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CITY OF BURIEN

August 10, 2010

To: Burien City Council  
From: Carol Jacobson  
3324 SW 172<sup>nd</sup> St.

I am writing to you with some concerns about the public access issues in the SMP. Public access on the marine shoreline has not received as much attention as buffers, bulkheads, vegetation, and nonconforming language, but it is of critical importance to those of us on SW 172<sup>nd</sup> St. as well as to other shoreline residents. I want to try to clear up some potential misunderstanding about what we are asking the City Council to recommend related to this issue.

1. The city's broad policies and regulations related to public access do not specify that such access applies to publicly owned shoreline. The Shoreline Master Program Guidelines specifically state in 4 separate places and 5 different sentences that public access applies to "publicly owned areas of the shoreline" and "shorelines on public property". Most of Burien's marine shoreline is privately owned, and there is private property between the shoreline and any potential public access site. The SMP needs to reflect the city's intent to properly evaluate and mitigate the impact of public access on the adjacent private property and on the surrounding community. The redline SMP proposed by BMHA addresses some of these concerns in section 20.30.035 2(a, b, c), which should be incorporated into Burien's SMP.
2. Item 20.30.035 2c in Burien's SMP draft states: If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as public access unless vacated as set forth in RCW 35.79.035". We are requesting that this entire item be removed for several reasons:
  - a. We have submitted written statements for the public record from two separate land use attorneys stating that this item should be deleted because it is overly broad and suggests an improper and potentially illegal approach, especially as pertains to SW 172<sup>nd</sup> St.
  - b. The right of way issue on SW 172<sup>nd</sup> has been in dispute for decades and is still not settled. Before the city does ANYTHING with SW 172<sup>nd</sup> the issue needs to be resolved, and that may have to occur in court.
  - c. In effect, this statement MANDATES that "unused right of way" will become public access. Nothing in the Shoreline Management Act or the SMP guidelines supports such a mandate. At the very least the city has not completed the necessary planning and review of impact to adjacent properties to support such a mandate. There is no reason to have this statement in there unless it is intended as a tool to achieve some agenda. The city should not be using the SMP as a weapon against any of its citizens, and this item is aimed directly at SW 172<sup>nd</sup> St.
  - d. There may be concern among council members about not wanting to "tie the hands" of future city councils by removing this item from the SMP. Removing this statement does not change anything for current or future city councils. It has no effect on the right of way issues that currently exist and we are not asking for a determination to be made about the right of way at this time. All we are asking is to remove this item to prevent the city from using the SMP as a method of achieving some agenda that they have not yet been willing to share publicly with the citizens. There can be no other reason to have this in there in the first place.

These items need to be addressed in order to avoid the potential disaster that the current wording related to public access could cause for the citizens on this street and for the city. Please don't let this important issue get lost in the shuffle of other issues as you debate the proposed SMP.

CFTR: 08/16/10

