

## Monica Lusk

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**From:** Monica Lusk  
**Sent:** Wednesday, July 13, 2011 1:15 PM  
**To:** 'Michael Noakes'  
**Subject:** RE: Document to be included in City Council Packet

Thank you for writing to the Burien City Council. Your message will be included in the Correspondence for the Record for the 7/18 Council meeting.

Monica Lusk  
City Clerk

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

**From:** Michael Noakes [<mailto:noakes.michael@gmail.com>]  
**Sent:** Wednesday, July 13, 2011 12:27 PM  
**To:** Monica Lusk  
**Subject:** Document to be included in City Council Packet

Dear Ms Lusk,

I hope this note finds you well.

The BMHA developed a memo last week which we hope could be a template for advancing the SMP discussion. We provided a copy to Staff and City Council in person but we have decided we would like to include the same item in the City Council packet for July 18 so that it is more fully distributed. I believe the cut off for this is today. If this is correct, could you please include it? Please let me know if I have mis-recalled the cutoff.

With best regards,

Michael D. Noakes

CFTR 07/18/11



## Setbacks/Buffers in the Burien Marine Shoreline

In late April of 2011 the Department of Ecology (DOE) approved Burien's comprehensive update to its Shoreline Master Program (SMP) subject to Burien's acceptance of a number of required changes. DOE also recommended a smaller list of suggested changes. Nearly all of the changes were judged to be consistent with the direction the Burien City Council established during their review of the SMP update and have been adopted by the City. Unfortunately there were four required changes that the City was not able to accept:

- 1) A requirement to seek a shoreline variance permit for certain developments in Critical Areas
- 2) The removal of a clause to limit watercraft access from potential future public access areas on Lake Burien
- 3) A limitation on the ability to replace a destroyed home if that home would require the continued maintenance of shoreline stabilization i.e. an existing bulkhead
- 4) An expansion of the proposed 20' Marine buffer to a 65' (50' + 15') buffer/setback for Shoreline Residential Designation

It is the understanding of the Burien Marine Homeowners Association (BMHA) that the Department of Ecology and the City of Burien are currently struggling to find a way to resolve these final points of concern and that DOE is considering a formal Denial of the Burien SMP. This step would lead to multiple points of legal Appeal and a possible requirement for DOE to staff an effort to complete Burien's SMP update. We believe this step would be unfortunate for all stakeholders and we recommend that DOE and the City of Burien continue to work together to find effective solutions to the remaining points of disagreement.

The BMHA does not have a position on items (1) or (2) from the list of unresolved concerns. We are concerned to see a new limitation on the reconstruction of a destroyed home and we may take that issue up in a second memo.

However for this memo we will focus on the topic of setbacks and buffers for the Marine Shoreline. We believe this is the most technically challenging of these four issues and the one where we have the most to contribute.

Most of the discussion on buffers and setbacks has aimed to determine a single standard for the entire Marine Shoreline. We believe that the variety of conditions along the shoreline coupled with the paucity of relevant science means that this is an inherently flawed approach.

In this memo we advance two alternatives that we believe would be more fruitful. We do not intend to fully define the details of each approach but we hope to provide a sufficiently complete outline of the concept in a modest amount of text. Both approaches have been advanced by multiple parties over time and have received informal support during conversations with DOE representatives.

The first approach is based on a more fine-grained designation of conditions along the shoreline than is currently proposed. Setbacks and, as necessary, buffers are then tailored to match the local conditions. This provides the opportunity to develop dimensional standards that respond to the varied conditions along our Shoreline in an understandable way and hence are likely to be accepted by all stakeholders. We anticipate almost 1/2 of existing homes would be subject to standards that approximate the City's current approach, almost 1/2 of homes would approximate the DOE solution, and the remaining homes would be subject to hybrid of the solutions. The downside is the potential for additional complexity compared to a single standard for the entire Shoreline.

The second approach couples an aggressive baseline setback standard, e.g. 65', for the Shoreline Residential designation with a protected re-development envelope around any portions of an existing structure that lies within this area. This simple approach limits the threat of development creep while providing security, predictability, and flexibility to the owners of existing structures.

We explore these alternatives in more detail in the remainder of this memo.

### **Fixed Width Buffer/Setbacks for the Marine Shoreline**

The concept of relying on fixed width buffers and setbacks in the SMP update can be traced to the first draft of the Update that was submitted to the Burien Planning Commission. The Marine Shoreline was partitioned into 4 Reaches labelled M1, M2, M3, M4. Reaches M1, M3, M4 were designated as "Shoreline Residential" and M2 was designated "Urban Conservancy". A casual review of conditions along the Marine confirm that M2, which includes Seahurst Park, has conditions that are significantly more natural than M1, M3, or M4. However a more careful analysis demonstrates a significant level of variation in development patterns within the Shoreline Residential designation that was not adequately reflected in the City's inventory, the dimensional standards, or the Cumulative Impacts Analysis.

We believe it is telling that a 50' Marine Riparian buffer was proposed for the entire Shoreline despite the considerable level of variability in conditions. The dimensional standards included a 15' building setback from the Riparian buffer. The primary difference in standards for Shoreline Residential and Urban Conservancy is the size of a Vegetation Conservation Buffer which was set at 150' and 200' respectively.

The initial concern with the (50+15)' buffer/setback was that it would render a large fraction of waterfront homes non-conforming structures; a disfavored status. While non-conforming status was a talking point during much of the early discussion of dimensional standards, our concern with this draft regulation matured as we developed our evaluations of Marine conditions. These evaluations demonstrated that significant portions of the Shoreline Residential designation are highly altered within the first 50' from Ordinary High Water Mark (OHWM). We do not believe it is logical to define a new regulation that impacts many private property owners but that is unlikely to be implementable for a meaningful fraction of our shoreline.

The Burien City Council concluded that the existing 20' setback, recast as a 20' buffer, in the context of the complete SMP is adequate to assure no-net-loss of ecological function given existing conditions. DOE objected to this claim and re-introduced the (50+15)' standard. While several concerns were advanced it appears that the primary objection is that a 20' setback/buffer for all of M1, M3, M4 provides too much opportunity for development creep. This debate becomes one of choosing a single standard for 4 miles of varied development patterns.

### Varying Buffer/Setbacks to Address Existing Marine Conditions

A first alternative is to follow the approach that was adopted by the City of Kirkland during their comprehensive SMP update and that has been approved by DOE. Their SMP relies on six Shoreline Environment Designations which are applied to approximately 20 regions. Some regions run parallel to, but offset from, the direction of the shoreline, and some regions are as small as a single tax parcel. Varying setback standards have been developed for each designation and use. These are typically expressed as a percentage of lot depth and then subject to minimum and maximum standards. The dimensional standards do not define a fixed width buffer; buffers are defined where appropriate by application of their Critical Areas Ordinance. It is clear that Kirkland expended a great deal of effort to develop the details for this approach but it should be noted that their shoreline is significantly more complex than ours.

We do not attempt to provide a specific, detailed proposal for how this idea could be applied to the Burien Marine but we do offer a broad outline of this idea based on data we provided in our memo "Setback Evaluation of the Burien Marine Shoreline" of Dec 8, 2010.

In that document we provided property-level data for the Shoreline Residential designations (M1, M3, M4). We found it appropriate to refine the characterization of the 4 Reaches and define 13 *Reach Segments* based on local development patterns and structural features. We believe these segments represent a good starting point for an approach that mirrors the Kirkland solution.

Table 1 presents a summary for each segment in the Shoreline Residential designation. We show the number of homes, the median setback in feet, and some simple notes. The reader is directed to the referenced memo for parcel level detail and high quality aerial imagery.

| Reach | Segment          | Homes | Median<br>(ft) | Notes  |
|-------|------------------|-------|----------------|--|
| M1    | Seola-30th       | 18    | 25             | Highly altered to OHWM. Backed by road and steep slope     |
|       | Shorewood Lane   | 24    | 36             | Homes at top and bottom of steep bluff. Varied conditions  |
|       | Standring Lane   | 24    | 26             | Highly altered to OHWM. Backed by road and steep slope     |
| M3    | 149-150-151      | 26    | 29             | Significant alterations near OHWM. Backed by steep slope   |
|       | Maplewild Start  | 17    | 26             | Homes at top and bottom of steep bluff. Varied conditions  |
|       | Indian Trail     | 53    | 43             | Homes generally towards OHWM. Varied but less intensive.   |
|       | Three Tree Point | 12    | 95             | Deeper, flat lots. Significant use of lawn to OHWM         |
| M4    | 171st            | 16    | 45             | Narrow, densely packed, flat lots. Lawns to OHWM.          |
|       | 172nd            | 41    | 77             | All homes are behind a roadway and backed by a steep slope |
|       | Seacoma Blvd     | 9     | 30             | Highly altered to OHWM. Homes located well above waterline |
|       | South Burien     | 35    | 87             | Homes at top and bottom of steep bluff. Varied conditions  |

**Table 1: A summary of 11 Shoreline Residential segments**

Five of the segments, containing 108 of the 275 homes, are extensively developed adjacent to OHWM. These are labelled Seola-30th, Standring Lane, 171st, 172nd, and Seacoma Blvd. Very few of these homes have the potential to move closer to OHWM and none of the homes have any critical areas between the home and OHWM. It is our belief that a simple setback of 20' from OHWM would be consistent with the goals of the SMP for most of these homes. The six homes along Seola Lane are located in a small valley on deeper lots and are generally well over 50' from OHWM. A slightly larger building setback might be appropriate for these homes. This might be accomplished using the "percentage of lot depth" approach from Kirkland.

The homes along 30th Ave and Standring Lane are backed by steep slopes that are in natural condition. While we believe the Critical Area Ordinances are sufficient to protect these slopes, it might provide additional clarity to the SMP to implement a pair of shoreline designations parallel to OHWM. The more natural designation would be applied to a region that covers much of the segment between 100' and 200' from OHWM.

The Three Tree Point segment consists of 12 homes on larger flat lots. Most of the homes are located a meaningful distance from OHWM. All of these homes have extensively landscaped lawns and most have decks, accessory structures, and so on. There are no critical areas in this segment. This segment would be a candidate for a modest expansion of the current 20' building setback with the proviso that the few homes that might intrude in to an expanded setback would be defined as Conforming Structures per the current SMP proposal.

The segment at the north end of M3 is less intensively altered than the six segments we have just discussed but the development is focussed towards OHWM; the median setback is approximately 30' and almost all of the homes have a setback of less than 40'. These homes are backed by a steep slope that is in mostly natural condition. This segment might be a candidate for parallel shoreline designations to protect the ecological function that is present behind the homes. We believe a simple building setback of 20 - 30' would be appropriate for the waterfront homes in this segment.

Conditions in the remaining four segments, which contain 129 of the 275 existing homes, are considerably less uniform and these are the homes that present the greatest challenge to the fixed-width buffer/setback approach. Significant portions of these segments are impacted by steep slopes at a variety of distances from OHWM. Homes tend to be pushed to the top or bottom of these slopes depending on the position of the slope which leads to a large variation in setbacks for existing homes. We believe that development near these slopes is constrained by technology and by the Critical Area Ordinances that have been adopted by reference. It might be appropriate to define a new shoreline designation for these portions of these segments to add clarity to the SMP. The designation would highlight the inclusion of site-specific buffers to protect the steep slopes and a 20' building setback from this buffer and from OHWM. We anticipate that a more complete analysis, presumably as an element of an update to the Cumulative Impacts Analysis, would demonstrate that the typical buffer would be on the order of 50' and that few of the homes currently beyond 65' from OHWM would be able to move forward into this region.

The properties that are not impacted by steep slopes, we estimate that there are about 25 such homes, would be subject to a simple building setback. Careful analysis might suggest that a 20' setback from OHWM would be suitable for many or most of those properties. However it might be necessary to implement two regions with differing setbacks or to explore the use of a model that includes a consideration of a percentage of lot depth per the Kirkland SMP to satisfy DOE's focus on development creep.

We have attempted to outline the essential elements of this approach in just two pages of text. We believe an acceptable solution could be implemented with between two and four shoreline designations and perhaps a dozen regions. A complete development of this concept, including an update of the Cumulative Impacts Analysis, would require a meaningful level of effort and BMHA would be pleased to provide significant technical support for such an effort.

### **A Predictable Building Envelope**

A second approach would define an aggressive setback standard for the Shoreline Residential designation; 65' is an obvious proposal. Portions of an existing structures that intrude in to this region would be protected by a well-defined building envelope that extends for, say, 15' around the foundation of the structure. This envelope would assure the ability to reconstruct a destroyed home and the flexibility to perform meaningful renovation so long as the development occurs within the envelope.

We believe that this significant setback meets the DOEs interest in preventing harmful levels of development creep. The use of an envelope provides predictability, and hence confidence, to the home owners. We note that many SMPs include language that explicitly provide for expansion of existing homes that are located within expanded setbacks and buffers; this is usually phrased in terms of a fixed area. This envelope achieves the same purpose but seems to be more easily appreciated and also adapts to the size of the home in a natural way.

We note that the Marine Shoreline includes a significant number of homes within 30' of OHWM and a number of regions with steep slopes which imply the existence of buffers per the CAO regulations that have been adopted by reference. The margin could not be used for **expansion** of an existing home towards OWHM if the resulting structure would have a setback of less than 20', or into a Critical Area buffer.

The approach appears to be simpler to define than the first alternative but suffers from being little more than a refinement of the current fixed-width proposals.

### **A Hybrid Solution**

A final alternative might build on both of these ideas using a less complex application of a few shoreline designations coupled with the concept of the building envelope to adequately protect those homes that intrude in to the coarser-grained expanded setbacks.

### **Conclusion**

The primary intent of this memo was to demonstrate that the few remaining issues that prevent adoption of the City's comprehensive SMP update need not be viewed as insurmountable differences. We have tackled one of the more technically challenging issue that has befuddled the development of the SMP for the Marine Shoreline and have proposed specific alternatives that we believe strike an appropriate balance among the needs of the key stakeholders.

We have limited our discussion to an outline level of detail but the BMHA would be pleased to contribute to the technical analysis that would support a successful completion of the SMP update process.