

Lisa Clausen

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

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


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

Burien City Council Clerk,

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

Jessica Roper
Legal Assitant

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CFTR: 08/02/10

July 28, 2010

VIA EMAIL and U.S. MAIL

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

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

Honorable Councilmembers:

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

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

1. Adopt 20 foot Shoreline Buffer.

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

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

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

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

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

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

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

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

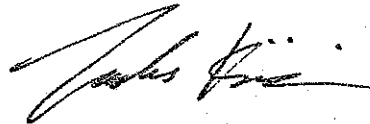
Staff has suggested several positive changes to the shoreline vegetation conservation standards, including an amendment to eliminate an onerous condition that purported to require revegetation of 75% of the vegetation conservation buffer. Nevertheless, more revisions are necessary for consistency with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

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

We appreciate this opportunity to provide public comment.

Very truly yours,

GORDONDERR LLP

A handwritten signature in black ink, appearing to read "Tadas Kisielius", written in a cursive style.

Tadas Kisielius