

BURIEN MARINE HOMEOWNERS ASSOCIATION

A non profit corporation

P O Box 300

Seahurst, WA 98062

April 5, 2010

Mayor and City Council

City of Burien

400 SW 152nd Street

Burien, WA 98166

Re: Draft shoreline master program

Greetings to the Mayor and Council members:

Our members are homeowners on the city's marine shoreline. On your agenda this evening is the adoption of the process for your analysis and adoption of amendments to the city's shoreline master program. We offer these suggestions for your process.

Involve your counsel. This is an important piece of legislation that requires clarity. Clarity is independent of substance. The draft you have received from the planning commission is not well written. We ask that your counsel have the lead in drafting this document. This level of involvement must be much more than a superficial review.

Non-conforming structures. Under the current draft 181 marine shoreline residences will become non-conforming structures. The planning commission has recommended this draft to you without sufficient analysis and consideration of existing residential shoreline development or the consequences of creating this non-conformity. There has been no analysis of what this will do to our property values or to the city's tax revenues. The Council needs to take a hard look at these consequences.

Regulation vs. taking. From the very beginning of land use regulation there has been a tension between allowable regulation and a constitutional taking that requires compensation. The Council needs to take a hard look at the regulatory takings issue. The DOE regulations for the implementation of the Shoreline Management Act recognize this tension and reference a memorandum prepared by the state's attorney general. This thoughtful memorandum is entitled "Recommended Process for Evaluation of

CFTR:04/12/10

Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.” This memorandum is available on the city’s web site as part of the SMP materials.

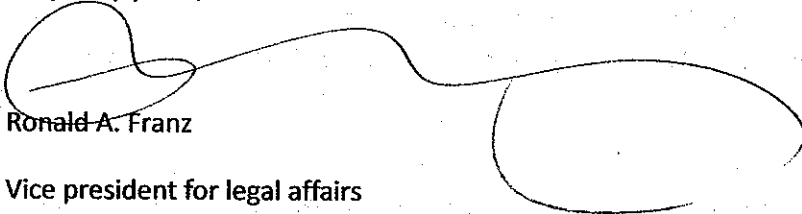
EHB 1653. This bill was signed on March 18, 2010 and became effective on the same date. With this law the legislature has revised the Growth Management Act and the Shoreline Management Act to clarify the standard to be applied by Burien when adopting regulations that protect critical areas within the regulated shoreline. The current draft SMP needs to be revised to meet the requirements of this new law. For example those portions of the planning commission draft that incorporate GMA critical area regulations by reference will need to be revised or eliminated. Your counsel can help with this. Furthermore the law reinforces the legislature’s intent to avoid creation of non-conforming structures during the shoreline master program update process.

BMHA redline. Our group prepared a redline version—one containing strikeouts and deletions—of the city’s SMP draft for the planning commission. Our redline is no longer up to date because the planning commission amended the SMP before passing it along to you. In the next week or so we will have an updated redline based upon the draft now before you.

BMHA presentation. Our group has or will hire technical and financial experts to help us present our issues. The technical experts will address the “no net loss of ecological function” SMA requirement and the financial experts will address the financial impacts to our properties and loss of tax revenues. Should you wish, we will have our experts make a presentation for you. We could do such a presentation as part of an official meeting or as a workshop.

Those of us who live on the water realize that we are blessed and with that the blessing comes the responsibility of stewardship. We want to do our part to reduce the impact of urbanization on Puget Sound. We can help the city make its SMP better for everyone.

Very truly yours,



Ronald A. Franz

Vice president for legal affairs

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