

To : City Council, City of Burien
City Manager, Mike Martin
Community Development Director, Scott Greenberg
Sr. Planner, David Johanson
Monica Lusk for inclusion in public record

From : Don Warren, Lake Burien Shore Club, President and Lake Steward

Date : Monday, August 02, 2010

Re : Requested changes to the Burien Shoreline Master Program, Staff version 14 July 2010

I have a number of important points and requested changes to share with you this evening, so I have handed to each of you and to staff printed copies of this briefing.

- 1) **Regarding 20.30.030 [1.f] – Flood Hazard Reduction, Policies, The weir at outlet from Lake Burien** – As noted in previous meetings there is no history of flooding associated with Lake Burien or the outlet from the lake in more than 100 years. The weir assures the Lake, which has no outflow for about 6 months of each year, can be maintained near the ordinary high water mark a little longer than without the weir after the inflow is reduced in mid-spring. The Lake Burien Shore Club has maintained the weir in its own self interests since the weir was built, about 60 years ago. Any responsibility and liability for its maintenance falls to the Lake Burien Shore Club. The Shore Club thanks you in advance for removing the references to the weir from the SMP, as advised by staff in the changes Matrix, item # 6 in tonight's packet. We want to clarify that both [1.f] AND the erroneous reference to the weir as flood control structure in the introductory paragraph of 20.30.030 should be removed.
- 2) **Regarding 20.30.075 [2.g] – Over Water Structures (OWS :: Docks, Piers, and Floats), Limit one for each Single Family Detached Residential lot** – In the final Planning Commission meetings in March of 2010, The Planning Commission recognized that the Marine and Lake environments differ substantially in that no salmonids exist in Lake Burien. They advised that Lake Burien Private Property owners should be able to build whatever would be allowed by Dept of Fish and Wildlife and Army Corps of Engineers. References by staff to Lake Burien residents commenting on visual impairment and navigation issues are unfounded. In recent discussions with all of the Shore Club members recently, no one recalls any comment of the kind ever being made. **[2.g] can be modified as requested by the City Council as requested in Change Matrix item 17. "On Lake Burien, each single family lot may have one dock or pier, and one float.** (note that barges are boats/vessels and not considered as floats. If need be for clarity, the council can suggest a definition be added or that the definition of float be modified to distinguish that barges are vessels and not floats)
- 3) **The Shoreline Permit Matrix – 20.30.001 – Figure 4 –**
 - a. **Docks, Piers, and floats (Over Water Structures (OWS))– suggested change to "SDP" (Substantial Development) with footnote to show that Lake Burien OWS's need to adhere only to the guides of Dept of Fish and Wildlife and Army Corps of Engineers as**

advised by Planning Commission, and thus neither the SDP nor the CU apply to Lake Burien over water structures. The item presently shows Conditional Use (CU) Permit required which triggers a requirement for a Dept of Ecology review. I have attached to this document an email exchange between Kathi Skarbo of Lake Burien, Dave Douglas of Integrity Shoreline Permitting, and Sr. Planner David Johanson. It notes that the CU Permit requirement, should it stand in Burien's SMP would not only be outrageously unique from all other municipalities, but it would as well obviate the Planning Commission's advice and also cause an undue burden on the home owner and the Dept of Ecology. Please make the requested changes per Planning commission advice and commitment.

- b. Government Facilities – in column “Shoreline Residential” – shows as Substantial Development Permit (SDP) – **Please change to Conditional Use (CU) Permit.** David Johanson told me this row was entered into the matrix to handle the facilities in Seahurst Park, which is in the Urban Conservancy column NOT the Shoreline Residential column. Government Facilities are expected to include a higher point use and ecological impact than a single family residential use. Therefore, due diligence requires an environmental review by Dept of Ecology for this sort of use. **I leave it to the council to change the “SDP” reference to either “CU” (Conditional Use Permit) or “X” (Prohibited) in the Shoreline Residential column.**
- c. Residential Multi-Family – in column Shoreline Residential – Shows as SDP (Substantial Development) should be CU (Conditional Use) permit. Shore Residential for both Marine and Lake Burien is zoned for single family at this time. There is no reason that the SMP should be out of sync with the Zoning in the Comprehensive Plan. Therefore, this type of development should be “X” (prohibited) instead of SDP.
- d. Community Residential Facility – a footnote could be added referring to Ruth Dykeman Children's Center as an existing facility. And could note that existing facilities require only a SDP (Substantial Development Permit). RDCC, having been there for 80 years, has been and can be expected to be an ongoing good steward of the ecological function of the lake and shoreline. No development is presently possible water-ward of the existing buildings.
- e. Transportation Facilities and Parking – in Shoreline Residential column – Shows “SDP” (Substantial Development Permit) where it should be either “CU” (Conditional Use) or “X” (Prohibited) - **Due to the expected lack of compatibility to ecological function that a parking/transportation facility would assure by drawing a dramatic increase in point sources of oily pollution and human access, this type of development should not be encouraged (“X” prohibited) or it should be assured in its design to achieve no net loss of ecological function by requiring a “CU” permit, which would have to be reviewed and approved by Dept of Ecology.**
- f. Public Parks and Recreation Facilities – Shows “SDP” (Substantial Development Permit) where it should be either “CU” (Conditional Use) or “X” (Prohibited). Public Parks and Recreation Facilities under review for development would have a high likelihood of promoting a net loss of ecological function. **Therefore, this particular use should be**

changed from “SDP” to either “X” (prohibited) or “CU” (Conditional Use, which requires Dept of Ecology review and approval), in order to require proper due diligence towards best assuring no net loss of ecological function of the shoreline and associated waters.

- 4) **20.30.085 [2.h] – Recreational Development, Regulations** – Staff has provided suggested language in the Changes Matrix in packet for tonight. See item #18. Staff’s suggestion for language is pretty good and would best be stated as “Should physical public access occur on Lake Burien, No watercraft access is allowed through that public access point”. Some boats that have been in other lakes in the area will have fragments of milfoil, elodea, or other invasive submerged plant species. The introduction to the lake of any of these will cause a net loss of ecological function of the waters of the lake as noted in Lake Burien Shore Clubs scientific reports from Herrera and also from Cooke. These sorts of invasions are not possible to mitigate but through prohibition of and constant proactive prevention of entry into the lake.
- 5) **Changes Matrix – Item 20 , Inventory and Appendices** – To include the Burien Marine Homeowners Association baseline analyses and Lake Burien Shore Club’s scientific reports in the appendices to the Burien SMP. – Although staff is correct in noting the items have been submitted in the public record, including these items in the appendices to the SMP is a stronger show of support for an accurate baseline and inventory. Any future development considerations would be much better informed were they to use these documents. Failing to include them in the SMP appendices assures the permitting process need not consider them as baseline conditions for subsequent adjudication of “no net loss”. We strongly urge and request that you include these honest and factual references in the appendices of the SMP.
- 6) **Physical Public Access to Lake Burien will result, with the highest likelihood, in the net loss of ecological function of the shoreline and the associated waters. Please make the changes requested in our Lake Burien Shore club red line request of June 2010 (see excerpt below) for the following reasons..** Physical Public Access cannot be properly monitored. The police department of Burien already acknowledges it cannot be everywhere at once and controlling parks and their uses will never be a top priority when simultaneous, situational needs conflict. Therefore, physical public access WILL result in someone bringing a boat to the lake regardless a prohibition in the regulations. A law without enforcement is as good as no law at all. If boats are brought to the lake, sooner or later, one of them will carry a fragment of a fast growing and over competitive submerged plant species such as milfoil. At the likely occurrence of that event it would take about two years for 60% of the lake to become infested with the invasive plant. (submerged plant growth occurs in up to 12 feet of water on average. More than 60% of the lake is less than 12 feet in depth.) Our scientific reports show this would lead to a chemical change in the lake promoting a large spike in blue-green algae populations. This produces a toxic result to lake and people. The “no net loss” requirement of the Washington State Shoreline Management Act requires mitigation according to a hierarchy with the first step being to not perform the development, in this case a physical public access point. **Bob Fritzen repeatedly answered “NO” when asked if the City must provide physical access to ever reach of every shoreline of the state.** He said “NO” in the Shoreline Advisory Committee meetings multiple times. He said “NO” in the Planning Commission meetings multiple times. He said “NO” in the

forums with the city council in recent months. **It is your responsibility to assure not net loss by promoting a Draft SMP to Dept of Ecology that protects Lake Burien in the only way you can; please prohibit Physical Public Access specifically in the SMP as advised and requested below..**

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.

Don Warren

From: Kathi Skarbo [kskarbo@comcast.net]
Sent: Monday, August 02, 2010 2:19 PM
To: Chestine Edgar; Robbie & Robert Howell; Cyndi & John Upthegrove; Don Warren; Sandy Lievero; Tanya Engeset; Linda Plein; Greg & Paula Anderson
Subject: Comments from Dave to DJ

Following is a message from Dave Douglas to David Johanson. There are a few good points if anyone wants to speak to this issue tonight.

Kathi

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

From: Dave Douglas [mailto:integritypermitting@hotmail.com]
Sent: Monday, August 02, 2010 12:10 PM
To: David Johansen
Cc: Barbara Trenary; Kathi Skarbo; Andy Ryan
Subject: RE: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Thanks.

First off, I am in disbelief based on my experience over the past few years with the SMP Update process. Are there plans to change this back to the appropriate permit classification so it aligns with all other local government SMPs or does the City of Burien plan to totally abandon its responsibility for managing its own shorelines and turn review, approval and all control for the permitting of all such structures over to the state?

I'm not one to question how Burien conducts business on behalf of its citizens but as a resident of the state and someone extremely familiar with the shoreline permitting process can you explain the City's thinking on this and the position of the Planning and Land Use Department? There is no other Land Use and Planning Department in the area, maybe even the entire state, that would turn over the shoreline management and fate of their residents to the state except in the already accepted situations for variances and the most unusual of projects. Conditional uses, just like variances are an exception not the norm. Ecology has also stated their goal through the SMP Updates is not to take on more work through the review of additional project. Docks, piers and floats are routine water-dependent accessory structures and should not require Conditional Use permits. This process takes longer and is more expensive and at a time when the state is cutting staff to cover budget shortfalls it cannot be good for your property owners or the state. State and federal permits are totally covered by tax dollars so this means more work with no additional revenue. What is the state's position on this approach by the City?

Section 20.30.705 outlines some minimal requirements for Over-Water Structures. Why include this section in the City's SMP if review and approval is required by Ecology under the Conditional Use process? Did the City just need to put something in writing that would pass the state SMP Update litmus test? WA Department of Ecology essentially has no design parameters for these structures so they depend and require local governments to assign standards. How is the City meeting this responsibility?

What has been the reaction of property owners, homeowner groups and any their legal counsel? Has this been a point of discussion or simply passed by because people don't understand what this means in terms of restrictions, process and cost?

I am quite puzzled by this approach and hope you can provide some answers to all the questions above. I appreciate your time, energy and expertise.

Sincerely,

Dave Douglas
Permit Manager/Shoreline Consultant
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"Putting the Property Owner First"

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From: DAVIDJ@burienwa.gov
To: integritypermitting@hotmail.com
Date: Mon, 2 Aug 2010 11:02:53 -0700
Subject: RE: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Mr. Douglas

Thank you for your e-mail. We should have pulled out the document while you were here, I believe I was recalling a change that was made regarding bulkheads (See page IV-1, Figure 4). The draft dated July 14th does show dock, piers and floats as a conditional use permit.

David Johanson, AICP
City of Burien, Senior Planner
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Burien, WA 98166

Phone: (206) 248-5522

From: Dave Douglas [<mailto:integritypermitting@hotmail.com>]
Sent: Monday, August 02, 2010 9:47 AM
To: David Johanson
Cc: Barbara Trenary; Kathi Skarbo; Andy Ryan
Subject: CONDITIONAL USE FOR DOSCK, PIERS AND FLOATS

Hi David,

Thanks for meeting with me to discuss the Kathi Skarbo project on Friday.

During our discussion I asked you why a Single Family Residential (Shoreline Residential) Dock, Pier and Float required a Conditional Use Permit. You said I must have seen an old draft and it was changed to a Substantial Development Permit. I checked the July 14, 2010 City Council Draft over the weekend and those structures are indeed listed as Conditional Use on the Shoreline Permit Matrix on page IV-1. Can you confirm that a change was made at a recent meeting and is not yet reflected on the city website and will show up in the next draft?

If Burien does require a single family dock, pier or float to go through the Conditional Use process for a structure that is considered a water-dependent accessory use to a preferred shoreline use (single family residence) it will be the only City in the Puget Sound Area taking such action against its waterfront property owners. I would question the strength of this position since I don't believe the WAC, RCW or SMA would support it.

If I am reading the matrix in error or if a recent change was made I will gladly accept correction and direction. Please respond to this e-mail as soon as possible. Thanks.

Sincerely,

Dave Douglas
Permit Manager/Shoreline Consultant

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