



UNIVERSITY OF WASHINGTON

OFFICE OF REGIONAL AND COMMUNITY RELATIONS
Theresa Doherty, Director

December 21, 2011

Via Email: margaret.glowacki@seattle.gov

Ms. Margaret Glowacki
City of Seattle
Department of Planning and Development
P.O. Box 34019
Seattle, WA 98124-4019

Re: Comments on October 2011 Draft Shoreline Master Program

Dear Ms. Glowacki:

The University of Washington (University) appreciates the opportunity to provide these additional comments on the October 2011 draft Shoreline Master Program (SMP). We note many improvements, especially in clarity, with revisions since the first draft issued in February. We also appreciate the discussions we have had with Department Staff since submittal of our May 2011 comment letter. However, several fundamental issues remain a concern to the University in the October 2011 draft. As noted in our prior comment letter, it is the University's position that the City must maintain the commitments and land use decisions made in our joint adoption of the 2003 Campus Master Plan (CMP). Under our City University Agreement (Agreement) and the CMP, the City cannot make unilateral changes to regulations that conflict with the agreed plan for University Campus use and development. Despite improvement since the February 2011 draft, there remain significant conflicts between that adopted land use plan, the CMP, and the proposed shoreline policies and regulations that would undermine the University uses and development previously approved by the City - jeopardizing the University's mission and academic programs.

The University has demonstrated a strong commitment to shoreline protection and restoration - both through the adopted CMP, but more importantly through the University's efforts over the years to protect and enhance the existing campus shoreline environment. The University is a leader in wetlands restoration research and has constructed significant public access, shoreline open space, and water-dependent recreational uses along the University shoreline - all through implementation of the agreed CMP. The CMP was drafted to ensure adequate shoreline protection and supports the conclusion in the EIS for the CMP, which noted that the proposed CMP was consistent with the then-current Seattle Shoreline Master Program and Regulations (FEIS at p. 141, *Attachment A*).

The University still believes that a simple recognition of the adopted 2003 CMP as controlling within the University shoreline is the simplest approach to resolving these conflicts. The adopted CMP (*see* CMP, page 135, *Attachment B*) and Seattle Municipal Code 23.69.006 and 23.12.120 specifically recognize that the CMP controls over other City land use regulations. The CMP also states that the University will comply with provisions of the Seattle Shoreline Master Program (*see* CMP, page 5, *Attachment C*). This provision refers to the Seattle SMP that existed on the date of CMP adoption and cannot be interpreted to give the City the authority to adopt SMP changes that create conflicts with the CMP, especially in light of the fact that the CMP and the Agreement under which the CMP was prepared and adopted specifies amendments by agreement of both the University and the City. Further, the Environmental Impact Statement (EIS) for the CMP concludes that the CMP as approved in 2003 is consistent with the Seattle Shoreline Master Program (*see* FEIS at page 141, *Attachment A*). To the extent staff has asserted that CMP-approved uses and development are and have been inconsistent, that is not the case.

Despite the University's belief that recognition of the CMP is the simplest and most appropriate solution, this comment letter also provides specific details regarding conflicts and recommends code changes to address them. If the City does not choose to accept the simple solution, the University asks the City to incorporate these revisions into the SMP before final adoption.

OVERVIEW

During our Department meetings since submittal of our May 2011 comment letter, we identified and the City agreed on several Principles to guide application of the SMP to the University campus, as follows:

- 1. Maintenance, Repair, Replacement of Existing Uses and Structures Identified in the CMP:** The University should be able to maintain, repair, or, if necessary, replace existing uses or structures identified in the CMP that are located within the shoreline jurisdiction (including any expanded shoreline jurisdiction under the draft SMP), provided these changes do not require an increase or change in the shoreline footprint of the structure shown in the CMP. Those existing uses or structures should not be treated as nonconforming. Examples include the athletic facilities in Union Bay area and several existing campus buildings located along the Montlake cut.
- 2. Environmental Critical Areas (ECA) Amendments, if necessary:** If other land use regulations, such as the ECA, impose limitations incompatible with Principle #1, we should evaluate potential amendment to those regulations as well.
- 3. Change of Use within Existing Structures:** The University should be able to change uses within existing structures within the shoreline jurisdiction (including any expanded shoreline jurisdiction) and complete comprehensive re-construction of those structures as necessary to accommodate those uses or to address seismic or other retrofit needs, provided these changes do not require an increase or change in the shoreline footprint of the structure that was not identified in the CMP. Examples include several existing structures along Montlake cut.
- 4. New Uses and Structures Identified in the CMP:** The University should be permitted to construct those new uses and new structures within the shoreline jurisdiction (including any expanded shoreline jurisdiction under the draft SMP) that were identified in the CMP. The University and the City may impose mitigation for construction of those uses and structures, consistent with the mitigation requirements of the draft SMP, provided that the mitigation does not prohibit the construction at the general location and the size identified

in the CMP. Our discussions will include identifying where the Master Plan provides adequate specificity to determine location with respect to SMP/ECA setbacks and buffers.

5. **New Uses and Structure NOT Identified in the CMP:** Uses and structures that are not identified in the CMP should be addressed using the provisions for amendments set out in the 1998 Agreement and not in this SMP revision process. The SMP already has a process for exchanging nonconforming uses.
6. **Future Mitigation Requirements and Prior UW Shoreline Restoration Efforts:** The City and the University propose to defer the following Principle because it is not practicable at this time and is beyond the scope of our discussion. In addition, any new mitigation requirements should recognize the significant shoreline environment restoration efforts already completed by the University as part of the overall shoreline development approved in the CMP Program. Examples include the Center for Urban Horticulture greenhouses and the Waterfront Activities Center.
7. **Union Bay Natural Area Research:** University research within the Union Bay natural area, together with incidental wetland or wetland buffer alteration associated with that research, should be a permitted use and defined.

The understanding from our meetings with City staff was that these agreed Principles should guide revisions to the October 2011 draft policies and regulations to avoid conflicts with University uses and development identified in the CMP. As described in more detail below, this result has not been achieved in the October draft.

In addition, it is difficult to discern from available shoreline environment mapping whether the current SMP draft proposes changes to the shoreline environment designations reflected on the CMP. Compare page 38 of the CMP which shows the current shoreline environment designations with the shoreline sub-reach analysis mapping, *Attachment D*. The University has not received any notification from the City regarding any intention to change shoreline environment designations on University property from those reflected in the CMP. SMC 23.60.042 and 23.76 require a property-specific rezone analysis before changing the shoreline environment designation. Because the differences in permitted uses and development standards between the CP environment and the CM environment are substantial for University uses and interests, this uncertainty is of concern. The CP environment would prohibit essentially all University uses, including existing athletic facilities, the crew house, the waterfront activities center and, depending on where this environmental designation boundary is located, two proposed future building sites identified on pages 86-87, 115-116, 119-120, 122, of the CMP. *Attachment E*. At a minimum, the City must provide an analysis of the rezone criteria for Council to make its decision including better mapping clarity regarding the extent of the proposed CP shoreline environment designation. If there are areas where the City intends to expand the CP environment designation that create conflicts with the uses and development sites shown in the CMP, the City's plans and regulations must provide certainty that the University can continue to maintain the existing facilities, to improve them (within existing footprints or within the scope approved in the CMP) and permit construction of those new University uses and facilities expressly noted in the CMP development site table on pages 86 and 87 (*Attachment E*) of the CMP - all as specified in the Principles identified above.

In addition to the potential CP mapping conflicts described in the prior paragraph, the University has other concerns with provisions of the October draft, generally categorized as follows:

1. **CP Environment:** New use restrictions and changes to development standards in the CP zone impact existing University facilities and the University’s ongoing wetlands research programs in the Union Bay Natural Area.
2. **CM Environment:** Restrictions on permitted uses and new development standards in the CM zone impact existing and proposed University Uses inconsistent with the adopted CMP and with the principles identified above.
3. **UC Environment (formerly US Environment):** Use restrictions on waterfront lots and new development standards in the UC zone impact existing University buildings and limit the University’s ability to make highest and best use of those existing structures.
4. **Shoreline Setback in All Environments:** New shoreline setback requirements in all three shoreline environments that effectively turn existing University facilities and buildings into nonconforming structures. The University must be able to maintain and, in fact to substantially remodel or improve each of those existing facilities, as needed, to meet changing academic program needs. The University recognizes that the footprint of these existing facilities should not be expanded beyond that required to address accessibility to avoid any increase in potential impact to the shoreline environment, but the regulations as currently drafted appear to impose greater restrictions than that.
5. **Nonconforming Use and Nonconforming Structure Provisions:** These limitations become problematic for ongoing University activities when considered in light of the new use restrictions imposed by the above-referenced changes, thereby creating conflicts with the adopted CMP.
6. **Habitat Mitigation Units Program and the Restoration Plan:** Several sections of the proposed SMP impose new “habitat mitigation unit” requirements, but provide no specificity regarding what or how these will be determined. In addition, the shoreline regulations require the City to adopt a Restoration Plan to demonstrate how the City will focus its efforts to achieve the no net loss objectives of the Shoreline Management Act. The University has not seen, nor been provided with an opportunity to comment on the City’s Restoration Plan and, thus, is unable to evaluate its implications for University properties and University activities and uses within the shoreline environment. The University has concerns about leaving such significant components of the SMP to “director’s rule,” especially when the University has already had difficulty with the City holding to the commitments and the plans identified in the adopted CMP. The University believes these components must be vetted through a public review process similar to the SMP update, before applying any of the outcomes of the Restoration Plan or the Habitat Mitigation Units Program on individual development permit requests. While the Restoration Plan may not function as a regulation, to the extent it serves as the focus for offsite mitigation efforts, it is important that the Restoration Plan be evaluated by affected shoreline property owners. Habitat Mitigation Units are included within the regulations and, therefore, the specifics of how they will be calculated and imposed similarly must be evaluated by affected shoreline property owners.

SPECIFIC CONFLICTS AND SUGGESTED CODE REVISIONS

1. CP Environment

SMC 23.60.250 addresses use restrictions and development standards for the CP Environment and limits institutional uses in this shoreline environment to only park and open space uses and, by reference to SMC 23.60.195, aquatic research, provided no permanent structures are permitted. In contrast, the adopted CMP includes existing roads, trails, expansion of the Urban Horticulture Center Greenhouses (CMP Building site

54E), the Baseball Field stands (CMP Building Site 59E) and, potentially, the soccer field stands (CMP Building Site 58E) within this area. This conflict requires two changes to the October draft:

- A. Revise the boundary of the CP environment so it does not include the site of the existing or proposed structures and uses identified in the CMP; and
- B. Add a footnote to Table A, SMC 23.60.252 Uses in the CP Environment as follows:

****institutional uses in existing buildings or at existing facilities shown as part of an approved major institution master plan are not considered nonconforming even if those uses are not water dependent or water related. Such uses may be replaced with other MIO non-water dependent or non-water-related uses approved under the applicable master plan.***

By adding the requested footnote, existing University uses and buildings would not be subject to the nonconforming use or structure provisions of SMC 23.60.122 and .124. Both of these corrections are necessary to address the existing use/structure conflict and the identified new building site conflicts. CP Environment development standard conflicts are addressed under the shoreline setbacks item #4 below.

2. CM Environment

SMC 23.60.224 Uses in the CM Environment distinguish between uses permitted on waterfront lots and uses permitted on upland lots. The University has several concerns regarding this section. First, please clarify that footnote F in SMC 23.60.224 Table permits all college uses on upland lots and only imposes the water-related, water-dependent use restriction on waterfront lots. The University is not clear what is intended as the distinction between footnote E and footnote F, as relates to the University campus facilities and uses. In that regard, please clarify whether the Early Childhood Center would be classified as a college use or as a child care center under SMC 23.60.224. The University believes it should be classified as a college use generally. In addition, please note that the adopted CMP lists specific roads and parking lots that the City and University have agreed to define the division between upland and waterfront lots. See page 127 of the adopted CMP (*Attachment F*).

Beyond these requested clarifications, the University must retain the ability to convert existing structures from one college-related use to another. Several University buildings already exist on water front lots and are not necessarily limited to water-related academic uses. These include: Conibear Shellhouse, Waterfront Activities Center, Indoor Practice Facility and portions of the Center for Human Development. While some of these existing structures currently contain water-related academic uses (such as the Oceanography and Fisheries buildings), the adopted CMP did not contain such limited use restrictions. Academic needs change, and the University must be able to respond to those needs with efficient re-use of existing buildings and facilities. For that reason, the University requests that an additional footnote be added to Table A for Section 23.60.224 Uses in the CM Environment, as follows:

****institutional uses in existing buildings or at existing facilities on waterfront lots shown as part of an approved major institution master plan are not considered nonconforming even if those uses are not water dependent or water related. Such uses may be replaced with other MIO non-water dependent or non-water-related uses approved under the applicable master plan.***

By adding the requested footnote, existing University uses and buildings would not be subject to the nonconforming use or structure provisions of SMC 23.60.122 and .124. These clarifications and this

footnote are required to address what otherwise would be conflicts with the adopted CMP and would jeopardize the University's ability to fulfill its academic mission. CM Environment development standard conflicts are addressed under the shoreline setbacks item #4 below.

3. UC Environment

The UC Environment contains a waterfront lot/upland lot distinction similar to the CM Environment, except that the UC Environment, SMC 23.60.382 defers to the underlying zoning. First, please clarify that the City interprets that deferral (SMC 23.60.382(B) to include uses identified in an adopted CMP. We suggest revising that section as follows:

B. Uses on upland lots are allowed, allowed as a conditional use, or prohibited as provided in the underlying zones, including any approved major institution master plan, except for the following uses, these uses are prohibited on upland lots:

Second, as with the CM Environment, the University must retain the ability to convert existing structures from one college-related use to another in the UC Environment. Several University buildings already exist on water front lots and are not necessarily limited to water-related academic uses. These include the Bryant Building and Bryant Annex, AquaVerde, Marine Services, Oceanography Storage Building Fisheries Center, Center for Human Development and Disability While some of these existing structures currently contain water-related academic uses (such as the Oceanography and Fisheries buildings), the adopted CMP did not contain such limited use restrictions. Academic needs change, and the University must be able to respond to those needs with efficient re-use of existing buildings and facilities. For that reason, the University requests that an additional footnote be added to Table A for Section 23.60.382 Uses in the CM Environment, as follows:

****institutional uses in existing buildings or at existing facilities on waterfront lots shown as part of an approved major institution master plan are not considered nonconforming even if those uses are not water dependent or water related. Such uses may be replaced with other MIO non-water dependent or non-water-related uses approved under the applicable master plan.***

By adding the requested footnote, existing University uses and buildings would not be subject to the nonconforming use or structure provisions of SMC 23.60.122 and .124.

4. Shoreline Setbacks

All three of the University shoreline environments contain new development standards that impose a 50 or 35-foot setback from the ordinary high water mark that essentially impose a "no-touch" zone. This new setback standard turns several existing University facilities and structures into nonconforming structures and would effectively prohibit substantial improvement to these existing University structures and prohibit construction of new facilities or structures identified in the adopted CMP. Specific examples include:

CP Environment (50-foot setback):

- The Conibear Shellhouse
- Conibear Annex
- Greenhouse additions at the Urban Horticulture field House p. 119 CMP (*Attachment E*)

CM Environment (50-foot setback):

- The Waterfront Activities Center relocation p.115 CMP

UC Environment (35-foot setback):

- Oceanography Storage and Dock
- Institute for Learning and Brain Sciences
- Bryant Building and Bryant Annex

Consistent with the guiding Principles identified at the beginning of this letter, the University asks the City to include the following language regarding existing University facilities and structures located within the proposed 50 or 35-foot shoreline setback. This amendment can be included in SMC 23.60.124(C), Nonconforming Structures (perhaps by dividing that subsection into one part applicable to existing facilities and structures identified in an approved major institution master plan and another subsection applicable to other existing structures). Additionally, the University recommends a similar amendment or cross-reference within the shoreline setback development standards for each of the Shoreline Environments identified above:

Existing facilities or structures identified in an approved major institution master plan that are located within the shoreline setback required by this subsection may be maintained, repaired, structurally altered, substantially improved or replaced, provided such activity does not increase the footprint of the existing facility or structure or in any other manner expand or increase the extent of the nonconformity or create additional nonconformity, except as otherwise required by law if necessary to improve access for the elderly or disabled or to provide regulated public access.

5. Nonconforming Use and Nonconforming Structure

As described above, if the City makes the amendments suggested as new footnotes in each of the shoreline environment use tables described above, then existing University structures located on waterfront lots would not be deemed nonconforming and, as such, no amendments to the nonconforming use provisions of SMC 23.60.122 should be required. If the City does not make those requested footnote amendments, then the existing University uses approved in the CMP will require amendment to this nonconforming use section. The suggested amendment to SMC 23.60.124, Nonconforming Structures is discussed under the Shoreline Setback section (4) above.

6. Other Draft SMC Provisions

The University further requests the following additional amendments to address other conflicts, inconsistencies and potential lack of clarity with the adopted CMP:

- **SMC 23.60.027 Ecological Mitigation and Measuring Program.** Add a new subsection (E) to this section to recognize approved master plan approach to shoreline habitat mitigation:

(E) The Director shall recognize shoreline habitat mitigation that has been or will be implemented as a part of any approved major institution master plan as part

of any Shoreline Habitat Unit and Mitigation Program developed pursuant to this section.

- **SMC 23.60.062(B) Procedures for Obtaining Exemptions.** This new section of the code includes not only an exemption review process for “development,” but further includes “or an activity or use that is not development.” This additional phrase inappropriately broadens shoreline jurisdiction to matters not covered by the statute or regulations and, as drafted, implies even continuation of an existing use or activity somehow triggers review under this new section. The phrase “or an activity or use that is not development” should be deleted from this code section:

B. A determination that ~~either a development exempt from the requirement for a Shoreline Substantial Development Permit or an activity or use that is not development~~ is consistent with the regulations of this chapter, as required by Section 23.60.012, shall be made by the Director as follows:
- **SMC 23.60.157 Essential Public Facilities.** Because the adopted CMP includes specific approved building sites, as well as overall project scope, this section should be amended so as not to require the first step of mitigation sequencing (avoidance) to building sites identified in the adopted CMP:

B. Essential public facilities are required to comply with the development standards in this chapter for each component of the essential public facility and to mitigate all adverse impacts to the ecological functions of shorelines and critical areas by applying mitigation sequencing set forth in Section 23.60.158. Mitigation sequencing does not apply to the scope of the project but does apply to the siting of specific ~~project~~ components of the project. Mitigation sequencing also shall not be required for siting of specific project components if the site has been approved in an adopted master plan for the essential public facility.
- **SMC 23.60.158 Standards for Mitigation Sequencing.** This section should be amended to recognize those circumstances where mitigation has been identified as part of an approved master plan.

B. Regulations set out in this Chapter 23.60 to mitigate impacts to ecological functions, including regulations for environmentally critical areas, are minimum requirements to mitigate impacts to ecological functions and are to be supplemented by using mitigation sequencing in this Section 23.60.158 to achieve no net loss of ecological functions. Mitigation under this Section is not intended to duplicate mitigation for the same ecologic function that is required under other City regulations or under state and federal permits. Mitigation under this Section shall take into account mitigation required for planned development projects approved under adopted Major Institution Master Plans. The permit condition most protective of the ecologic functions shall be enforced.
- **SMC 23.60.160 Standards for Priority Habitat Protection.** It is not clear whether the City intends to apply a priority habitat designation to the mouth of the existing drainage ditch in the Union Bay area. The history of this drainage ditch does not support such as designation. Regardless, the University suggests a clarification that the prohibition apply only to new structures. If it does, then this section potentially imposes significant new restrictions on existing

University facilities that may be located within this new Priority Habitat designation, including Chaffey Field and Canal Road. If applicable to the mouth of this drainage ditch, then this section should be amended to clarify it only imposes restrictions on new structures or infrastructure:

A. Priority freshwater habitat.

...

3. No new structure, including but not limited to new piers, bulkheads, bridges, fill, floats, jetties, and utility crossings shall be located within the priority freshwater habitat, unless the applicant demonstrates that no reasonable alternative alignment or location exists.

- **SMC 23.60.164 Standards for regulated public access.** This section should be modified to recognize the plan for public access in the approved CMP. Waiting for further review of the previously approved and largely constructed public access plan for the campus until new SMP language is adopted is not an acceptable substitution for this proposed code language that would preserve the valuable work in the CMP Public Access plan.

K. Public Access Plan. A public access plan shall meet the requirements of WAC 173-26-221(4) and shall be developed through an open public process as provided in WAC 173-26-201(3)(b)(i). Public access plans that are part of an adopted Master Plan are deemed to satisfy the requirements of this section 23.60.164.

- **SMC 23.60.187 Standards for Piers and Floats and Overwater Structures.** Subsection E includes new language that requires evaluation of “periodic or continual disturbance by human activity” when applying mitigation sequencing to piers and floats. This section should be clarified so as to impose mitigation requirements only if pier or float construction or repair creates a periodic or continual disturbance by human activity in excess of the amount of disturbance caused by the existing pier or float. Otherwise, this section could have the affect of imposing mitigation on an existing use or activity, which is not required by the “not net loss” standard of the Shoreline Management Act, nor permitted under regulatory nexus and proportionality standards.
- **Comprehensive Plan Policy LU 231.** This comprehensive plan policy should be amended to recognize the approved CMP as appropriate uses within the University shoreline environments.

LU 231 (5)

Recognizing the extensive planning effort and public benefit of the University of Washington’s Campus Master Plan, and the University’s extensive shoreline public access network, the City will recognize uses indentified in the Campus Master Plan as conforming, regardless of location. The City will adopt flexible regulations with regard to maintaining University buildings, grounds and academic uses on the shoreline areas of Campus.

As noted at the beginning of this letter, the University’s primary concerns relate to protection of the integrity of and commitments made by both the University and the City in the adopted CMP. That CMP was the result of hard work by both the City and the University. It received significant public scrutiny during its development and adoption and, for those reasons as well, should not be undermined by modifications to the City’s shoreline master program. Each of the University’s suggestions in this letter is consistent with the adopted CMP and is

permissible within the framework of the state shoreline management act and applicable regulations. Given the fairly significant nature of several of these outstanding issues, the University requests that the City issue a third public comment draft prior to sending the final document to the City Council. Without one more round of review and comment, the likelihood that some or many of these outstanding issues will have to be debated in the public forum before the City Council increases. The University believes it would be more effective to work through the necessary revisions with staff prior to transmittal to the City Council.

If you would like to discuss any of these comments further, please do not hesitate to call.

Very truly yours,

Theresa Doherty
Director
Regional and Community Relations