of: Lg. rivers - 150'; or CMZ +50'; or floodway		100'	100'
Spence et al., <i>An Ecosystem Approach to Salmonid Conservation</i> . (ManTech Report for NOAA)	1 site pot. tree height (up to 150')		1 site pot. tree height (up to 150')	
Knutson & Naef, <i>Management Recommendations for Washington's Priority Habitats: Riparian</i> (WDFW)	150-250' per str. type + floodplain			
Sheldon et al., <i>Wetlands in Washington State - Volume 1: A Synthesis of the Science</i> (Ecology)		150'-300' for most human uses		
EnviroVision et al., <i>Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide</i> (Aquatic Habitat Guideline Working Group)				150-200'
Brennan and Culverwell, <i>Marine Riparian: An assessment of riparian functions</i> (SeaGrant)				>30m (>100')

NOTE: See footnote 6 for full citations and links to the studies.

These science reviews document that: (1) small buffers, even with intact vegetation, are incapable of fully mitigating development impacts; and (2) degraded buffers are unable to fully perform their buffering function.⁸ The science of intact buffer areas of adequate width shows that they perform many functions - some of which are provided below and grouped by similarity.

⁷ Sheldon, et al., *Wetlands in Washington State - Volume 1*, p. 5-25 to 5-26.

Brennan and Culverwell, *Marine Riparian*, pp. 2 & 16.

EnviroVision, et al., *Protecting Nearshore Habitat*, p. III-38.

⁸ See particularly: Spence et al., *An Ecosystem Approach to Salmonid Conservation*. (ManTech Report for NOAA) Chapter 6: Effects of Human Activities.

Water Quality and Infiltration

- Inhibiting surface erosion from surface runoff and flood flows.
- Filtering sediment from surface runoff and flood flows.
- Removing and transforming nutrients and harmful substances from surface runoff and flood flows.
- Infiltrating and storing surface runoff and flood flows into groundwater for later release to water bodies.
- Removing and transforming nutrients and harmful substances from groundwater passing through root zones.

Stabilization

- Providing stabilization to streambanks, lake shores, and marine waters against erosive water forces through root mats and root-strength.
- Contributing in-water woody debris which reduces and slows erosive water forces against streambanks and lake shores through barriers and increased roughness.
- Protects uplands from surface erosion caused by storms and rising sea levels.

In-Water Habitat Contributions

- Providing fish with over-water hanging cover from predators.
- Providing shade to help cool the water, especially for shallow margins.
- Contributing in-water woody debris needed for creation of fish habitat.
- Contributing in-water organic matter to support fish food species (insects and invertebrates), and other aquatic life.
- Screening or dampening noise, glare, and human activity from the water.

Land Habitat

- Providing refuge for fish from fast flows during floods, as well as access to new food sources.
- Contributing large woody debris needed for amphibian, small mammal, bird, and insect habitat.
- Providing wildlife habitat areas (for feeding, reproducing, resting, etc.) for riparian species, and for upland species that use riparian areas.
- Providing a wildlife dispersal and migration corridor along the water to other areas.
- Generating organic matter needed for foundation of food web.
- Providing natural processes and food web functions to support wildlife.
- Altering the microclimate near the water to be more suitable for aquatic and riparian species by sheltering from wind, holding humidity, etc.
- Screening or dampening noise, glare, and human activity.
- Providing separation from human activity for sensitive aquatic and upland species.

While full-sized, intact buffers perform or protect almost the full level of the functions above, degraded buffers still perform low levels of functions, and additional development continues to impact these. It is not the case that degraded buffers have no functions; thus mitigation is needed for new development outside any buffer area which is too small to fully perform or protect the full range of shoreline functions.

Small Degraded Buffers Cannot Protect Shoreline Functions

The currently available science shows that using the science-based buffer for avoidance and minimization in mitigation sequencing has several *policy implications* that bear on the use of small buffer regulations for existing development:

1. If the science-based buffers are intact, they can provide functions and protect the resource from many impacts from nearby development.
2. If the buffers are not intact, they cannot provide the functions nor protect the resource from adjacent development - even if it meets the science-based width - and there will be impacts.
3. If development takes place within the buffer area, there will be impacts.
4. In the case of existing development within the science-based buffer width, the vegetation is both degraded and there is not enough width. The presence of existing development does not mean that new development will not have impacts or even that existing development does not have ongoing impacts. Just as in #3 above, additional development in the science-based buffer area will increase the impacts. Simply making the regulatory buffer width smaller to match the existing development does not change the presence of impacts.
5. Using small regulatory buffer widths to accommodate existing development establishes built-in impacts in the SMP review system.
6. Since the normal path of development in urban areas over time is expansion and intensification, there will be a continual increase in impacts and degradation across shoreline jurisdiction in these areas. This creates additional impacts that must be addressed in both the Cumulative Impacts Analysis and the Restoration Plan.

This information shows that just because the science-based buffer area is degraded, it is not the case that unlimited additional development has no additional impacts as long as it meets a small regulatory buffer or setback. It also shows that small buffers cannot be applied to areas that may still have intact functions, especially if it is possible to maintain or establish a scientific buffer width, as those areas need to be protected from loss.

Some small buffer systems proposed in some SMPs seem to assume that the smaller degraded buffer works the same as an intact science-based buffer, i.e. adequately providing functions and buffering against impacts as long as development is outside the buffer line. But the peer-reviewed scientific literature shows that a smaller degraded buffer is incapable of performing functions adequately and incapable of protecting the resource it is intended to protect.

New Development and Existing Development Impact Shoreline Functions

Expansion of existing development, redevelopment, and new development on vacant land all adversely affect shoreline resources and functions. In fact, even existing development can continue to cause impacts to ecological functions. As described above, this is the case even for development outside a small regulatory setback. Consider the following adverse impacts of development on the shoreline resources.

- New structures and impervious surfaces increase runoff volumes, remove vegetation, remove native soils that absorb water, and reduce the area available to infiltrate those volumes. Note that these impacts are partially mitigated through stormwater ordinances. However, stormwater regulations generally only address increased peak runoff volumes, not the other impacts.⁹ In addition, small developments are only required to comply with some of the storm water requirements, thus reducing the ability of those regulations to address these impacts.¹⁰
 - a. The increased runoff is focused into smaller receiving areas, thus increasing the erosive power and sediment carrying ability of the surface runoff in those areas.
 - b. Where infiltration can still occur, the focused runoff drives infiltrated water to the groundwater table more rapidly with less opportunity for soil treatment.
 - c. Less vegetation area is available to filter sediment and nutrients from flood waters and the larger volumes of surface runoff passing over the site.
 - d. Less native soils and vegetation root structure is available to treat groundwater.
 - e. The trend of decreased infiltration in a drainage basin changes the hydrology of the basin by increasing winter flows and decreasing summer and fall flows adversely affecting water quality and aquatic habitats.

- Adding new structures, additions, or impervious surfaces, and removing or simplifying vegetation (cutting trees, replacing shrubs with lawn, paving, etc.) also adversely affect habitat:
 - a. Higher value habitat areas and migration pathways are eliminated or replaced with lower value areas, until the most simplified areas (open impervious surfaces) have only limited value for migration pathways and separation areas. More complex areas for nesting and refuge are most susceptible to loss.
 - b. Substituting native vegetation with non-native species, or their total removal, results in a loss of food sources for the entire food web. For example, many native insect species cannot effectively use non-native vegetation for food. The reductions in insect populations then affect the fish that feed on them.
 - c. Natural processes, insect food sources, and food web functions are reduced or eliminated with the progressive removal of complex vegetation elements.
 - d. Species (large and small) capable of using degraded areas are greatly reduced with greater degradation.
 - e. Microclimate is altered for species currently using site.
 - f. Reduces the organic matter input to the water from drifting and blowing wind that supports the aquatic food web and aquatic life.
 - g. Reduces the large woody debris input from trees and branches falling into the water that is needed to form and diversify fish and aquatic life habitat.

⁹ Washington State Department of Ecology, *Stormwater Management Manual for Western Washington Volume 1 – Minimum Technical Requirements* pp. 1-20 – 1-26 (February 2005). Accessed on March 10, 2010 at: <http://www.ecy.wa.gov/biblio/0510029.html>

¹⁰ *Id.* at p. 2-9.

- In addition removing or simplifying the vegetation near water also:
 - a. Reduces the root strength and root mats that provide bank stabilization.
 - b. Increases sun exposure on shallow water areas and heats them.

- Residential uses have additional impacts, not directly related to construction, that increase with enlargement or expansion of the use. Aside from lighting, very little can be done to mitigate these impacts – they are a function of the existence of the development. Non-residential uses can have impacts similar to residential uses that vary depending on the activities and the level of use.
 - a. Human presence and activity that impacts or drives off fish and wildlife. Bigger residences usually mean more people on the property, whether family members or guests.
 - b. Pets that prey on or drive off fish and wildlife. More family members increase the likelihood of having more pets.
 - c. Machinery and vehicular noise that impacts or drives off fish and wildlife. More people on the property increase the likelihood of having more machines and vehicles – including automobiles, watercraft, yard machinery, and recreational vehicles.
 - d. Use of chemicals and fertilizers for house and yard. Larger structures and grounds increase the use of chemicals.
 - e. Use of night lighting that impacts or drives off fish and wildlife. Larger structures and grounds typically increase the use of night lighting.

- Existing development that has inadequate buffers can also have ongoing impacts or impacts that increase over time. While shoreline master programs do not apply to most existing uses, these impacts show that allowing an expanded, redeveloped, or new use that continues to rely on existing, degraded buffers or non-existent buffers will result in an increased loss of shoreline functions, contrary to the requirements of the SMA. Further, shoreline master programs do apply to ongoing activities that require five year permit renewals. The SMP should require measures to protect shoreline functions when those permits are renewed.
 - a. Inadequate buffers allow larger pollutant loads to pass than intact buffers. Thus the receiving waters become more and more contaminated as pollutants build up in aquatic sediments and the water body year after year. Some pollutants are removed or transformed by flushing and biological processes, but others build up over time.
 - b. Inadequate buffers allow larger sediment loads to pass than intact buffers. Thus aquatic life and habitat areas continue to be smothered by sediment, and water turbidity continues to impact organisms.
 - c. Buffers degrade over time, so existing uses increase their pollution loads as the buffers degrade. The degraded buffers also provide fewer functions and mitigate fewer impacts.

Recommendations for Using Small Buffers, or Setbacks with Plantings

Based on the discussion above, regulatory systems that use small buffers alone are ineffective and fail to comply with the SMA. While a science-based regulatory buffer can provide a means of avoidance and minimization, small degraded regulatory buffers and setbacks do not, and result in a system with built-in adverse impacts to ecological functions.

Since a system that uses small buffers or setbacks alone cannot accomplish avoidance, or otherwise mitigate the impacts of a development, the only other acceptable strategy for their use is if the built-in impacts are offset by built-in mitigation measures, including mitigation for habitat impacts. This is best accomplished by an improvement of the existing degraded buffer or habitat conditions. While this approach can be used with validity, it must be only one part of a system that addresses the range of different shoreline conditions in a logical and systematic manner. Below is our recommended strategy for jurisdictions to use small buffers or setbacks for existing developed areas.

1. The shoreline area should be carefully mapped, and the existing level of development should be characterized. This should be part of the inventory and characterization step of the SMP update. When broad variations exist in setback and vegetation, the areas should be categorized based on the character so the protection measures can consider such variations.
2. Science-based regulatory buffer widths need to be adopted for areas with intact functions or with consistently large setbacks. These areas need to be protected from further degradation.
3. Small regulatory buffers widths or setbacks, along with built-in mitigation (as described below), can be used for areas of existing development, and should be based on the vegetation and setback categories identified during mapping. These areas need to be wide enough to function, and function over time. For example, the narrowest high quality buffer that can filter nutrients is 13 feet, and for filtering pollutants you need 33 to 52 feet.¹¹ And buffers degrade over time as they filter out nutrients and pollutants. The area needs to be at least 20 feet wide (enough for a fully grown tree) to provide minimum functions. Wider buffers are needed to protect other important shoreline functions.
4. Built-in mitigation requirements need to be included when an intact science-based buffer cannot be used to mitigate impacts of new development. This should include various means of enhancing the degraded shoreline areas where doing so is possible – such as planting native shoreline vegetation, removal or reduction of unnecessary shore armoring or other near-water structures, etc. Where native vegetation is planted, it needs to include native groundcover, shrub, and tree planting; and needs to extend across the shoreline with allowances for water access.
5. Even if a science-based buffer can be used in some places, it will be ineffective if it is degraded or non-vegetated. In such cases, the buffer or setback must be planted and maintained in order to buffer the impacts of the new development. This must include native understory, shrub, and tree planting and extend across the shoreline with allowances for water access.

¹¹ K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* p. XI, pp. 164 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997).

In addition to built-in mitigation in the form of enhancement, the use of small buffers means other impacts need to be carefully controlled, which means the use of additional standards.

1. Only very limited uses should be allowed in the setback and no uses can be allowed within the planted areas if they are to function. Encroachments into a buffer or setback vegetation should be limited to those that are water-dependent and water-related. Water-enjoyment and non-water-oriented uses and facilities can function without being in the buffer area.
2. Low impact development (LID) techniques should be required to minimize storm water runoff and help maintain a more natural hydrologic system. This is needed to help reduce the polluted storm water that would otherwise overwhelm the narrow planting strip.
3. Major redevelopments and changes in use, which usually result in great intensification, must establish scientific based buffers to ensure no net loss of shoreline functions.
4. When permits for activities are renewed every five years, buffers or setbacks and vegetation plantings should be required.

While small buffers can be made acceptable for highly developed urban areas and rural areas, there needs to be policy support for not basing the buffer width on the available scientific information - of course science-based buffers should be used for intact areas. Such justification can be provided in the jurisdiction's policy that supports the use of shoreline buffers. We recommend a policy similar to the following:

BUFFER POLICY: While buffers widths based on science are necessary to protect ecological functions, using them is not possible in existing heavily developed areas, such as along some parts of [FILL IN THE BLANK]. In such areas, an alternative strategy is established using smaller buffers [OR setbacks] that are based on the existing development pattern, in combination with mitigation requirements for new development that provide enhancement of the smaller buffer and other degraded features to address impacts of the new development outside the small buffer areas.

For more information please contact:

Dean Patterson, Shoreline Planner, Futurewise. E-mail: dean@futurewise.org. Direct Cell 509-823-5481. Or the Futurewise main office at 206-343-0681. Web: www.futurewise.org.

Lisa Clausen

m: Ryan, Andrew F [andrew.f.ryan@boeing.com]
Sent: Thursday, June 17, 2010 3:00 PM
To: Taylor, Kathy (ECY)
Cc: Public Council Inbox; Fritzen, Bob (ECY)
Subject: RE: Burien SMP conversation

Dr Taylor, Thank you very much for your reply, I was already familiar with most of your referenced information but found some new links, etc going over them again.

Regarding the Burien regulatory update, below are references to provisions in the proposed Burien SMP that are clearly related to vegetation and impacts to associated appurtenances.

The below apply based on a fixed % modification to existing structure:

20.35.045 (b) states the area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards (Section 20.30.040) (Our homes will be rezoned as non-conforming in the proposed regulation)

Section 20.30.040 Shoreline Vegetation Conservation:

Part (j) states-vegetation plan shall include a monitoring and maintenance program that at a minimum shall require annual progress reports submitted to shoreline administrator for not less than 5 years.

Section 20.30.055 states a potential requirement for a performance bond to guarantee the vegetation mitigation.

20.30.040 (c)ii states 75% of the buffer needs to be re-vegetated, where degraded, to mimic natural conditions, with a mix of native trees, shrubs, and groundcover

Section v provides special emphasis on the 20 foot wide area parallel and adjacent to the shoreline

Section vi outlaws grass

This provision is much more onerous.

Proposed BMC 20.30.095 Residential Development addresses new construction and **exterior modifications** with part (j) stating that accessory structures and appurtenances are not permitted waterward of the primary structure. (The exterior modification text encompasses existing houses - i.e. - re-roofing, siding or deck replacements, or any other exterior activity that would require a permit)

There are other numerous examples in the Burien proposal that are in conflict w/ the information provided in your below referenced answers to frequently asked questions involving buffers, property issues, and other topics.

Thank you again
Sincerely
Andy Ryan

m: Taylor, Kathy (ECY) [mailto:ktay461@ECY.WA.GOV]
Sent: Thursday, June 17, 2010 11:36 AM
To: Ryan, Andrew F
Cc: council@burienwa.gov; Fritzen, Bob (ECY)
Subject: RE: Burien SMP conversation

AFT: 07/19/10

Hi Mr. Ryan,

Thanks for your questions and your interest in Burien's shorelines.

My understanding is that the regulatory update under discussion in Burien would not require any changes to existing houses and associated appurtenances or landscaping. If you or your neighbors would like to voluntarily reduce impacts from your existing homes, a couple of resources that would help guide your efforts are the Homeowner Tips available on the Department of Ecology website <http://www.ecy.wa.gov/programs/sea/pugetsound/tips/tips.html> and the Puget Sound Shoreline Stewardship Guidebook available on the Puget Sound Partnership archives website http://www.psparchives.com/publications/our_work/science/shoreline_guidebook06.pdf.

Ecology has also posted answers to frequently asked questions involving buffers, property issues, and other topics. You can view these at: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/faqs.html>

Again, thanks for your interest.

Warm regards,

Kathy Taylor, Ph.D.
Senior Marine Ecologist
Shorelands and Environmental Assistance Program
Washington Department of Ecology
360-407-7125 kathy.taylor@ecy.wa.gov

Washington Coastal Atlas
http://www.ecy.wa.gov/programs/sea/sma/atlas_home.html

-----Original Message-----

From: Ryan, Andrew F [<mailto:andrew.f.ryan@boeing.com>]
Sent: Wednesday, June 16, 2010 2:44 PM
To: Taylor, Kathy (ECY)
Cc: council@burienwa.gov
Subject: Burien SMP conversation

Dr. Taylor, thank you for supporting the Burien City meeting last Monday.

I'm the fella that had the buffer question and spoke w/ you after the mtg. You mentioned during our conversation that there was a lot of literature regarding the benefits of woody debris, vegetative matter, etc that enters the marine environment in natural settings from native growth along the shoreline. If I understood you correctly, development precludes this from happening and thus one of the reasons for the desire to develop buffer zones along the shoreline. If one were to start w/ the assumption that we're not going to tear down all the residences along the shoreline (I hope this is a valid assumption), and therefore never regain the target buffer that the scientific community desires, are there alternative ways to create these same functions?

Currently, the majority of us dispose of grass clippings and woody yard debris through a variety of different ways (landfills, compost, mulch, burn, etc). Would a better alternative be to dispose a portion of that on the beach? I shred a large portion of my prunings and use it for mulch on the hillside, but that is "small woody debris". I cringe at that suggestion as I've always been rather anal about making sure none of my yardwork ends up on the beach and have had words with a few previous neighbors who did dispose of clippings on the beach. Would something like that make up for the loss of the natural process?

We briefly discussed shade, filtering of pollutants & runoff, and halting use of pesticides & herbicides, are there other alternatives to working through the other of the 7 buffer functions you mentioned? Another thing you, and the other panel members mentioned, (at least I interpreted it that way) is that the functions are site specific and a one size fits all regulation would not be appropriate.

It bothers me that we waterfront property owners are being put in an adversarial role w/ ecology, because the majority of us are highly supportive of ecological causes, but the current regulations Burien is proposing are hazardous not only to our financial well being, but also our abilities to use our properties for personal enjoyment and water related purposes. As an example, on my bulkhead area, which is the only level area on my whole property, under several scenarios, I would have to tear down my boathouse, plant native vegetation in densities that mimic natural conditions, and essentially lose usage of that entire piece of my property. As such, I'm highly motivated to explore other solutions.

Wish we could have heard the rest of your presentation and had more dialogue. Thanks again

Sincerely
Andy Ryan

Lisa Clausen

From: Fritzen, Bob (ECY) [BFRI461@ECY.WA.GOV]
Sent: Friday, June 18, 2010 8:32 AM
To: Ryan, Andrew F
Cc: Public Council Inbox; Taylor, Kathy (ECY)
Subject: RE: Burien SMP conversation

Follow Up Flag: Follow up
Flag Status: Flagged

Concerning your question about putting grass clippings and twigs into the water. Generally this is not a good practice. First, there may be pesticides and herbicides on the material. Second, it doesn't mimic the natural process of "leaf litter" or recruitment of large woody material that we talk about. Again, thanks for your interest.

Bob Fritzen

From: Taylor, Kathy (ECY)
Sent: Thursday, June 17, 2010 11:36 AM
To: Ryan, Andrew F
Cc: council@burienwa.gov; Fritzen, Bob (ECY)
Subject: RE: Burien SMP conversation

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Senior Marine Ecologist
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Washington Department of Ecology
360-407-7125 kathy.taylor@ecy.wa.gov

Washington Coastal Atlas
http://www.ecy.wa.gov/programs/sea/sma/atlas_home.html

-----Original Message-----

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Sent: Wednesday, June 16, 2010 2:44 PM

To: Taylor, Kathy (ECY)

Cc: council@burienwa.gov

Subject: Burien SMP conversation

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Wish we could have heard the rest of your presentation and had more dialogue. Thanks again

Sincerely
Andy Ryan

Lisa Clausen

m: Public Council Inbox
cc: Ryan, Andrew F
Subject: RE: Comments re Ju 21 Council SMP meeting

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

L. Clausen
City Manager's Office

-----Original Message-----

From: Ryan, Andrew F [mailto:andrew.f.ryan@boeing.com]
Sent: Tuesday, June 22, 2010 9:58 AM
To: Public Council Inbox; David Johanson
Subject: Comments re Ju 21 Council SMP meeting

First of all I would like to thank you for holding these meetings as I believe they have been very informative. There were a few comments/observations made last night that I would like to address, plus I have a specific question to Mr Johanson that I was unable to ask last night.

I'm encouraged by the Council's comments regarding search for other alternatives and a desire for practical applications towards a goal that benefit Puget Sound as opposed to a one-size fits all solution. The configurations of properties not only between reaches but within the individual reaches are so diverse that in my opinion a blanket solution is unreasonable.

I was also encouraged by the DOE presentation stating that preservation of private property and property owners rights was one of the overarching guidelines in the state regulations as this had been omitted from previous presentations to the council.

I was disturbed by comments made by Ecology last night that it was up to the individual ~200 jurisdictions to develop and enforce their requirements and regulations. While DOE has minimum requirements, the inference is that is is less about the science, and more about the regulations - any regulations. This concept was further re-enforced when one of the audience asked our DOE representative about being proactive by implementing the proscribed native vegetation buffer now, in an attempt to satisfy the buffer requirement to establish future rights to rebuild. The lack of an answer and deferral to city regulations was disenchanting to say the least.

The response to the individuals question/comments regarding the ability to rebuild his house located between the Indian Trail and the beach response was less than forward, but finally answered the question in that he would have to remove existing "improvements" along the 20 foot band parallel and adjacent to the shoreline and revegetate to natural conditions. This would seem to be in conflict w/ the requirement that "the buffer area shall be revegetated, where it is degraded; " that was stressed numerous times last night.

Additionally, as I have stated before, this is the area that we property owners use to enjoy our waterfront, and removal of that ability is unacceptable. For some of us (see below) that is the only portion of our property, excluding structures, that is not vegetated.

Regarding the Mayor's comment on property valuations, there are not many properties on Burien's "Gold Coast" as she described it in the \$3 -\$4M dollar range, at least not in Reaches M3 and M4. Major portions of Reach 3 I like to refer to as the "Cheap Seats" of waterfront properties because it includes homes that are well under \$1M, and not all

CFTR:07/19/10

teardowns as the comment was made. While there are several teardowns, (3 w/i a stone throw of my property), the majority of these houses are lower priced due to access issues as one has to hike up to several hundred yards and 100 - 200 ft elevation gain/loss to get to them. Most people are unwilling to pay premium waterfront dollars for a house they cannot drive to - not because they are teardowns. Incidentally, many of these lots appear to have more existing native vegetation than any of the other properties along the shoreline.

Mr. Rea asked a question about the replacement of appurtenances last night such as decks in the event of a catastrophic event. I believe Staff response was that decks were part of the structure and therefore replacement should not be an issue.

However, Appurtenance is a defined term in the SMP as follows:

20.40.005 Appurtenance means development necessarily connected to the use and enjoyment of a single family residence and located landward of the perimeter of an associated wetland and landward of the ordinary high water mark. Normal appurtenances include a garage; deck; driveway; utilities solely servicing the subject single family residence; fences; and grading which does not exceed 250 cubic yards.

The emphasis on "decks" is mine which leads to my question for Mr. Johanson.

Section 20.30.095 Residential Development states the following:

20.30.095 Residential Development

Single family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Residential development shall mean the construction or exterior alteration of one or more buildings, structures or portions thereof which are designed for and used to provide a place of abode for human beings including one and two family detached dwellings, multi-family residences, townhouses and condominiums, together with appurtenances and accessory structures. Bed and Breakfast establishments are considered an accessory use (Emphasis is mine)

Contained within the regulation of the is particular proposed BMC is the following:

2. Regulations

g. Accessory structures and Appurtenances. Accessory structures and appurtenances must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural features. Accessory structures and appurtenances that are not water-dependent are not permitted waterward of the principal residence unless clearly water-dependent (buoys, docks and floats) and used for recreational or personal use. Except for fences less than 6 feet high, accessory and appurtenant structures shall not be located within shoreline buffers or riparian buffer setbacks to assure that buffer integrity is maintained. (Again the emphasis is mine)

So given the above definition and regulation, my question is:

Independent of the 75% catastrophic loss criterion we discussed so much last night, doesn't this proposed regulation mean that: 1) Decks are appurtenances and therefore, if waterward of the primary structure, are no longer permitted; and 2) in order to get a permit for exterior modifications (i.e. - new roof, deck or siding replacement, etc) residents would be required to remove their waterward appurtenances (which I believe includes decks, boathouses, cabanas, garages, carports)?

Thank you again for all the time and effort your expending, the holding of these special meetings and your goal to achieve a workable solution.

Sincerely
Andy Ryan

David Johanson

From: Knight, Katie M (DFW) [Katie.Knight@dfw.wa.gov]
Date: Tuesday, June 22, 2010 3:55 PM
To: Fritzen, Bob (ECY); Lakey, Kirk A (DFW); David Johanson
Cc: Anderson, Christopher D (DFW)
Subject: FW: Lake Burien Wildlife

Hi all, Thought you all might be interested in this exchange between myself and a Lake Burien citizen regarding the SMP update. I have not addressed the public access concerns, but focused our response on whether or not the Lake contains priority species. We do not believe it does. Thank you, Katie

From: Knight, Katie M (DFW)
Sent: Tuesday, June 22, 2010 3:48 PM
To: 'Robbie Howell'
Cc: Director (DFW); Habitat Program (DFW); Anderson, Christopher D (DFW)
Subject: RE: Lake Burien Wildlife

Robbie,

Thank you for the information regarding fish and wildlife presence in Lake Burien. I am excited to know the citizens at Lake Burien are interested in fish and wildlife. WDFW Wildlife biologist, Chris Anderson has corresponded with Ms. Christine Edgar, who also provided the Washington Department of Fish and Wildlife (WDFW) with documentation of wildlife use at Lake Burien. Ms. Edgar has done a great job documenting use, however, none of the species identified by Ms. Edgar in the Herrera report, reported by Ms. Cooke, or documented in your email are considered Priority Habitats Species (PHS) by WDFW.

We have rather strict guidelines for considering a species or habitat a priority. Priority species include state listed (Endangered, Threatened and Sensitive) as well as Candidate species (at-risk of being listed). Priority species also include vulnerable aggregations and species of recreational, commercial and/or tribal importance. I reviewed the species documented at the lake using our PHS listing protocol as well as consultation with wildlife biologist, Chris Anderson. We found the following:

- 1) *Osprey* – Although Osprey are not a PHS species, our department does monitor this species. We map their nest sites and some local municipalities give consideration to these occurrences (e.g. Bellevue). However, Burien does not, and WDFW does not currently recommend them for management consideration per PHS. We do appreciate being alerted to any documentation of nest sites.
- 2) *Great Blue Heron* – Breeding areas are a PHS priority, but not feeding as documented at Lake Burien.
- 3) *Bald eagles* – Bald Eagles are a state-listed Sensitive species and priority areas include breeding, communal roosts and regular concentrations. Biologically, the use of Lake Burien by area eagles for feeding is mostly in a general sense. A few transitory, non-breeding individuals and possibly one nearby territorial pair will use the lake for a feeding resource, at times. It is not a primary source for these animals, but offers feeding opportunity similar to many lowland lakes in the Puget Trough. It is not, biologically, considered a “regular concentration,” per PHS criteria. An example of a regular concentration would be an area where annual spawned out salmon attract large numbers of migratory and resident eagles congregating to feed.
- 4) *Cavity nesting ducks* – Cavity nesting ducks, such as Barrows Golden Eye, Common Golden Eye, Bufflehead, Hooded Merganser, etc. are a PHS priority, but only their breeding areas are considered vulnerable. These species use the lake for migratory staging and breed elsewhere.
- 5) *Kingfisher* – Not considered a PHS species.
- 6) *Painted Turtle* – listed incorrectly as an endangered species in the Herrera report. Painted Turtle is not considered a PHS species.
- 7) *Cascade and Bull Frog* – Not considered a PHS species.

8) *Warm water fish* – None of the warm water fish listed in the report are considered a PHS species.

We are grateful the lake is available for wildlife use and the residents are committed to protecting water quality. If you or your neighbors find any species or habitat occurrences recommended for management by the WDFW PHS program, please contact myself or wildlife biologist, Chris Anderson. We want to ensure appropriate occurrences are mapped by WDFW.

For more information on our PHS program, please visit: <http://wdfw.wa.gov/hab/phslist.htm>.

Thank you,

Katie

Katie Knight : PHS/GMA/SMA Coordinator
Priority Habitats & Species | Growth Management | Shoreline Management
http://wdfw.wa.gov/habitat/gma_sma/
(360) 902-2618 | katie.knight@dfw.wa.gov

From: Robbie Howell [<mailto:robbieh@windermere.com>]
Sent: Monday, June 21, 2010 6:17 PM
To: Knight, Katie M (DFW)
Subject: Lake Burien Wildlife

Hi Katie,

Sorry I missed you today. Attached is a DATA ANALYSIS REPORT done by Rob Zisette of Herrera of Environmental Consultants, his Credentials, and a letter written by Sarah Spear Cooke, Ph. D. of Cooke Scientific, and her Expertise. Sarah's letter tells about her field investigation of Lake Burien.

I have recently taken pictures from my deck of **Species of Local Importance**, the Osprey, Great Blue Heron, Bald Eagles, Barrows Golden Eye, Common Golden Eye and Kingfisher. I have tried to photograph Purple Finches but they are too fast for me. I have also photographed the Ruddy Duck, Bufflehead, Merganser, Wigeons, Coots, Geese and Mallard Duck families and others and would like to share them and some additional information with you. Please let me know if it would be possible for me to give you a book I have put together with some of these pictures, maps etc.

Thank you for your consideration.

Robbie

Robbie Howell
Your Real Estate Consultant for Life
Windermere Real Estate/South Inc.

Cell~ 206 948 8227
Pager~ 206 244 5925 ext.154
FAX~ 206 241 6837
Web~ www.homesbyrobbie.com

Lisa Clausen

From: Peter Eglick [eglick@ekwlaw.com]
Date: Wednesday, June 23, 2010 3:57 PM
To: Joan McGilton; Rose Clark; Brian Bennett; Jack Block; Kathy Keene; Lucy Krakowiak; Gordon Shaw; Public Council Inbox
Cc: Scott Greenberg; David Johanson
Subject: The Lake Burien Shore Club, by its president Don Warren, has asked that we transmit to you the Club's attached comments and suggestions for
Attachments: SMP Draft - Lake Burien Shore Club - Redline Changes 062310.pdf
Importance: High

changes to the Draft SMP received from the Planning Commission. You will be relieved to know that the attachment is only four pages. It consists of a handful of suggested changes to the draft SMP that can be moved and adopted by Council. There are also very brief explanations of the proposed language. The Shore Club -- through Mr. Warren, other Club leaders, or me (Shore Club counsel) -- would be happy to discuss these with you.

Meanwhile, the Shore Club thanks the Council as a whole in advance for the time you will spend in reviewing these (and others') comments and for the time you have already spent on this matter.

Sincerely,

Peter Eglick



Peter J. Eglick

Eglick Kiker Whited
1000 Second Avenue, Suite 3130
Seattle, WA 98104
206.441.1069

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JFR:07/19/10

To: Burien City Council
Cc: Scott Greenberg, Community Development Director
David Johanson, Senior Planner and City Planner's Office

From: Don Warren,
President and Lake Steward, Lake Burien Shore Club
15702 13th Ave SW

Date: Wednesday, June 23, 2010

Re: **Lake Burien Shore Club Recommended Changes to Planning Commission SMP Draft**

Dear Councilmembers:

By now, you have no doubt discovered that the Burien SMP Amendments are a plague of riches in terms of detail and data. The Record of proceedings to date is by itself voluminous. The Burien Marine Homeowners Association (BMHA) has provided you with a guide to the issues in the form of a comprehensive "redline". It calls out, page by page and line by line, areas in the Draft SMP Amendments such as vegetative cover, nonconforming status, and setbacks that clearly need further consideration.

Therefore, the Shore Club won't add to the Council's workload by offering another line by line annotation of the Draft. Instead, because our core concerns are relatively discrete and specific to Lake Burien, we have suggested below tightly worded revisions to just a few relevant passages in the SMP Draft.

The highest concern is, of course, the degradation of the lake's existing fragile balance. The risk of degradation is through the introduction of physical public access. As explained in our May 14, 2010 letter to the Council, the Shore Club went to considerable expense to commission review of the impact of physical public access for Lake Burien by a wetlands ecologist, Dr. Sarah Cooke, and a well-respected limnologist, Rob Zisette of Herrera Environmental Consultants. Their detailed written analyses were submitted while the SMP was pending before the Planning Commission and are also in the Record for Council review.

These scientists' analyses make clear that physical public access to Lake Burien is ill-advised.

Consequently, the Shore Club's first proposed changes below directly address physical public access to the lake, which, again, is at the heart of our concerns. Following those suggested changes we have set out a limited number of additional suggestions for concise modifications concerning the Lake Burien Weir's misplaced inclusion in the Flood Hazard Reduction section (20.30.030) and the Shoreline Permit Matrix (20.30.001 Figure 4).

Each of the Shore Club's limited changes can be readily moved for adoption by Councilmembers as part of decision-making on the Draft SMP. For ease of reference, these proposed changes to particular SMP sections are shown in red typeface below. We have also underlined additions and shown strike-through ~~deletions~~ in case these comments are copied or scanned in black and white.

Physical Public Access – changes requested [shown in red typeface: also underline and strike-out]

20.20.015 Shoreline Public Access Element

Pol. PA 5: The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline. However, the City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

20.30.035 Public Access

2. Regulations g)

- g. Public access improvements shall not result in a net loss of shoreline ecological functions. The City will not seek physical public access for Lake Burien because it has been determined that Lake Burien cannot support the additional impact that physical public access would create.

20.30.085 Recreational Development

2. Regulations h)

- ~~h. — Should public access occur on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public access areas.~~

Clarifying notes: This section (20.30.085 ... 2..h ..) assumes the possibility of physical public access on Lake Burien and therefore, consistent with the noted changes immediately above (for 20.20.015 and 20.30.035), this item should be deleted in its entirety.

Adoption of each of the parallel changes shown above will, consistent with the Record, avoid the redundant public expense and private burden of rehashing the question of physical public access for Lake Burien.

Lake Burien Weir – Changes Requested [shown in red typeface: also underline and strike-out]

20.30.030 Flood Hazard Reduction

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

I. Policies

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

f: The Lake Burien Shore Club has for sixty years maintained the outlet weir at Lake Burien to provide a relatively constant lake level during the late fall, winter, and early spring months. The City will be supportive of the Club in carrying out that function, to minimize the potential for flooding.

Clarifying note: Section 20.30.030 as presently drafted, assumes in its introductory paragraph and then again in "1. Policies ... item f." that the weir at the outlet of Lake Burien is a flood control mechanism and/or poses some flood threat associated with its existence, maintenance, or failure. This assumption is incorrect: flooding is not and has never been the issue. Inclusion of reference to the weir in a "flood hazard" section is therefore mistaken. The history of the installation of the weir demonstrates this:

The weir was built after storm water management systems were constructed in the vicinity diverting inflows away from the lake in the 1950's. This resulted in the Lake having no outflow for more than a year. The weir was built as a result of efforts of the lake shore property owners to ameliorate that problem. Its function was and is to restore the ordinary high water mark existing prior to the storm drain system's construction. The weir assures the lake can retain some small portion of the larger seasonal rains from November thru March, such that there is an outflow for about six months each year. There is no outflow from the lake yearly from June through October. In sum, there is no evidence or historic record of flooding associated with the outflow from Lake Burien, neither prior nor subsequent to the construction of the weir. Flooding was not the basis for installation of the weir: in fact the weir was installed to ensure that the Lake would have adequate water despite the loss of flow due to storm water diversion.

Therefore, because the weir has no flood control function and no association with flood hazards, reference to the weir should be struck from the Flood Hazard Reduction section. If any mention of the weir is retained in the SMP, then the reference should be corrected and reworded to acknowledge that the weir has been and will be maintained by the Lake Burien Shore Club, which has done so for over half a century, for the purposes described above. Further, any such reference should be moved out of the flood hazard section, where it does not belong, and to an appropriate section.

Shoreline Permit Matrix – Section 20.30.001 Figure 4

The Shore Club requests the following modifications to the "Shoreline Permit Matrix" to ensure that incompatible uses are not introduced in the shoreline and that potentially problematic uses go through the Conditional Use permit ("CUP") process:

20.30.001 Figure 4 Shoreline Permit Matrix

Note: Only those table lines for which changes are requested are included in table excerpt below:

	Shoreline Residential	Aquatic	Urban Conservancy
Cell Towers Personal Wireless Facility	CU X	N/A	X
Government Facility	SDP X	X	SDP

Public Park and Recreation Facilities	SDP CU	X	SDP
Recreation	SDP CU	SDP CU	SDP
Transportation Facilities and Parking	SDP X	X	SDP

Clarifying Notes:

"Personal Wireless Service Facility" should not be permitted and should therefore show as an "X" in the Shoreline Residential column. The shoreline and residences within them are unique in that they are afforded special aesthetic and view protection under the Shoreline Management Act (SMA). Wireless facilities (such as cell towers) are incompatible with and in such a shoreline environment.

"Government Facility" should not be permitted and should therefore show as an "X" in the Shoreline Residential column. Except for shoreline facilities that qualify under other use provisions (e.g. public marina), location of generic government facilities in the shoreline is not an appropriate use under the SMA.

"Public Park and Recreation Facilities" should show as "CU" in the Shoreline Residential column. Such facilities should be subject to the assurance of compatibility that the conditional use process and standards provide.

"Recreation", as referred to in the table, is not clearly defined in the SMP draft. Assuming this refers to recreational facilities, this category potentially overlaps with other potential uses that are called out and defined. Therefore, this line of the matrix may either be removed, or depending on its purpose, modified to show as "CU" in both the Shoreline Residential and Aquatic columns. Recreational use facilities should be subject to the assurance of compatibility that the conditional use process and standards provide.

"Transportation Facilities and Parking" should be prohibited and should therefore show as an "X" in the Shoreline Residential column. Point sources of oily pollution associated with all transportation and parking facilities are not supportive of "no net loss of ecological function" particularly within an enclosed small lake shoreline environment.

Summary and Thanks

We appreciate that the Council has substantial work ahead of it. We hope that this letter will be a road map to assist the Council in identifying areas where specific, discrete changes, which we have called out, can be made. The Lake Burien Shore Club will be happy to assist the Council by providing further information on the whys and wherefores of these modifications.

Best regards and sincere thanks,

Don Warren
15702 13th Ave SW
Burien, WA 98166-2120
206-679-1550

President and Lake Steward, Lake Burien Shore Club
President, Burien Shorelines Defense Fund
Board of Governors, Ruth Dykeman Children's Center

RECEIVED

JUN 25 2010

CITY OF BURIEN

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

Re: Lake Burien Public Access

Dear Council members:

Lake Burien is a public resource that is currently restricted to the exclusive use of the shoreline property owners because there is no public access to the lake. Public access to the lake should be acquired as the opportunity arises. The SMP should encourage public access, if for no other reason than to be consistent with virtually every state and local guideline, according to the information given to those of us who were on the Citizen Advisory Committee. Since the City's financial resources are limited, it seemed to be obvious to state that priority should be given to the reaches that currently have no access. That common sense provision should be restored to the SMP, although it is somewhat academic since it is unlikely that multiple opportunities for public access acquisition will occur at the same time.

You received a letter from Peter Eglick, an attorney for the Lake Burien Shore Club. It refers to studies by Cooke and Zisette that offer some scientific information and the letter makes a number of statements that need to be addressed.

The Lake Burien Shore Club claims responsibility for the condition of the lake. There is no doubt that they encourage some good practices. However, they have no real authority and there is nothing to prevent someone on the lake from launching a jet ski, abusing the use of lawn chemicals, etc. The fact that they do not is because most people use common sense, whether they are a property owner or a park user. If the Lake Burien Shore Club is responsible for the condition of the lake, it is responsible for the introduction of species that were not originally in the lake. According to their own studies numerous species have been introduced, some benign and some noxious, some presumably accidentally and some deliberately. Unfortunately, this trend will probably continue, regardless of whether there is public access, since, for example, anyone in the greater neighborhood of the lake could wash invasive species off his boat and into a storm drain that leads to the lake. A park could be a public outreach opportunity to reduce this type of risk.

Neither of the studies defines what it means by public access. The closest they come is a reference in Zisette's report to a boat ramp study in Michigan. A boat ramp on Lake Burien would clearly have a negative impact, which is why, to my knowledge, it has never been suggested. Purchasing a piece of property and making it a picnic area with no change to the shoreline would have no ecological effect. It could even be a chance for an ecological enhancement. The "no net loss" argument is meaningless until we know what the design of the access would be. Without knowing what is proposed for an access site, requiring extensive studies to meet a "no net loss" requirement is senseless. Extensive studies should not be necessary simply for a policy that says we want public access. They should be necessary for a boat ramp.

As applied by the opponents of public access, the "no net loss" argument is a red herring. The property currently in question on Lake Burien is a part of the Ruth Dykman Children's Center. It has native rushes established along its entire shoreline. The upland is grass and trees. It could be a park as

CFTR: 07/19/10

it is. No change, no net loss. If it is not acquired as a park, it will be developed with three homes and 70% impermeable surface on the property, according to the current permit application. It is obvious that a public access site is much more likely to meet the "no net loss" goal than the planned option.

The Cooke study criticizes the lack of research in previous studies. It is debatable how much is needed for a policy statement. The Cooke study never defines what it means by public access. Based on some research, a tour of the lake and talks with residents, the report states that the water quality is good and the neighbors take care of the lake. Although the report chooses not to mention it in the summary, it does state that almost all of the native shoreline vegetation has been removed from virtually all of the residential lots. The report also states that the local dogs and cats don't bother birds and since the locals don't move their boats in and out of the area, there are "few to no opportunities for invasive weeds to be introduced...". Except, of course, the report previously noted that a number of invasive weed species have been introduced while the lake has been "private". The report concludes that since it is such a nice lake, the public should not be allowed access. It offers no evidence or even a hypothetical scenario that a picnic area or a hand launch site would be detrimental.

The Zissette study is quite extensive and educational concerning the lake ecology. There is no question that invasive species are a problem. Again, however, the report does not define what it means by public access, other than referring to a boat ramp study in Michigan. The Zissette report states that "Lake Burien presents several contraindications for adding public access...", but only actually gives two. One, the blue green algae, is in the lake now and is a health risk for any swimmer, whether he uses private or public property. It has nothing to do with the ecology of the lake and public access. Even with a public access, it is probable that most of the swimmers in the lake would be residents. So, with over twenty pages of scientific investigation, the sole contraindication to public access is introduction of invasive species. The report seems to recognize that the dominate mechanism is trailerable boats. In the conclusion it states that "it is now recognized that less intensive uses can result in the introduction of harmful species..". It gives no indication of what these activities might be or if they are even related to public access. Washing a contaminated boat and trailer anywhere in the watershed on a rainy day is certainly a possibility. By comparison, hand launching a boat is not as likely to be a problem, since there is virtually no chance that it is contaminated. Hand launched craft are typically stored dry for long periods of time between uses. The conclusion states "...any public access scenario for Lake Burien would entail significant risk...". This statement is not backed up by any of the facts in the report. Nowhere does the report show any risk, no matter how far fetched, for the type of access that would likely be used at Lake Burien.

Both of these reports were paid for by anti public access interests and were based on extensive communications with those interests. They try hard, but in fact they simply fail to support the desired conclusions. What they actually show is that even well paid professionals cannot show a scientific connection between most types of public access and a negative impact on the lake.

The Peter Eglick letter goes on to cite *Turtle v. Fitchett* stating that "the Washington Supreme Court upheld objections to public use on Lake Burien's shoreline, citing testimony of the King County Health Officer that the lake was too small to support it." This statement is misleading, at best. The court found that a proposed large commercial swimming beach (parking for 200 cars) would result in so many swimmers that it was a communicable disease health risk due to the lack of circulation in the lake. It had nothing to do with the idea of public access or the ecology of the lake.

The anti access interests seem to have the resources to buy considerable technical and legal support. The volume of their input can be overwhelming. However, with all their resources they still are not able to show that reasonable public access should not be supported. Clearly, it has to be done responsibly, but in the case of the likely site on Lake Burien, almost anything short of a boat ramp would be better for the lake than the proposed development that is the alternative.

The easiest way to kill a technical issue is with delay and confusion. There has been plenty of public input and nothing new is showing up now. I urge you to pass this SMP with a strong public access provision and to do it now.

Sincerely, 

Lee Moyer, SMP Advisory Committee member

To Planning Dept. - SMP File
RECEIVED

To-The Burien City Council

Re-Suggested Revisions to the March 2010 Shoreline Master Plan (SMP) Draft, - Citizen

Comments

June 28, 2010

JUL 02 2010
CITY OF BURIEN

This is a request that the list of items discussed here be amended, edited or corrected in the SMP Draft, March 2010 version. The items are documented by page and the requested changes are shown on each included page.

1. **Page 3. Add Appendix 8-C to the Table of Contents, Appendices.** This appendix is referenced in the document on page IV-6 and is to be used in coordination with the SMP.
2. **Page I-1. Add items 1-7 from the RCW 90.58** to this section.
3. **Page I-4. Correct Figure 2** to show the relationship between the Technical Documents and the SMP.
4. **Page II-3.** State that this refers to **publicly owned street ends and publicly owned tax titled properties.**
5. **Page II-4.** State that coordinated walking systems are to be developed on **publicly owned lands.**
6. **Page II-14. Pol. CON 27 b.** State that the **Adopted King County Comprehensive Plan, October 2008** will be used. This correction is in keeping with Current Science/Best Available Science.
7. **Page IV-1. In the Figure 4 Matrix:** **a. Wireless Facilities should be removed from the residential shoreline** or a discussion on what protections residents would have if these facilities were allowed. A presentation/discussion about this was promised at the Planning Commission level, but did not happen and was left in the chart. **b. Government Facility and Recreation Facility in the residential shoreline were never discussed at any level** but simply got put in the matrix of the March 2010 draft. They do not belong in the residential shoreline. **c. Schools do not belong in the residential shoreline.** There are currently none there.
8. **Page IV-6. Regulations. Keep these regulations** as these were added to correct areas not adequately addressed in the CAO. **Their addition brings the SMP in line with Current Science/Best Available Science.**
9. **Page IV-7. Flooding Hazard Reduction, 1.f. Remove this item** as Lake Burien has no flooding.
10. **Page IV-8-1. a.** Insert the terms **publicly owned** and add **protect private property and public health and safety** per the intent of WAC 173-26-221.

11. **Page IV-14. Figure 5.** A reference needs to be made to **Lake Burien, Appendix 8-C and how they will work together in the SMP.**

12. **Page IV-18. Bulkheads (1e).** Remove the terms **unnecessary** and **ineffective**. As long as the structures are not harmful, failing or not causing net loss to the environment, to work in the shoreline removing them is more damaging than just leaving them alone.

13. **Page IV-²⁵~~23~~. Recreational Development (2.h.).** Remove this portion completely. Research shows that hand-carried craft carry diseases and invasive species from shoreline to shoreline. Boat washes are not effective in preventing the hazards these craft introduce to clean lakes.

14. **Page IV-33. State that 2.c. does not belong in the residential shoreline.**

15. **Definitions Section.** There were revisions made to this section in the SMP March 2010 Draft. **That revision date should ^{be on} all of the pages in this section-3/30/10.**

Additionally, there are corrections that need to be made to the Technical Documents that were prepared by city's consultants. This is something that the City Staff should attend to. The corrections drafted by this citizen/writer will be forwarded to them for their consideration in a separate document.

Thank you for taking the time to read, review and consider these items for change to the DRAFT SMP.

Sincerely,
Chestine Edgar

APPENDICES

- Appendix 1: City of Burien Shoreline Inventory
- Appendix 2: City of Burien Shoreline Analysis and Characterization
- Appendix 3: City of Burien Shoreline Restoration Plan
- Appendix 4: City of Burien Shoreline Cumulative Impacts Analysis

Appendix 8-C -

(This was to be added per agreement with the Dept. of Ecology and the City Planning Staff - discussed at Planning Commission Meeting and noted on page IV-6(27b) of the draft SMP.

2

20.10.001 Overview of State Shoreline Management Act

The State of Washington's Shoreline Management Act (RCW 90.58) was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The following is an excerpt from the Shoreline Management Act stating Washington State's policy regarding shorelines.

RCW 90.58.020 - The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The goal of the Shoreline Management Act (SMA) is to "prevent the inherent harm in uncoordinated and piecemeal development of the state's shorelines." It establishes statewide policy to provide for management of the shorelines by planning for and fostering all reasonable and appropriate uses in an environmentally responsible manner. The state conceived the concept of preferred uses in an effort to protect shoreline functions and values and foster reasonable use and economic development of shoreline areas. Towards this end, the SMA establishes a broad policy directive giving

Include
list of 7
here.
See
attached
RCW
90.58.02
→

RCW 90.58.020

Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The ^{state} legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Notes:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

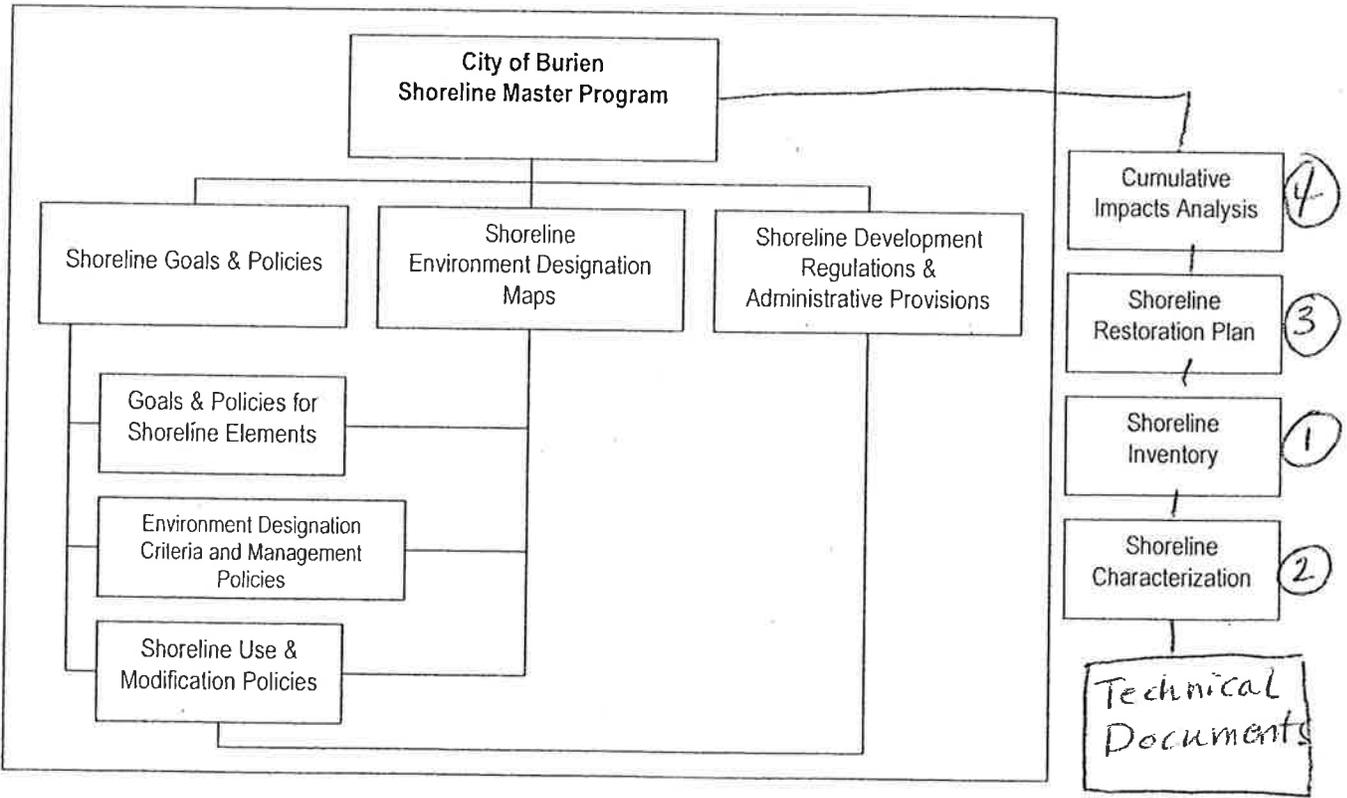
#3

well as any associated wetlands (RCW 90.5 8.030). All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Shoreline Master Program.

20.10.010 Components of Burien Shoreline Master Program

The City of Burien Shoreline Master Program was originally adopted at the time of the City's incorporation in 1993. Under new shoreline master program guidelines adopted by Ecology in 2004, cities within King County are required to update their local shoreline master programs.

Figure 2: Structure of City of Burien Shoreline Master Program



Label and put these documents in the order they were developed. Attach them to the SMP

Pol. PA 4 Public access should be provided as close as possible to the water's edge with no net loss of shoreline ecological function without adversely affecting a sensitive environment and should be designed for handicapped and physically impaired persons.

Pol. PA 5 The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline. ~~Highest priority should be placed on reaches without existing public access. Mechanisms to obtain access to the shoreline include:~~

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

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

Pol. PA 7 ^{publicly owned} Waterfront street ends should be recognized as:

- a. An important community resource that provides visual and physical access to the Puget Sound;
- b. Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods;
- c. A destination resource, where limited facilities and enhancements are provided.

Pol. PA 8 The City should manage and develop ^{publicly owned} waterfront street ends by:

- a. Supporting their use by residents city-wide, yet ensuring that the street ends and their supporting facilities are developed at a level or capacity which are appropriate to the neighborhood character, promotes safety, protects private property rights and individual privacy, and is consistent with City risk management practices;
- b. Ensuring that public parking is available and limited to a level appropriate to the capacity of the public access site, and ~~that any new parking that is developed would be~~ harmonious with the surrounding neighborhood;
- c. Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area; ~~limits and~~
- d. Installing signs that indicate the public's right of access, the rules of use, and penalties for misuse and encourage appropriate use;
- e. Installing limited trail improvements and enhancements to allow access to the water;
- f. Protecting adjacent private property including but not limited to protecting individual privacy and ensuring public safety ~~Minimizing the potential impacts associated with their use on adjacent private property;~~ and

publicly owned

g. Developing a street ends plan that promotes waterfront access and public safety.

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

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

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

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

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

on publicly owned lands

publicly owned

20.20.020 Recreation Element

Goal REC

Develop a well-maintained, interconnected system of multi-functional parks, recreation facilities, and open spaces that: is attractive, safe, and accessible for all geographic regions and population segments within the City; supports the community's well-established neighborhoods and small town atmosphere; protects private property rights and results in and does not adversely impact no net loss of shoreline ecological functions and processes.

Pol. REC 1 Recreation facilities in the shoreline area should be restricted to those dependent upon a shoreline location, or those benefiting from a shoreline or in-water location that are in the public interest.

Pol. REC 2 Recreational developments should be located, designed and operated to be compatible with, and minimize adverse impacts on, environmental quality and valuable natural features as well as on adjacent surrounding land and water uses. Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and result in no net loss of ecological functions. ~~which leave natural areas undisturbed and protected.~~

Pol. REC 3 Public information and education programs should be developed and implemented to help ensure that the public is aware of park regulations

#6

- Pol. CON 24 Enhance riparian vegetation to improve shoreline ecological functions and processes where possible.
- Pol. CON 25 The City should maintain and enhance existing species and habitat diversity including fish and wildlife habitat that supports the greatest diversity of native species.
- Pol. CON 26 All development activities shall be located, designed, constructed and managed to avoid disturbance of adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
- Pol. CON 27 Fish and wildlife habitat should be protected, conserved and enhanced, including:
 - a. Habitats for species which have been identified as endangered, threatened, or sensitive by the state or federal government;
 - b. Priority species and habitats listed in the Adopted King County Comprehensive Plan, ~~November 1994~~ *October 2008*;
 - c. Shellfish areas;
 - d. Kelp and eel-grass beds;
 - e. Herring and smelt spawning areas; and
 - f. Wildlife habitat networks designated by the City.
- Pol. CON 28 Fish and wildlife should be maintained through conservation and enhancement of terrestrial, air and aquatic habitats.
- Pol. CON 29 The City should ensure that habitat networks throughout the City are designated and mapped. The network should be of sufficient width to protect habitat and dispersal zones for small mammals, amphibians, reptiles, and birds. These networks should be protected through incentives, regulation and other appropriate mechanisms. Site planning should be coordinated during development review to ensure that connections are made or maintained amongst segments of the network.
- Pol. CON 30 Native plant communities and wildlife habitats shall be integrated with other land uses where possible. Development shall protect wildlife habitat through site design and landscaping. Landscaping, screening, or vegetated buffers required during development review shall retain, salvage and/or reestablish native vegetation whenever feasible. Development within or adjacent to wildlife habitat networks shall incorporate design techniques that protect and enhance wildlife habitat values.
- Pol. CON 31 In order to minimize adverse impacts related to noise, unless prohibited by federal or state law, fish and wildlife habitat conservation areas within the City should be protected from exterior noise levels which exceed 55 dBA Ldn.

General Provisions

20.30.001 Figure 4 Shoreline Permit Matrix

#7 Not adequately explained at the Planning Commission to provide protection to residents

Type of Shoreline Permit Required for Shoreline Uses and Modifications*

	Shoreline Residential	Aquatic	Urban Conservancy
Aquaculture	X	CU ¹	X
Boat Mooring Buoy	N/A	CUP ³	N/A
Boat Ramp	X	X	X
Boat House (covered moorage)	X	X	X
Breakwater & other in-water structures	N/A	X	N/A
Bulkheads	CU	CU	CU
Cell towers/Personal Wireless Service Facility	X CU ?	N/A	X
Community Beach	CU	CU	X
Community residential facility RDCC	CU	X	X
Docks, Piers and Floats	CU	CU	CU
Dredging	N/A	X	N/A
Fill ²	X	X	X
Floating home	N/A	X	N/A
Flood protection	SDP	SDP	SDP
Forestry (clearing)	CU	N/A	CU
Grading	CU	N/A	CU
Government facility	X SDP	X	SDP
Habitat Enhancement or Restoration	SDP	SDP	SDP
Industrial & Ports	X	X	X
Jetty	X	X	X
Mining	X	X	X
Office	X	X	X
Public park and recreation facilities	X SDP	X	SDP
Recreation	SDP	SDP	SDP
Residential - Single family**	SDP	N/A	SDP
Residential - Multi family	SDP	N/A	CU
Retail	X	X	X
Schools - Schools	X CU	N/A	CU
Transportation Facilities & Parking	SDP	X	SDP
Utilities	SDP	CU	SDP

Not discuss at Plan Comm
Not discuss at Plan Comm

SDP Shoreline substantial development permit

CU Shoreline conditional use permit

X Prohibited

N/A Not applicable

1 Prohibited in critical saltwater habitats and Lake Burien

2 Allowed if necessary to construct a permitted use

3 Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with BMC 20.30.090

* Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit.

** Exempt from shoreline substantial development permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-27-040(g), as amended.

Not needed as RDCC is not a school but a comm. residential facility

Government and Recreation Facilities were never discussed as being allowed in the residential shoreline

They are not appropriate for these areas.

Nov 2009 Draft
 from the Shoreline Advisory
 Committee

General Provisions

20.30.001 Figure 4 Shoreline Permit Matrix

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

SDP Shoreline substantial development permit

CU Shoreline conditional use permit

X Prohibited

N/A Not applicable

1 Prohibited in critical saltwater habitats and Lake Burien

2 Allowed if necessary to construct a permitted use

* Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit.

** Exempt from shoreline substantial development permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-27-040(g), as amended.

This important part of this section is completely retained in the Burien Critical Areas Ordinance which not contain the best available science / present science for rating or protecting Lake Burien and small wetlands. This was added with advice from the DOE.

2. Regulations

#8

- a. BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the following exceptions:
 - i. ~~of~~ The reasonable use provisions contained in BMC 19.40.070 (4) do not apply.
 - ii. The following types of wetlands are regulated by the SMP:
 - (a). Small wetlands less than 1,000 square feet and hydrologically isolated;
 - (b). Man-made ponds smaller than one acre and excavated from uplands without a surface water connection to streams, lakes, or other wetlands.
- b. Wetland delineation. Wetlands are those areas in the City of Burien, designated in accordance with the Washington State Wetland Identification and Delineation Manual, as required by RCW 36.70A.175 (Ecology Publication #96-94).
- c. Wetland rating system. Wetlands for the purposes of the SMP shall be categorized in accordance with the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication #04-06-025).
- d. Wetland buffers. Wetland buffers for the purposes of this SMP shall be determined based upon Appendix 8-C of “Wetlands in Washington State Volume 2: Guidance for Protecting and Managing Wetlands FINAL April 2005 Ecology Publication #05-06-0088” based on information provided as part of a critical area study.
- e. Development proposals shall adhere to the applicable submittal requirements (a critical area report specific to the critical area) as specified in the Critical Areas Ordinance.
- f. Development shall not intrude into, over, or within 10 feet from *critical saltwater habitats* (e.g., eelgrass) except when an alternative alignment or location is not *feasible* and the development would result in no net loss of *critical saltwater habitat*.
- g. When this Master Program requires mitigation, the mitigation sequence described in section BMC 20.30.010 shall be followed.

20.30.030 Flood Hazard Reduction

The following provisions apply to actions taken to reduce flood damage or hazard, as well as to uses, development and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, biotechnical measures, and storm water

management. Flood hazard reduction measures may also include structural measures such as the weir at Lake Burien, floodwalls, dikes and elevation of structures consistent with the National Flood Insurance Program.

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1. Policies

- a. All new shoreline development and uses shall be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures for the life of the development.
- b. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.
- c. New and expanded public flood protection measures may be permitted subject to City of Burien review and approval of a critical area study and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
- d. New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.
- e. When emergency repair of flood protection structures are necessary, permits for the work including mitigation, should be obtained upon abatement of the emergency or the structure must be removed.

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

Remove -
Lake Burien
has no
flooding

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

2. Regulations

- a. Non-structural flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a non-structural solution is not feasible and there would be no net loss of shoreline ecological functions.
- b. All flood protection measures, including repair and maintenance, shall conform to standards set forth in approved floodplain management plans, when available.
- c. Flood protection shall not have adverse impacts on the property of others.
- d. Flood control methods must be consistent with BMC 15.55-Flood Damage Prevention and BMC 19.40-Critical Areas.

WAC 173-26-221, page 10, (4)Public access (b) (i) Principles states-Local master programs shall: Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

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

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20.30.035 Public Access

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

1. Policies

- a. Public access to ^{publicly owned} shoreline areas should be designed to ^{protect private property} provide for public safety and to minimize potential impacts to private property and individual privacy. ~~and public health and safety~~ and
- b. Public access should be provided as close as possible to the water's edge with no net loss of shoreline ecological function without adversely affecting a critical area such as a wetland.
- c. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction.

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

2. Regulations

- a. Public access provided by ^{publicly owned} shoreline street ends, rights-of-way, and other public lands shall provide, maintain, enhance and preserve visual access to the water and shoreline in accordance with RCW 35.79.035.
- b. Visual access to outstanding scenic areas shall be provided with the provision of roadway design features that allow for visual access opportunities and are sensitive to adjacent land uses and neighborhood characteristics. ~~roadside pullovers or broadening of road shoulders.~~
- c. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.
- d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses, individual single family residences and subdivisions of less than ~~four~~ five parcels.

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from the ordinary high water mark or from the landward face of a bulkhead or other shoreline stabilization structure if one is present. For measurement methods, refer to BMC 19.17.

Figure 5 Dimensional Standards for ^{New} Shoreline Development

SHORELINE ENVIRONMENT DESIGNATION

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

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

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

A reference needs to be made here to Appendix 8-C and how it works with this Figure

20.30.055 Shoreline Buffers

Regulations:

1. A fifty foot riparian buffer for the marine shoreline (thirty feet for Lake Burien) shall be established from the ordinary high water mark for all lots. The riparian buffer is measured landward from a perpendicular line from the edge of the OHWM.
2. Docks are allowed within the buffer as provided herein. Structures and development such as viewing platforms, boardwalks, benches, and trails are allowed when associated with public access.
3. Whenever the Shoreline Administrator determines that monitoring has established a significant adverse deviation from predicted impacts, or that mitigation or

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- c. Burien should take active measures to preserve natural unaltered shorelines, and prevent the proliferation of bulkheads and other forms of shoreline armoring.
- d. Non-structural stabilization measures including relocating structures, increasing buffers, enhancing vegetation, managing drainage and runoff and other measures are preferred over structural shoreline armoring.
- e. Where feasible, any failing, harmful, ~~unnecessary~~, or ~~ineffective~~ structural shoreline armoring should be removed, and shoreline ecological functions and processes should be restored using non-structural methods.

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

2. Regulations

- a. Non-structural shoreline stabilization or flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a non-structural solution is not *feasible* and there would be no net loss of shoreline ecological functions.
- b. Construction of bulkheads, gabions, revetments, retaining walls and bluff walls, are only permitted when non structural methods (e.g., building setbacks, biotechnical vegetation measures, anchor trees, upland drainage control, and beach enhancement) are not feasible to protect a residence or other *primary structure* or essential public facility.
- c. New structural stabilization measures shall not be allowed except when the necessity to protect existing *primary structures* is demonstrated in the following manner:
 - i. New or enlarged structural shoreline stabilization measures for an existing *primary structure*, including residences and roads, shall not be allowed unless a geotechnical analysis, accepted by the City of Burien Shoreline Administrator, indicates that the structure is in imminent danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.
 - ii. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
- d. An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

1. Policies

- a. Allow a variety of active and passive recreation opportunities in the shoreline areas.
- b. Encourage provision of view points, rest areas and picnic facilities in public shoreline areas.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 4-7, 15.)

2. Regulations

- a. Commercial recreational development or use in Seahurst Park shall be consistent with the provisions of this section.
- b. Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.
- c. Recreation areas shall promote public health, safety and security and not materially interfere with the normal public use of the water and shorelines.
- d. Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.
- e. Recreation facilities shall provide signage that prohibits tree cutting and collecting of marine life, driftwood and other natural materials.
- f. Jet skis and water craft with combustion engines are prohibited on Lake Burien.
- g. No person shall moor, anchor or dock a boat or other object overnight on or within 50 feet of the ordinary high water mark at any city beachfront park without authorization from the City of Burien Parks Department.

~~h. Should public access occur on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public access areas.~~ ^{remove completely} Research shows these hand carried craft carry diseases + invasive species - even with boat washing facilities. They are a hazard to clean lakes

20.30.090 Recreational Mooring Buoys

A recreational mooring buoy is a device used to tie up a boat and typically consists of a line from the boat attached to a float at the water's surface with a cable or line fixed underwater to the submerged ground. The anchor line allows the boat to float and swing around the fixed buoy anchor.

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from the ordinary high water mark out to a minimum water depth of minus ten feet (-10') below mean lower low water.

- d. Directional boring, instead of excavation or trenching is required where *feasible*.
- e. New transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where *feasible* and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- f. New or altered aerial utility lines and vertical utility facilities shall make maximum use of topography to minimize visual impact on the surrounding area.
- g. Communication and radio towers shall not obstruct or destroy scenic views of the water. This may be accomplished by design, orientation and location of the tower, height, camouflage of the tower, or other features consistent with utility technology.
- h. Culverts shall be located and installed in accordance with City of Burien standards and specifications.
- i. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- j. Except for water lines, all underwater pipelines transporting substances hazardous to aquatic life or water quality are prohibited unless no other practical alternative exists. Such facilities shall include an automatic shut off valve on both shorelines and maintenance procedures are established.
- k. Expansion or repair of existing, underground utilities within shoreline jurisdiction shall include reclamation of areas disturbed during construction including, where *feasible*, replanting and maintenance care until the newly planted vegetation is established.

These do not belong in the residential shoreline - They are not a water dependent use in these areas