

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion regarding Burien Shoreline Master Plan		Meeting Date: October 24, 2011
Department: Community Development	Attachments: BMHA Document	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: David Johanson, Senior Planner		
Telephone: (206) 248-5522		
Adopted Initiative: Yes <input checked="" type="checkbox"/> No	Initiative Description: Shoreline Master Program	
PURPOSE/REQUIRED ACTION:		
The purpose of this agenda item is for Council to review and discuss the attached document submitted by the Burien Marine Homeowners Association (BMHA) regarding Burien's Shoreline Master Program.		
BACKGROUND (Include prior Council action & discussion):		
On Sept. 27, 2010, the City Council passed Resolution 317 approving Burien's Shoreline Master Program. The SMP was then submitted to the Department of Ecology for review. Ecology held a public hearing on the SMP on Dec. 8, 2010. Ecology approved the SMP with required and optional changes on April 22, 2011 (letter mailed to the City on April 27, 2011). On May 23, 2011, the City Council authorized the Mayor to submit an alternative proposal to Ecology, accepting all but 4 of the required changes and accepting most of the optional changes. Ecology has not formally responded to the Mayor's letter.		
Last month, Councilmember Shaw received the attached document from the BMHA. At your October 3 rd meeting, Council agreed to schedule time on your October 24 th agenda for discussion of the document.		
OPTIONS (Including fiscal impacts): N/A		
Administrative Recommendation: Review and discuss the BMHA document. Provide direction to staff as needed.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: None required.		
Submitted by: David Johanson Administration		Mike Martin City Manager
Today's Date: October 14, 2011	File Code: \\File01\records\CC\Agenda Bill 2011\102411cd-1 Shoreline Master Program.docx	



Burien's SMP To Be Denied Over A Failure To Negotiate

The Department of Ecology (DOE) is on the brink of issuing a formal Denial of the Burien SMP update. The package has been developed and the Director has approved it. This will not come as a surprise to the City. DOE has made a number of overtures to Staff and certain members of the City Council to negotiate the remaining points of disagreement but the City has been firm in its unwillingness to seize this opportunity.

It is assumed that a Denial will be appealed to the Growth Management Hearings Board and then to the Courts. While we anticipate that any Appeal will be driven by property owners and that we will bear the greatest burden, it is likely that the City will be required to play a meaningful role during these proceedings.

If the Appeal fails, DOE will be required to complete the SMP. This work will require participation by the City and the citizens of Burien. If the DOE version of the City's SMP is deemed to be unacceptable it can also be appealed.

At the end of this costly and uncertain process the City may be forced to accept a set of regulations that do not serve the City. Today Shoreline property owners have a vested interest in serving as stewards of the shoreline through continued investment in the health and quality of the Shoreline. In the worst case, this process could shake the confidence of Shoreline property owners and reduce this ongoing investment to the detriment of Burien, the County, and the State.

Recent informal conversation with representatives of DOE suggest that they remain open to negotiation and there appears to be a framework for success. Further they appear willing to work with non-Staff representatives of the City to minimize effort by City Staff during the exploratory phase of this work.

If this process proves to be successful, a point will be reached at which additional Staff and Council effort will be required but this is unlikely to be more onerous than the work that would be required in the event of Denial. DOE has an understanding of the demands for the City's attention and have suggested a willingness to be flexible in scheduling the City's contribution.

There is a great deal of opportunity for success but DOE requires that the City take the step to initiate this process. We ask that the City do so with all reasonable urgency.

Outline of Process

Informal conversations with DOE have suggested the following basic process:

- 1) Burien appoints a small working group to work with DOE to negotiate solutions to the remaining points of concern. This group will be responsible for developing a framework for resolving the remaining challenges along with any technical analysis required to validate the solution. This group might also produce sample language.
- 2) Council reviews the resulting recommendations. If Council is satisfied with the result, Staff will be directed to update the draft SMP and the Cumulative Impacts Analysis based on the concepts, analysis, and sample language developed in step 1. DOE and the advisory committee would be available to support Staff during this stage. Further DOE has indicated that there is flexibility in the scheduling of this activity.
- 3) City holds a public hearing/comment period. Ultimately City submits a letter rescinding the first response and proposing the new alternative.
- 4) DOE formally reviews the submittal.

Issues to be Resolved

In April 2011 DOE issued a Conditional Approval to Burien's submitted SMP. City Staff found that most of the required and recommended changes were acceptable to the City. Unfortunately there were four required changes that have yet to be resolved:

- 1) An expansion of the proposed 20' Marine buffer to a 65' (50' + 15') buffer/setback
- 2) A possible 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
- 3) Removal of a prohibition on watercraft if there is ever public access on Lake Burien
- 4) A requirement for a shoreline variance for certain developments in Critical Areas

The first two concerns are of greatest relevance to residents of the Marine Shoreline and we believe that the Burien Marine Homeowners Association (BMHA) can help to represent Burien's interests in these matters. The third issue is one that could be addressed by a representative of the Lake Burien Shore Club (LBSC). The final issue appears to be a focal point for Burien Staff but we believe that BMHA can help to facilitate a resolution.

It is important that the working group limit the scope of its work to addressing these four issues. This is not to be an opportunity to reopen issues that were resolved during the City Council process and accepted by DOE.

It is therefore a goal to address these issues using the simplest reasonable solutions. If there appear to be multiple solutions to a particular concern, then the solution that will be easiest to understand and implement, by residents and Staff at the Permit Desk, is to be preferred.

Guiding Principles for Development in the Marine Shoreline

The two issues that are of primary concern to residents of the Marine Shoreline are closely related and are focussed on the ability of home owners to continue to enjoy their homes and to be motivated to continue to invest in these homes. There are already several homes along the shoreline that have been effectively abandoned and have fallen in to disrepair. A continuation of this process does not benefit the Shoreline or Burien.

Much of the discussion of development standards for the Marine has focussed on a false choice between continuing to rely on the existing 20' setback or resetting the setback to 65' for the entire Shoreline. Imposition of a wider setback introduces maintenance risks for over 200 waterfront homes along the Marine; almost 75% of the existing waterfront inventory.

The SMP guidelines dictate that development within Shoreline Designation must be managed so as to assure No Net Loss of Ecological Function (NNL) while considering

- 1) Renovation or complete reconstruction of an existing structure within its current footprint
- 2) Expansion of an existing structure
- 3) Construction of a new structure
- 4) Other forms of non-structural alteration e.g. the introduction of lawn

Within the Burien Marine Shoreline, *structure* means a primary Single Family Residence, various forms of accessory structure, and bulkheads. Developing an SMP that assures NNL in the face of *pure redevelopment*, i.e. item 1 above, appears to be a relatively straight forward process that should require little or no new regulation. Concerns with achieving NNL should be focused on development standards for the expansion of existing structures or the creation of brand new structures on largely unaltered shorelands.

Consistent with this observation, the BMHA suggests that the SMP must include simple and unambiguous language to assure that, at a minimum

- 1) Existing structures are conforming with respect to the SMP
- 2) Existing structures may be maintained, redeveloped, and reconstructed within their current footprint without mitigation and subject only to City-wide building codes. This explicitly includes the reconstruction of a completely destroyed home.
- 3) Existing bulkheads may be maintained and reconstructed in their current form

No language should be accepted that causes property owners to doubt their right to these minimum standards. We believe that an SMP that allowed only this form of development could be approved by DOE with relatively little effort and would be quite brief.

The challenge then is to develop an SMP that also allows for some level of expansion and new development, for preferred uses, without creating a net-loss. This requires a thoughtful consideration of existing conditions, the likely pressure for expansion and new development, and the variety of mitigation options that are available.

We believe there are a number of solutions for achieving these goals and we are keen to work with DOE to identify the most appropriate path forward. Our focus will be on simplicity and predictability for property owners, City planners, and Permit Staff.

Summary of Existing Marine Conditions

The Grette Inventory partitioned the Marine Shoreline, which has a total length of 5 miles, into 4 Reaches. M2, which includes Seahurst Park and Eagle Landing Park, is designated as Urban Conservancy and the remaining three reaches are designated as Shoreline Residential.

Reach	(mi)	Portion	Designation
M1	1.05	21.1%	Shoreline Residential
M2	1.14	22.8%	Urban Conservancy
M3	1.64	32.9%	Shoreline Residential
M4	1.16	23.2%	Shoreline Residential
Total	5.00		

Table 1: The Marine Shoreline is Approximately 5 miles long

There are 388 properties that are partially or wholly within this shoreline. Most of these are privately owned and 295 of these properties are adjacent to Ordinary High Water Mark (OHWM). All but 10 of these are developed. Reference to a detailed inventory reveals that many of the undeveloped properties are at least partially encumbered by steep slopes.

Reach	Properties	Waterfront	Undeveloped
M1	92	67	1
M2	16	13	0
M3	159	112	7
M4	121	103	2
Total	388	295	10

Table 2: 10 of the privately owned waterfront properties are undeveloped

Much of the debate regarding development standards has focussed on the land between 20' and 65' from OHWM. We have reported that nearly 65% of the existing homes are within this band as summarized in Table 3. We have also noted that much of this land is already highly altered. A focus on this area has the potential to negatively impact a majority of home owners while doing little to manage the health of the shoreline.

Reach	Median Setback (ft)	< 20'	20 - 65'	65 - 200'	> 200'
M1	28	12%	70%	8%	11%
M2	420	0%	8%	0%	92%
M3	34	17%	59%	23%	1%
M4	49	5%	71%	24%	0%
Total	42	11%	64%	19%	7%

Table 3: The majority of development is between 20' and 65' of OHWM