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CITY OF BURIEIN

December 14, 2010

To the Burien City Council:

This letter is in response to the events of the City Council meeting on Dec. 13, 2010. As the applicants of Amendment 2010-2, a request for a change to the Burien Comprehensive Plan Land-Use Map, we were greatly concerned at the mis-reporting of history that we heard at the meeting. Major elements about the design to the 1997 Comprehensive Plan and 1999 Comprehensive Plan amendment that were referred to by council members were not based on public records but rather on someone's distant recall. This mis-information was then used as the basis for judging the merit of our request rather than the criteria set out in the Comprehensive Plan and the related zoning code.

Specifically, there was no case filed before the Growth Management Board and no finding from that Board that forced Burien to impose a moderate land-use density on the Lake Burien Neighborhood or even other parts of the city. Attached is a letter from the public record that discusses this very issue. It was submitted to the City Council in 1998 and three members of the current City Council were members of the Planning Commission at that point in time. This letter clearly states that Keith Inness never filed with the Growth Management Board and, as such, had no standing in his appeal. As a result of this, there was no finding in his favor that required that the Lake Burien Neighborhood or any other part of the city be returned to moderate density (See attached Randall Parson letter).

Some of the council members voted against our request based on this flawed retelling of history. None of the criteria for making a change to the Comprehensive Plan includes someone's recall of history. Sadly, we did not hear any council member refer to or reference any of the required criteria nor did the Council even refer to the criteria as the vote was taken. This would seem to be the preferred process that a government should follow if it was striving to appear to be transparent.

Our concerns about water quality and public health and safety were completely ignored by the council. A discussion of what constituted Best Available Science for critical areas was not addressed by the council. Any remedy or even a plan to work with the neighborhood regarding the toxic algae bloom was not even considered. This on-going toxic bloom poses a threat to water quality and public health and safety. There was not even a comment or consideration expressed by the council for the neighbors who were inconvenienced or suffered property damage due to the inadequacy of the storm water and surface water management system in the Lake Burien Neighborhood. These system problems pose a water quality, economic and public health and safety threat to the residents of the neighborhood.

Under the Growth Management Act and the Burien Comprehensive Plan, citizens are allowed to file once a year for changes to the plan. For the record, we would like to state that the city staff attempted to prevent us from filing by initially withholding public information and telling us that citizens were not allowed this right. When we tried to file, we were forced to file for something we did not want to file for in order to submit our application. We were charged an extremely high fee in relation to other cities in our region to get the application filed. After the application

was filed, our requests for public information were not provided in a good faith manner. We had to speak with the city attorney on several occasions about this and about the standards that we were being forced to meet that other requestors did not have to meet. As of this writing, we are still waiting for public information that we requested months ago and that has not been forthcoming. In addition, the city staff showed us models that had no relationship to: reality; the PSRC; the Growth Management Board; King County Records; the State of Washington Financial Office or the Burien Comprehensive Plan. These flawed models were repeatedly used by the city staff as evidence for why our request should be denied. Thankfully, members of the above mentioned agencies and some local cities were willing to meet with us and give us their time to explain how the things such as density, growth management numbers, GIS mapping, significance of critical areas and land use are supposed to be determined. When we asked the city staff, whose salaries are paid through our taxes, questions related to these processes and models, we were told that they could not help us with our request. This is not the way that a transparent form of government works. And if anyone was badly abused or served in this process, it was we the citizens/applicants.

There continues to be a disconnect with what the city claims is the amount of development that will occur around the lake, the maps and the calculations used to prepare the 1999 amendment to the Comprehensive Plan. Based on this discrepancy, there appears to be a hidden agenda on the part of the city to densify this neighborhood at a far greater level than the city is willing to discuss publicly or document in the Burien Shoreline Master Plan. The degree of densification discussed in the 1999 amendment contradicts the finding and mitigations suggested in the 1997 EIS. Again this is not how a transparent government works.

We heard testimony from the City Council members at this meeting that the zoning map drove the text in 1999. In 1999, political decisions and compromises were made at the last minute with no cross-referencing back to the Comprehensive Plan. By the way, the Lake Burien Neighborhood did not enter into a compromise to be moderate density. Our neighborhood community club spoke against moderate density. It appears this decision about our land-use was based on some developer's dream and not the Comprehensive Plan or the requirements of the Growth Management Act. These decisions were not based on the text of the Burien Comprehensive Plan, the 1997 EIS or even the Sensitive Areas Map. In all decisions, the text of the Comprehensive Plan comes first and rules--this is a requirement of the Growth Management Act. This was obviously not a consideration again in reviewing and voting on our request at the 12/13/2010 City Council meeting. Again, a transparent form of government uses its Comprehensive Plan text and the requirements of the Growth Management Act as the driving forces for its decisions about land use, critical areas, etc.

During the Shoreline Advisory Committee, we first approached the City of Burien and the Department of Ecology about our concerns for the environmental protection of the lake and of the densification that the city was planning by using a zoning model of 7,200'/moderate density land use for the lake. The real issue that concerned us the most was the massive increase of impervious surface and pressure of human activity on the land and lake. For the record, we discussed this two times with Bob Fritzen at two separate meetings. We were finally told by the city staff that this could not be handled through the Shoreline Master Program Update and would have to be taken up through the Comprehensive Plan process. but citizens were really not

allowed to do that as it was too complex. So we, the applicants, find it offensive that the mayor would publicly suggest that our concern relating to this issue initially sprung from a hidden agenda of preventing public access. It would seem that we should have at least been offered the courtesy of a private inquiry by the mayor about what initially drove our request before the mayor publically announced what she assumed was our initial driving force for this request. As the mayor and city manager both know, allowing the land use around the Lake Burien Neighborhood to return to the 1997 low density land-use model will have no bearing on public access. And if the mayor was completely frank about this issue, she would know that in 1997 when she was on the Planning Commission, that commission ruled out physical public access to the lake because of the fragile nature of the lake. This is recorded in the 1997 Comprehensive Plan document and was based on the 1997 EIS findings. Plainly stated, public access is a red herring argument and it stinks like an old red herring. Once more, transparent government does not treat its citizens in this manner.

There was an implied statement in the staff document, Exhibit C, attached to the 12/13/2010 City Council meeting packet that the Lake Burien Neighborhood is really just a smaller piece of the greater Gregory Heights Neighborhood and for that reason our request should be denied. Then at 12/13/10 meeting, there was a comment that the Lake Burien Neighborhood was connected to business district of Burien. Both of these notions are nonsense. The Lake Burien Neighborhood has always been a separate, distinct neighborhood. Ever since Burien has become a city, someone at City Hall has continued to advance the notion that we are historically linked to the Burien business district. Each time this has come up, the Lake Burien Neighborhood has stated that we emphatically do not have a historic link to Burien's business district. We are attaching a 1997 letter from the City records written by Joe Wozniak, then president of the Lake Burien Shore Club, that supports that we are not historically linked (see attached Joe Wozniak letter). Even more peculiar is the notion that we are really a little add-on to the Gregory Heights Neighborhood. The Lake Burien neighborhood developed as a separate neighborhood around the lake. It has had a citizen community club for easily sixty years. It paid for the sewer line as a citizen neighborhood group in the 1950s and was not part of any other neighborhood in this endeavor. In 1999, the City of Burien linked us to the Seahurst neighborhood in its great but poorly documented compromise process. However at the eleventh hour of this poorly recorded, semi-public, semi-secret, negotiated event or events, the City dealt with the Lake Burien Neighborhood as a separate neighborhood. The only remaining documentation of this compromise is the map that was attached to this letter (see attached map and tables). This map clearly shows the Lake Burien Neighborhood as part of the greater Seahurst Neighborhood but then, in the table at the bottom of the page, breaks out Lake Burien as a separate neighborhood. We the residents of the Lake Burien Neighborhood again are restating for the city that we are a separate neighborhood and, as such, have the rights guaranteed to other neighborhoods in the Comprehensive Plan.

The LU-1 Map/Land Use Map is in error. It fails to recognize that the Land-Use Map was changed on June 6, 1999 by Ordinance 255. This is clearly an error. We have brought this error to the attention of the Planning Department, but we do not intend to pay another \$1,723.63 to have this error corrected nor are we willing to have this error ignored. It was Ordinance 255 that incorrectly placed the Lake Burien Neighborhood on the Land-Use Map at moderate land-use density. The staff must have been completely unaware of this ordinance and even failed to

mention this ordinance in their overview discussion of our amendment. This omission is also the reason there is error in the discussion in the 2003-2009 Comprehensive Plan about map amendments. Transparent government will correct these errors without forcing fee payments or arguing with citizens.

The GIS maps that Burien is using from the King County map folio are in error for the Lake Burien Neighborhood. We have spoken with the King County Maps Manager and he confirms the errors. We have brought this to the Planning Department's attention and expect that they will be corrected before they are again used for any determinations in the Lake Burien Neighborhood.

The 1997 Environmental Impact Statement provided specific reasons why the Lake Burien Neighborhood should have land use per the Preferred Alternative, low density residential land use. In the 1999 Comprehensive Plan amendment, the land use was changed to moderate density employing a different model than was the one supported by the 1997 EIS. Once again there is an inconsistency between the discussion in Chapter 5 of the Comprehensive Plan (which includes the 1997 EIS) and the Land-Use Map for the Lake Burien Neighborhood. A transparent government would take the time to check on this inconsistency and remedy it.

In closing, we would like to state that we feel the decision reached on our amendment request was not in keeping with the intent of the Burien Comprehensive Plan and the Growth Management Act. The council members did not even follow the criteria stated in the Comprehensive Plan to guide their voting. Their disregard for the water quality of the lake, our neighborhood character, critical areas and public health and safety appeared to be purposeful and at times downright malicious in nature. This model of decision making does not inspire public trust nor does it suggest a concern for environment or public health and safety. At numerous points in this amendment process it became clear that some of our city staff, as well as some city officials, enjoy the idea of working for a city--it is just the citizens that they did not want to be bothered with, hear from, talk to or serve.

Sincerely,
Chestine and Robert Edgar

Attachments

- Randall Parson letter
- Joe Wozniak letter
- 1999 Comprehensive Plan Amendment map

January 25, 1999

Honorable Mayor and Councilmembers
City of Burien
415 SW 150th St.
Burien, WA. 98166

RE: Proposed Comprehensive Plan Amendments - Based on Non-valid Inness Settlement

Dear Honorable Mayor and Councilmembers,

I would like to provide the following facts that bear on the validity of the purported "settlement" you reached with Mr. Keith Inness last August on which you have based the proposed amendments to remove down-zoning of the single-family neighborhoods from the adopted Comprehensive Plan.

As you are aware, you met in Executive session on August 3, 1999 with Mr. Inness (see attached unendorsed Inness letter of August 3, 1999) prior to the regular Council meeting on August 17, 1999 (see attached Kenyon letter of August 19, 1998) from which you agreed to repeal the single-family down-zoning from the adopted Comprehensive Plan. This proposed condition of settlement was made by Mr. Inness in his letter of July 29, 1999 which you received August 3, 1999. In the Kenyon letter of August 19, 1999, the third paragraph notes that: "This letter, then, will confirm that the City Council has agreed to adopt Comprehensive Plan amendments designed to repeal the "single family downzone" provisions of the Plan. Accordingly we will prepare a stipulation for both of our signatures which can then be filed with the Growth Board to dismiss your petition."

The above referenced "stipulation", if prepared, was never submitted to the Growth Board. As a result, per the Central Puget Sound Growth Management Hearings Board Consolidated Case No. 98-3-0005c "**ORDER DISMISSING PETITIONS, DEFERRING CONSIDERATION OF MOTIONS and ANNOUNCING LOCATION AND SCHEDULE FOR HEARING**", of September 10, 1998, the Growth Board noted the following with regards to the standing of Mr. Inness' appeal, commencing on page 2, line 12 (attached for reference):

"II. DISMISSAL OF RABIE AND INNESS PETITIONS FOR REVIEW"

"Neither Petitioner Rabie nor Petitioner Inness filed a Prehearing Brief with the Board by the deadline of August 20, 1998 established the Board's Prehearing Order dated June 23, 1998, nor did either party file a request with the Board for an extension of the briefing deadline or file a prehearing brief subsequent to that deadline.

Failure to brief any legal issue "shall constitute abandonment of the unbrieffed issue."
WAC 242-02-570(1)..."

Continuing on page 3, line 1:

"Thus, a petitioner's issues which are unbrieffed will be considered abandoned, and accordingly, will not be considered further and will be dismissed with prejudice. See WAC 242-02-720(4). The Board holds that each of Rabie's and Inness' legal issues are abandoned, and **Rabie's and Inness's Petitions are dismissed with prejudice (emphasis added).**"

The Growth Board further confirmed this dismissal in Consolidated Case No. 98-3-0005c "**FINAL DECISION AND ORDER**", of October 19, 1998, commencing on page 5, line 15 (attached for reference):

"IV. DISCUSSION AND CONCLUSIONS"

"A. Introduction"

"The petitions of Rabie and Inness were dismissed by the Board because those petitioners failed to file briefs (emphasis added)."

It should further be noted that the Board was not presented any settlement agreements prior to the Board hearing on September 21, 1998. This is in violation of the directions made by the Board in Consolidated Case No. 98-3-0005c **"ORDER OF CONSOLIDATION and NOTICE OF HEARING"**, of January 22, 1998, commencing on page 2, line 7 (attached for reference):

"If settlement is reached by the parties, the Presiding Officer shall be notified, and a Stipulated Dismissal filed with the Board. If settlement is not reached, the case will proceed as finally scheduled in the Board's Prehearing Order.² The parties are advised that the Board is now authorized, in certain situations, to extend the 180 day decision deadline. The Board may grant "settlement extensions of up to ninety days. However, requests for settlement extensions must be filed with Board no later than seven days before the Hearing on the Merits."

It is my hope and interest that the it should be apparent to Councilmembers and informed citizens of Burien that the apparent Growth Board's lack of awareness of the unendorsed "settlement" with Mr. Inness does not provide sufficient legal basis for meeting the requirements specified in RCW 36.70A.130 "Comprehensive plans--Review--Amendments.", (2)(b) (attached for reference) which states:

"Any amendment or revision to a comprehensive land use plan shall conform to this chapter, ... (2)(b) ... Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or **to resolve an appeal of a comprehensive plan filed with a growth management hearings board (emphasis added)** or with the court."

Mr. Inness and the City clearly were aware of the proper process for consideration of appeals to the adopted Comprehensive Plan, but chose to step outside the rule of law provided by the State Growth Management act by not formally entering into and filing with the Growth Board a timely Stipulated Dismissal as noted above. Therefore the current proposed amendments to the Comprehensive Plan have no merit and no legal basis as the City has characterized to it's citizens in the notices and amendment documents. A number of citizen's to whom I have spoken have been very confused by the City's notices and this contention that these amendments are required to meet the Growth Board's orders.

I therefore request that the City suspend any further consideration of the currently proposed amendments to the adopted Comprehensive Plan until such time as they can be considered in their entirety with a legitimate annual review and update of the Plan allowed under RCW 36.70A.130 "Comprehensive plans--Review--Amendments.", (2)(a) (attached for reference) which states:

"Each County and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby **proposed amendments or revision of the comprehensive plan are considered by the governing body of the county or city no more frequently than once a year (emphasis added)** ..."

Page 3: January 25, 1999, Honorable Mayor and Councilmembers, City of Burien
Proposed Comprehensive Plan Amendments - Based on Non-valid Inness Settlement

Thank you for your consideration of my concerns and request.

Sincerely,

Randall L. Parsons, P.E.
2727 SW 149th Pl.
Burien, WA. 98166-1657

cc City Clerk, City Attorney, City Manager
Planning Commissioners, Burien Planning Staff
Seahurst Community Club
Shorewood on the Sound Community Club
Three Tree Point Homeowners Association
Editor, Highline Times
Concerned Burien Citizens

II. SPECIFIC TO LAKE BURIEN VOLUME I:

1. The PCP shows the Ruth Dykeman Children's Center as being zoned Downtown Commercial and as part of a Special Enhancement Area.

COMMENT: The residents and landowners on Lake Burien absolutely object to this re-zone and all the implications stated or otherwise, or that may be implied by future bureaucratic interpretation that this designation carries.

2. The residential area surrounding Lake Burien is R-3. This is covered by Pol RE 1.5 The Low Density Residential Neighborhood designation on page II-8. This is, appropriately, the lowest density of units per acre in the hierarchy of residential/multi-family designations. The Ruth Dykeman Children's Center's changed designation is covered by Pol BU 1.6 The Downtown Commercial designation on page II-18. This is a designation of higher commercial intensity of use exceeding that of the Neighborhood Center, The Intersection Commercial, and The City Center Commercial designations.

ANALYSIS:

BU 1.3 The Neighborhood Center contains the following: "The design of these areas, including the size, location and design of parking lots, shall be strictly regulated to ensure compatibility with the surrounding neighborhood."

BU 1.4 The Intersection Commercial contains the following: "The edges of these areas need to be well-defined to contain development and limit encroachment into single family areas."

BU 1.5 The City Center Commercial contains the following: "Development on the edge of this area must be compatible with the character of adjacent single family neighborhoods."

BU 1.6 The Downtown Commercial designation contains absolutely no similar limiting, defining, or constraining provision as part of this policy statement as set forth in above in Bu 1.3, 1.4, and 1.5.

The Downtown Commercial designation contains no limiting, defining or constraining provisions to protect the adjacent "Low Density Residential Neighborhood" zoned single family residential area.

COMMENT: The residents and landowners on Lake Burien absolutely object to the absence of any protective provision in The Downtown Commercial designation as it applies to the Ruth Dykeman Children's Center and the adjacent "Low Density Residential Neighborhood" zoned single family residential area.

(NOTE: Pol. RE 1.5 the "first" 2nd statement is incorrect. Map LU-2 shows only Steep Slopes, Suburban and Urban. It does not show any "rural".)

October 30, 1997

Joseph Wozniak to City Council
PRESIDENT OF THE LAKE BURIEN
SHORE CLUB

3. Pol. BU 1.6 The Downtown Commercial designation criteria #2 states "The area is already characterized by business uses of moderate scale and intensity, or may be an appropriate area for these types of uses."

COMMENT: The residents and landowners on Lake Burien absolutely object to this statement being applied to the Ruth Dykeman Children's Center property. That specific property is not now characterized by this use nor is it appropriate for this use in the future.

4. Pol. SE 1.3 on page II-26 provides that in the future in the absence of the Ruth Dykeman Children's Center that "Limited and controlled public access to the Lake is provided through a quasi-public type of development, such as a restaurant." and that "The development supports and enhances the historical link between Old Burien and Lake Burien, . . ."

COMMENT A: The residents and landowners on Lake Burien absolutely object to preconceiving the future use of the Ruth Dykeman Children's Center in this PCP.

COMMENT B: Other than the geographical and topographical relationship between "Olde Burien" and Lake Burien there is no known "historical" link of any meaningful substance or importance and the conjuring up of one by this statement in the PCP is objected to categorically.

5. Pol EV. 1.7 "The City shall develop land use regulations to buffer environmentally sensitive areas from impacts of adjacent land uses."

COMMENT: The residents and landowners on Lake Burien support this policy and believe that the PCP, as currently drafted, is absolutely contrary to this policy as it relates to the Ruth Dykeman Children's Center and the adjacent "Low Density Residential Neighborhood" and Lake Burien.

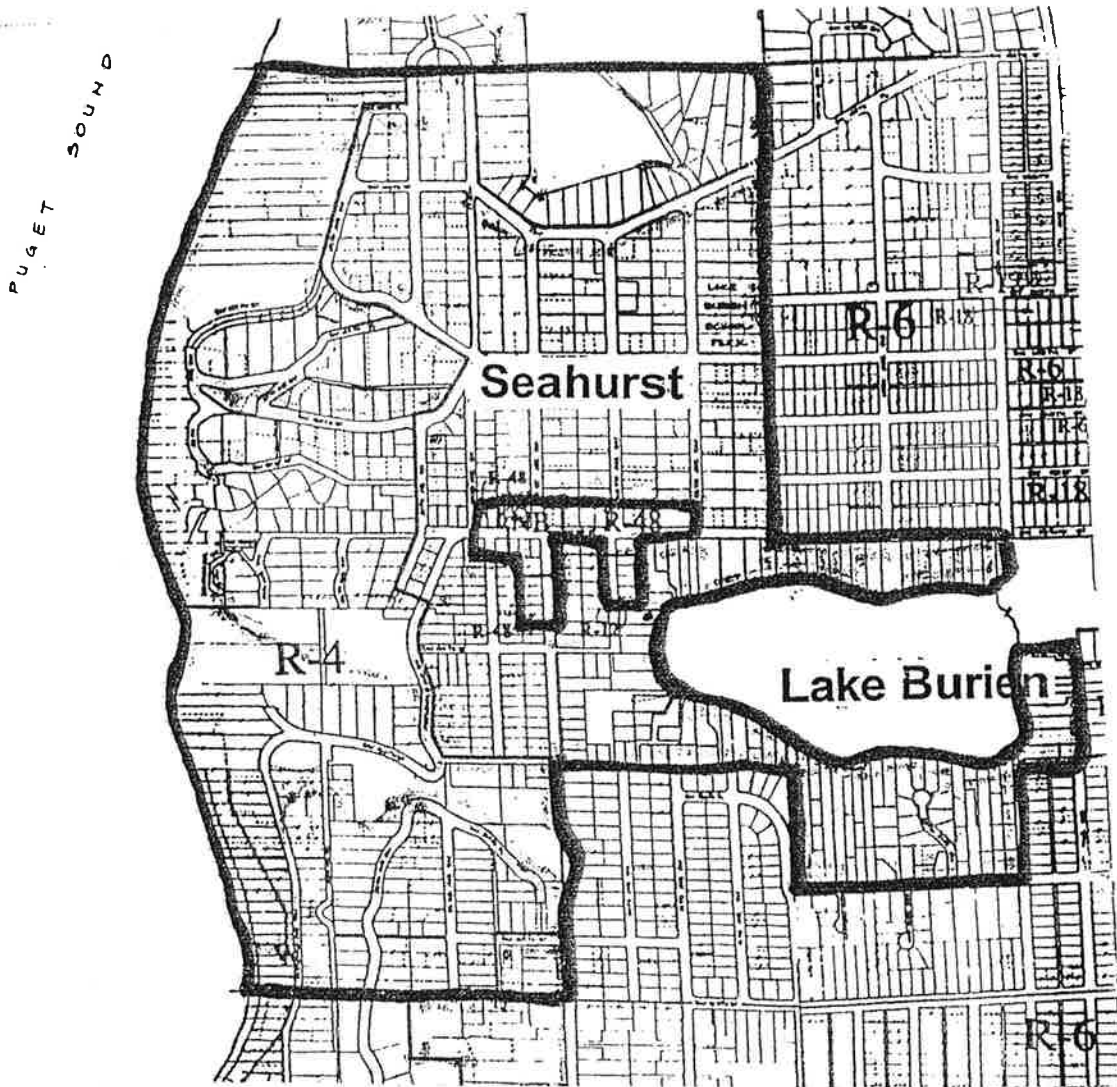
III. SPECIFIC TO LAKE BURIEN VOLUME II:

1. Page IV-32 third paragraph regarding Lake Burien has some technical errors. There are direct drains into the lake on the north and west sides which have substantial water flow in addition to those from the south side. The lake drains from the northeast corner into an underground culvert.

2. Page V-12 the Lake Burien paragraph. The city owned right-of-way is not adjacent to the lake shore on the southeast corner of the lake. The city owns no property with Lake Burien shoreline that could be developed as a pedestrian accessible "pocket park".



October 30, 1997 Joseph Wozniak to City Council
PRESIDENT OF THE LAKE BURIEN
SHORE CLUB



SEAHURST ANALYSIS AREA

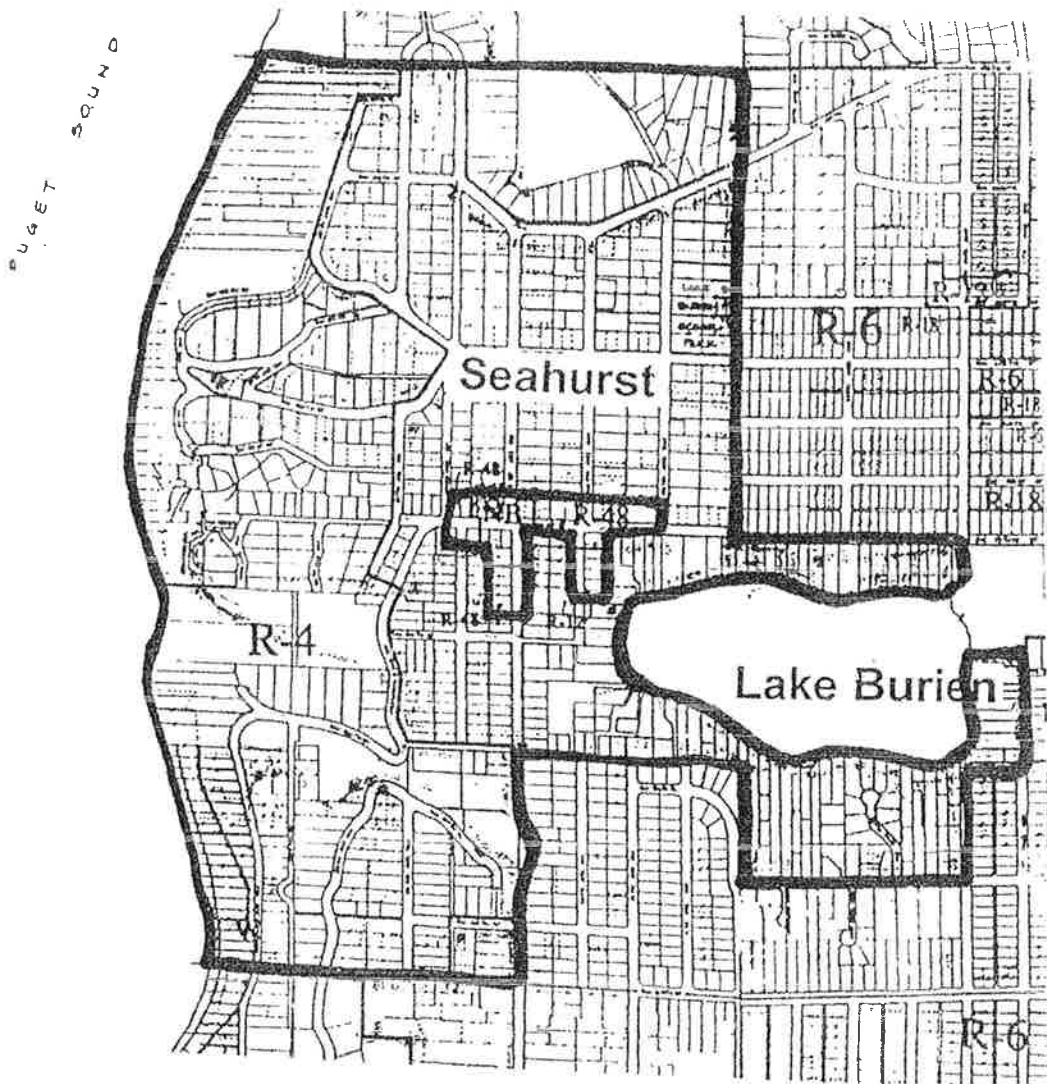
Potential new lots per existing zoning (at 7,200 or 9,600 square feet per lot)	413 (45% increase over existing number of lots)
Potential new lots per Comprehensive Plan (between 12,000-15,000 square feet per lot)	162 (18% increase over existing number of lots)
Base number of potential new lots per compromise "metering" system (at 7,200 or 9,600 square feet per lot)	162 (18 % increase over existing number of lots)

LAKE BURIEN ANALYSIS AREA

Potential new lots per existing zoning (at 7,200 square feet per lot)	53 (66% increase over existing number of lots)
Potential new lots per Comprehensive Plan (12,000 square feet per lot)	2 (3% increase over existing number of lots)
Base number of potential new lots per compromise "metering" system (at 7,200 square feet per lot)	2 (3% increase over existing number of lots)

TAKEN FROM 1999 ADDENDUM TO COMP. PLAN FILE DRAFT

ATTACHMENT E
1999 PLAN TO CHANGE COMP PLAN



SEAHURST ANALYSIS AREA

Potential new lots per existing zoning (at 7,200 or 9,600 square feet per lot)	413 (45% increase over existing number of lots)
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1999 Change to Thriving Land Use Model for Lake Burien

LAKE BURIEN ANALYSIS AREA

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Base number of potential new lots per compromise "metering" system (at 7,200 square feet per lot)	2 (3% increase over existing number of lots)

1997 PREFERRED Use for Lake Burien in EIS

TAKEN FROM 1999 ADDENDUM TO COMP. PLAN E.I.F

DRAFT

