



May 25, 2011

Ms. Diane Sugimura
Director, Department of Planning and Development
City of Seattle
PO Box 34019
Seattle, WA 98124-4019

Re: Seattle Shoreline Master Program Update

Dear Ms. Sugimura:

Thank you for the opportunity to comment on the City of Seattle's proposed update to its Shoreline Master Program. CalPortland owns and operates major manufacturing and industrial operations in the Duwamish Manufacturing Industrial Center that depend on a shoreline location. The operations are a critical component of our business and are essential to our continued ability to supply aggregate and concrete to Seattle and surrounding communities, and cement to the Pacific Northwest. More than 50% of the material we produce is for public infrastructure projects and nearly all the building materials we supply to the Seattle market arrives on the water eliminating hundreds of thousands of truck trips every year.

Given the importance of our facilities on the Duwamish to our long-term ability to provide buildings materials to the Puget Sound area, we have carefully reviewed the proposed Seattle Shoreline Master Program (SSMP). Our over-arching concern is that the proposed update does not implement the City of Seattle's Comprehensive Plan policies that direct the City in its planning to preserve industrial land for industrial uses. Rather, the proposed SSMP goes in the opposite direction. The proposal would actually make it much more difficult to maintain or expand industrial uses along the Duwamish. CalPortland employs over 130 individuals in the City of Seattle. As is the case with other construction related industries, our business has suffered from the economic downturn. The proposed SSMP would be another blow to industry trying to survive along the Duwamish and would hamper the public infrastructure projects that depend on our materials.

We ask the City to begin working with industry on a second draft proposed update that will (1) implement the Comprehensive Plan policies that protect industrial land for industrial uses, and (2) implement the Shoreline Management Act preference for industrial uses that depend on a shoreline location.

I. BACKGROUND

A. Our Facilities Depend on Access to the Duwamish.

CalPortland owns several facilities along the Duwamish waterway. All of our facilities are dependent on this central shoreline location, as we require access to the waterway for the shipment of materials.

Our Duwamish facility is located at 5975 East Marginal Way South, along Slip 2 at the Duwamish Waterway. At this facility, we receive concrete aggregates (sand and gravel) and cement by barge, and conduct various activities including operation of a concrete batch plant. Uses onsite include material storage, offices, truck dispatch, process water treatment and recycling facilities, maintenance and repair shops storage sheds, fueling stations, laboratory testing and other associated uses. In order to maintain barge access, periodic maintenance dredging is required to remove material deposited in the slip by the river, repair and maintenance of barge offloading facilities, as are bank stabilization measures.

Our Cement Terminal facility is located at 5900 West Marginal Way SW with direct access to the Duwamish Waterway. This facility is used to off-load cement from ships and barges, and transfer the material to trucks and rail cars for delivery to customers. Maintenance dredging is required to safe berthing depths at the dock. Maintenance and repair of the dock and associated equipment and shore protection are necessary for the continued operation of the facility.

Our Terminal 103 facility is leased from the Port of Seattle, and is located at 4002 West Marginal Way SW, along the Duwamish Waterway. At this site, various aggregate (rock) products are received by barge, off loaded, stockpiled, loaded onto trucks, and then sent for delivery around the Seattle region.

All of our facilities are on lands zoned for General Industrial (IG 1 U/85). The sites are within the Urban Industrial (UI) designation under the existing and proposed Seattle Shoreline Master Program. The sites are also within the Duwamish Manufacturing Industrial Center (MIC).

B. Seattle's Comp Plan Policies Promoting Industrial Uses Must Be Implemented.

1. Seattle's Comp Plan Policies Seek to Preserve Industrial Lands for Industrial Uses.

Seattle has a long established policy of fostering and protecting industrial uses. In 2006, at the urging of the Planning Commission, the Seattle City Council directed DPD to prepare an industrial lands strategy to ensure that adequate land would be available to accommodate the expected future amount of industrial uses in the City of Seattle. DPD began by conducting a survey of industrial businesses. Many businesses, such as ours, place a high value on being near Port facilities, the railroad, and highway connections that exist in Seattle's industrial areas.

Seattle locations put us closer to our suppliers and customers. The survey also concluded that many industrial uses felt that the City's land use policies constrained their businesses due to the fact that the Seattle area is "highly regulated." Department of Planning and Development Industrial Land Survey, Perspectives on the Benefits and Challenges of Business Opportunities in Seattle's Industrial Lands (April 2007).

Following the survey, DPD issued Seattle's Industrial Lands Background Report (May 2007), which explained that the Countywide Planning Policies identify four manufacturing/industrial centers, including the Duwamish Manufacturing Industrial Center. Within the geographic boundary of these centers, policies are to promote the preservation and aggregation of land parcels for manufacturing and industrial uses, and also discourage other land uses which are not compatible with manufacturing and industrial uses. Although Seattle's Comprehensive Plan already contained policies to protect industrial lands, DPD recommended that additional protections be adopted by the City Council.

In 2007, the Seattle City Council adopted Ordinance 122601, finding that development of retail and office uses in industrial zones reduce the amount of land available for industrial uses and inhibited the ability of industrial uses to locate, remain or expand in the City. The City Council therefore imposed new limitations on office and retail uses in the IG1 and IG2 zones. The Council concluded that stricter limits on office and retail uses could better fulfill the intent of the City's adopted policy preserving industrial land for industrial uses and discouraging competition for industrial land by non-industrial uses.

In 2011, the Seattle City Council began consideration of Comprehensive Plan amendments to conform to the recently adopted requirement of the Growth Management Act (GMA) that require the City to include an element addressing cargo terminals. The proposed element includes policies that aim to prevent incompatible land uses from locating near container terminals and to ensure adequate transportation access for moving freight to and from these terminals.

As it stands today, Seattle's Comprehensive Plan provides some of state's strongest policies seeking to promote and protect industrial uses, including the following:

- LU 24: *Preserve industrial land for industrial uses and protect viable marine and rail related industries from competing with non-industrial uses for scarce industrial land. Give special attention to preserving industrial land adjacent to rail or water dependent transportation facilities.*
- LU 26: Give adequate attention to the needs of industrial activity while reducing major land use conflicts between industrial development and budding residential or pedestrian-oriented commercial areas, and *avoid placing unnecessary restrictions on manufacturing uses.*
- LU 152: *Do not apply [shoreline view corridor] standards to areas along the Duwamish Waterway because they would not achieve the intended increase in visual*

access ...

- LU 231: *Water dependent uses generally shall have priority.*
- LU 237.6: *Give priority to the operating requirements of water dependent and water related uses over preservation of views in those environments where water dependent uses are encouraged.*
- LU 269.1.d. The Duwamish: Preserve the statewide interest by *encouraging industrial and port uses in this area, where such uses are already concentrated* while also protecting migratory fish routes.

2. The SSMP is a GMA Development Regulation, so it Must Be Consistent With and Implement the Comprehensive Plan.

The City of Seattle has adopted strong Comprehensive Plan policies to preserve industrial lands for industrial uses, and directs that the City must avoid placing unnecessary restrictions on manufacturing uses. Under the GMA, all development regulation must be consistent with and implement the Comprehensive Plan. RCW 36.70A.040; WAC 365-195-800. “Implement” in this context has a more affirmative meaning than merely being consistent; implement connotes not only a lack of conflict, but sufficient scope to carry out fully the goals, policies and directions contained in the Comprehensive Plan. WAC 365-195-800.

As such, the Seattle Shoreline Master Program must be reviewed for consistency and implementation of the Comprehensive Plan policies preserving industrial lands for industrial uses and giving preferences to water dependent and water related industries. Our major concern with the proposed update is that it is inconsistent with these goals, and actually goes in the opposite direction to create more regulatory barriers for industrial uses. Some of the areas where we identified inconsistencies are outlined below.

II. COMMENTS ON THE PROPOSED DRAFT SSMP UPDATE

A. Water Dependent and Water Related Manufacturing Uses Should Be Permitted Outright.

Under the existing Urban Industrial (UI) provisions of the SSMP, manufacturing uses are permitted outright on both waterfront lots and upland lots. SMC §23.60.840.G - .850. The proposed SSMP update would dramatically change this, as manufacturing and industrial uses are no longer permitted outright in the UI environment. As drafted, Water Dependent manufacturing uses are only permitted as a Special Use and Water Related manufacturing uses are allowed only as a conditional use.

The criteria established for special uses and conditional uses are also changing. For example, an applicant would be required to demonstrate that the proposed use can mitigate “all” adverse effects to ecological functions. See, Proposed Update §23.60.032, .034. As drafted, the new criteria would certainly make it much more difficult for industry to exist, and in fact, it may

be impossible for most manufacturing uses to meet the criteria. To require “all” impacts to be mitigated would include insignificant effects that cannot be measured. This is unavoidable.

As drafted, the update is tantamount to precluding such uses along the Duwamish in the MIC. Therefore, the proposed update is directly at odds with the Comprehensive Plan policies discussed above, which seek to preserve industrial lands for industrial uses and seek to “*avoid placing unnecessary restrictions on manufacturing uses.*” Clearly, the update’s proposed use chart is going in the opposite direction; it is intentionally making it more difficult to establish, maintain and expand industrial uses. As such, the proposed update is inconsistent with the Comprehensive Plan and fails to implement the Comprehensive Plan, as mandated by the GMA. The proposed use chart must be corrected in the next draft in order to be consistent with the policies that encourage industrial uses. The City’s industrial lands policies were intended to remove regulatory barriers, not create new ones, and foster industry. We do not understand why the existing master program, which allows such manufacturing uses outright, has been changed. The draft SSMP should restore the current use chart that allows such uses outright.

B. The New Definition of What Is Reasonable and the New Criteria for Special and Conditional Uses Are Too Strict and Fail to Give Preference to Water Dependent and Water Related Industry.

As discussed above, the criteria for special use permits and conditional use permits has been changed. For example, an applicant would be required to demonstrate that the proposed use can mitigate “all” adverse effects to ecological functions. See, Proposed Update §23.60.032, .034. This is more burdensome than requiring a “no net loss” standard. It is also more burdensome than the traditional SEPA mitigation that considers significant adverse impacts, and requires that mitigation be reasonable and capable of being accomplished. Under the proposed update, the definition of what is reasonable would also be changed, requiring a proposal to achieve the “lowest level of impact to ecological function”. This definition would be impractical and likely impossible to achieve in the Duwamish area where industry operates. The DOE Guidelines already have a definition of “feasible”, and considerable case law has evolved to define what is reasonable. Recreating the wheel seems unnecessary.

Again, the draft update appears to have a one-size-fits-all approach, and does not provide any flexibility for water dependent or water related uses along the UI environment of the Duwamish. The next draft should consider additional flexibility for water related and water dependent industry in the UI. The definition of “reasonable” should be deleted.

C. New Restrictions on Nonconforming Uses and Structures Are Too Strict and Fail to Give Preference to Water Dependent and Water Related Industry.

Most (if not all) of the uses along the Duwamish will become nonconforming uses, because they will not have the necessary special use or conditional use permit required by the proposed update. As such, the rules on nonconforming structures and nonconforming uses become critical. As presently drafted, the SSMP provides very narrow restrictions on such uses, such as by imposing a 12-month limitation on discontinuance. Restrictions are also placed on such uses if they are destroyed, for example by fire. It is also unclear why the word “renovation”

is deleted from the type of maintenance activities that can occur on nonconforming uses. Proposed Update §23.60.122.B.1. Overall, the policies appear to create inconsistencies with the Comprehensive Plan policies on industrial uses and the SMA policies for water dependent and water related industries.

To avoid the inconsistencies, the easiest solution is to reform the proposed use table to ensure that manufacturing and industrial uses in the Duwamish are permitted outright, and to ensure that they do not become nonconforming uses. In addition, the City should review the proposed criteria on nonconforming uses and nonconforming structures to add in additional flexibility for water dependent and water related industries.

D. The Mitigation Sequencing Standards Fail to Give Preference to Water Dependent and Water Related Industry.

We are concerned about the proposed mitigation sequencing approach, and the standards for mitigation of impacts in the proposed update. This new section creates a mitigation sequencing approach that is related to the type of permit being sought, regardless of the underlying zone or shoreline designation. Again, because manufacturing and industrial uses are treated as special or conditional uses, the mitigation that could be imposed commences at level B, (minimizing impacts) for conditional uses, and level C, (rectifying impacts) for special uses. For manufacturing and industrial uses in the MIC, this is too onerous, especially if it is a water related or water dependent use.

The mitigation sequencing *fails* to give any preference to water dependent or water related uses, despite the fact that these uses are supposed to be preferred under the SMA. It also *fails* to give any preference to industrial and manufacturing uses in the MIC as directed by the Comprehensive Plan policies. As such, the mitigation approach needs to change in the next draft. We prefer the traditional SEPA based approach to mitigation that is well established. We would like to see the mitigation sequencing approach removed from the next draft. If this approach is retained, then manufacturing uses in the UI should begin the mitigation sequencing further down the priority list, such as Step F (monitoring the impact and the compensation projects and taking appropriate corrective measures). As presently drafted, the mitigation sequencing is inconsistent with Seattle's Comprehensive Plan policies that seek to avoid placing unnecessary regulation on manufacturing uses, and inconsistent with the Shoreline Management Act preference for water dependent and water related uses.

E. Specific Concerns Are Set Forth in the Attached Matrix.

We have set forth above our over-arching concerns with the draft update. We have also attached a matrix that comments on various sections of the proposed SSMP update with our concerns about other sections of the proposed update, including development standards for various uses.

III. ADDITIONAL CONCERNS REGARDING THE SECOND DRAFT PROCESS

A. **The Ramifications on the Business Community Must Be Carefully Considered.**

As part of the Industrial Lands survey, our business community expressed serious concerns over the business ramifications with regard to increased regulatory risk and uncertainty. Such uncertainty discourages investment in things that increase efficiency or provide better environmental protection, like improved water quality treatment or air quality protection. As mentioned, 50% of the product we produce is used for public infrastructure projects and thus the cost of additional regulatory risk and uncertainty is ultimately realized by the public when our public infrastructure dollars don't stretch as far. This concern about regulatory risk and the impact on the industrial business community needs to be a consideration in the second drafting of the SSMP.

B. **The Second Draft Should Build on What We Already Have. If It Isn't Broke, Don't Try to Fix It.**

We echo the comments of others who are dismayed that the so-called SSMP "update" has turned into a complete overhaul. The document is unnecessarily complex and makes too many radical and fundamental changes in terms of the rules that have been in place for years and have been accepted and relied upon by the regulators and the regulated community. It is impossible for the public or the regulators to have a comprehensive understanding of all these changes or to know what the ramifications of these changes will be. The second draft should build on what we already have and limit changes to areas where true updates are needed. There is simply no reason to change the use chart in the UI environment, for example.

C. **The SSMP Should Not Try to Regulate Areas Already Regulated by Other State, Federal and Local Regulatory Programs.**

The City should not try to make the SSMP into a comprehensive regulatory program, but instead should rely upon other regulatory programs both at the City level and under the jurisdiction of other agencies. Regulatory requirements that are redundant with other regulatory programs are an unnecessary burden on the regulators and the regulated community, and often lead to confusion when other regulatory programs are reviewed and updated. For example, the first draft of the SSMP includes criteria that refer to protection of air quality, when we are already highly regulated by air pollution control laws under the jurisdiction of EPA, PSAPCA and WDOE. Criteria that seek to protect safety, public health, and stormwater stray into topics highly regulated by other laws. Similarly, dredging is highly regulated by the Dredged Material Management Agencies, EPA, WDOE, DNR and the Army Corps of Engineers. Can't the City leave the specifics of dredging to other agencies?

The second draft must do a better job of streamlining the SSMP and paring it back to matters within the purview of the SMA, which was intended to manage uses along the shoreline in a balanced way.

D. The Second Draft Should Employ a More Systematic Process, with a Thorough, Integrated SEPA Review and an Expanded Public Participation Process Involving Industry.

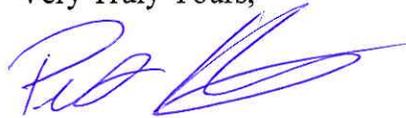
A more systematic approach to updating the SSMP should be employed in the second draft. If a problem with the current regulatory program is identified, it should be evaluated in a logical, systematic way, say for example through a series of issue papers. In this way, alternatives are considered and evaluated based on the effectiveness of the change to fix the problem identified. The resulting change in environmental risk, regulatory risk, and economic risk can then be thoughtfully considered prior to proposing a change.

We are also unclear why no EIS for the update is in the works. SEPA should be done early in the process, and in a manner integrated with the review of the program under review. Clearly, this is a proposal that will have the potential for significant adverse impacts on water dependent uses along the Duwamish. An EIS was prepared for other major land use decisions including the Livable South Downtown Plan, the new Downtown Plan, and the South Lake Union Plan. The City Council and the industrial users need to see some alternatives to this proposal, and the SEPA process provides a framework for that process.

We were not invited to participate in any public outreach or advisory committee process, and only became aware of the proposed legislation indirectly through others. This process is too important to the future to allow the draft to become law without meaningful involvement of industry. The manufacturing and industrial uses along the waterways are the most individually complex and diverse users of all the shoreline designated lands. A task force specific to these land use designations should be established to look at the existing requirements and help review and revise needed changes.

Thank you for the opportunity to comment on the SSMP update. Industry would like the opportunity to participate in the second draft of the proposed legislation. Local governments are granted discretion to balance the various policy goals of the SMA in light of other relevant local and state circumstances. WAC 173-26-186. Seattle must use this discretion to develop an update that implements the Comprehensive Plan policies that seek to promote our industrial uses.

Very Truly Yours,



Peter Stoltz
Manager, Permitting & Government Affairs

cc: Margaret Glowacki, DPD
T. Ryan Durkan, HCMP

SEATTLE SHORELINE MASTER PROGRAM UPDATE

SUBCHAPTER I: PURPOSE AND POLICIES

Code Section	Analysis and Requested Changes
<p>23.60.002</p> <ul style="list-style-type: none"> regulates shoreline developments and “shoreline modifications” 	<p>Analysis: Shoreline modification is defined broadly to include construction, grading, etc, and also altering vegetation, applying chemicals.</p> <p>This concept comes from the WDOE guidelines but appears to be an expansion of the regulatory scope of the SMA which governs “development”.</p> <p>If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1).</p>
<ul style="list-style-type: none"> “protect and restore” 	<p>Analysis: The goal of restoration becomes more paramount under the proposal. The concept is derived from the WDOE guidelines, which rely on one passage from the statutory goals in RCW 90.58.020. The passage itself is only one finding among many, and merely states that there is “concern” relating to shoreline utilization, protection, restoration and preservation. See, WAC 173-26-176. The regulations and proposed SSMP take the restoration concept further than it has ever been applied before, and appears to be a statutory expansion. If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1).</p> <p>With regard to the SSMP, the burden for restoration appears to be shifting burden to private property owners. More importantly, with regard to the Duwamish MIC, there is no recognition that industrial developed shorelines are permanently altered (ECA, for example, recognizes WD/WR as being eligible for development in a buffer area per 25.09.200B.4.c); here, in contrast, there is no water dependent or water related use preference.</p> <p>See DOE shoreline guidelines policy goal supporting utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use WAC 173-26-176(3). See also, RCW 90.58.020 recognizing that alterations of the natural conditions of shorelines of the state, in those limited circumstances when authorized, shall be given “priority for industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state.”</p>

	<p>Request: The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to prefer water dependent and water related industry over protection and restoration. We support the Port’s proposed language to reserve “appropriate areas” for restoration. The UI is not an appropriate area.</p>
<p>23.60.004</p> <ul style="list-style-type: none"> • adds lands “adjacent to” the shoreline 	<p>Analysis: Some industrial users are concerned that there may be an expansion of the regulatory scope of SMA to “adjacent” lands in a manner inconsistent with GMA. The correct approach is to ensure that the GMA Comprehensive Plan and mandates of consistency are met. The City has enacted Comp Plan policies to preserve industrial lands for industrial uses, and the SSMP should implement and be consistent with this policy. As drafted, the proposed SSMP is inconsistent with the Comp Plan policies, because it makes it more difficult for industrial uses to survive, rather than fostering retention and expansion of industrial uses as required by the Comp Plan.</p> <p>Request: The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to foster retention and expansion of water dependent and water related industry on shorelines and adjacent lands. Examples are noted herein; among the more concerning is the failure to allow water dependent and water related uses outright in the UI Duwamish area; instead they are allowed as special or conditional uses with criteria that cannot be met.</p>
<p>SUBCHAPTER II ADMINISTRATION PART 1 APPLICABILITY</p>	
<p>Code Section</p>	<p>Analysis and Requested Changes</p>
<p>23.60.016 C.1 shoreline developments “and modifications” must meet development standards</p>	<p>See comment above; Act does not appear to allow “modifications” to be regulated if they are not development.</p>
<p>C.5 submerged lands not counted toward lot area for purposes of minimum lot area</p>	<p>Could make some lots nonconforming, and others non-developable</p>
<p>23.60.020 exempt actions and shoreline modifications must still comply with Act even if not a substantial development see also 23.60.062</p>	<p>Analysis: The treatment of statutory exemptions has been eroded over time, and now the exemption process has itself become a permit process. This concept may come from the WDOE guidelines but appears to be an expansion of the regulatory scope of the SMA which governs “development”. If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1)</p>

	<p>Request: The exemption process should be more predictable, streamlined and not be treated as a permit process in itself. For example, is a permit exemption expected for normal WD 40 applications, now that a shoreline modification includes any spray activity? This section could be untenable; industry does not want to have to go to the permit counter to maintain its facilities in a normal and routine way. Please develop a more workable threshold in the second draft.</p>
<p>23.60.020 C.</p> <p>The exemptions include normal maintenance or repair of existing structures or developments, including damage by accident, fire or acts of nature; the word “elements” has been deleted and replaced with the new phrase “act of nature”</p>	<p>Clarify: Is the new term “act of nature” intended to include normal weathering? If not, it should be. It should not just be for extraordinary acts of nature, like earthquakes.</p>
<p>23.60.027</p> <p>A. Allows Director to create Ecological restoration and mitigation program;</p> <p>B. payment in lieu option allowed</p>	<p>Analysis: This implementation of this section appears to be a one size fits all. The so-called “SAMP” approach could be a successful option where mitigation is warranted, but not all shoreline districts are created equal. Specifically, the Duwamish is an industrialized and developed shoreline where the Comp Plan policies of the city support retention and expansion of industrial uses. Mitigation should not be required in many cases, but if it is, the cost should not be the same as development in other areas.</p> <p>Request: Clarify the purpose of this section and revise it to note that the program may vary by zone and shoreline environment, so that less is required for urban industrial shorelines in the Duwamish area.</p>
PART 2: CRITERIA FOR APPLICATION REVIEW	
Code Section	Analysis and Requested Changes
<p>Overview of Impact to Industrial Uses</p>	<p>Analysis: The section on criteria for various permits takes on significant new meaning, because under the new SSMP many WD/WR industrial and commercial uses are no longer permitted outright in the UI environment. Thus, the uses may technically become nonconforming uses and any expansions will trigger the new permit requirements and criteria. The ability to permit such uses would become substantially harder and perhaps even impossible under the proposed SSMP. This approach is inconsistent with the SMA preference for such uses and also with the</p>

	<p>Comprehensive Plan policies of the City. The City Council has repeatedly adopted policies to support the retention and expansion of industrial uses in the Duwamish area. The SSMP must be consistent with and implement the GMA Comp Plan.</p> <p>Request: The use table needs to be substantially re-written to prefer WD and WR industrial, commercial and manufacturing uses, and allow such uses outright. The use that requires a special use or conditional use should be rare; where required, the criteria need to be revised to make them achievable, otherwise it amounts to preclusion of the use.</p>
<p>23.60.032 Special Use criteria Uses identified as requiring special use approval may be approved, conditioned, denied if an applicant has demonstrated all of the criteria: ... D. use can mitigate <i>all</i> adverse effects to ecological functions...” E. the public interest suffers no substantial detrimental effect</p>	<p>Analysis:</p> <ul style="list-style-type: none"> • Use Table. This section needs to be considered in conjunction with the use table of 23.60.482. Industrial uses are not mentioned as a permitted use. Most uses would appear to fit under Manufacturing/Heavy or Transportation. WD Heavy manufacturing uses are allowed in UI only as a special use (23.60.482.F). If not WD, then see shoreline conditional use requirements. • Criteria: The previous standard of no unreasonably adverse effects is replaced by criteria that include the “no effects” language. This would be an impossible standard to meet, and open the WD industry up to challenges on every permit. Also, it appears to be inconsistent with the WDOE guidelines. See WAC 173-27-160 governing conditional uses (WDOE does not seem to have a special use category, but the conditional use category has the “no <u>significant</u> adverse effects” language). <p>Request:</p> <ul style="list-style-type: none"> • The use table should be substantially rewritten to allow WD and WR industrial uses outright in the Duwamish. • The criteria for special use permits and conditional use permits should be rewritten to restore the prior language that referred to “no unreasonably significant adverse” effects.

<p>23.60.034 Shoreline conditional uses may be approved, conditioned, denied if an applicant has demonstrated all of the criteria ... B.4. can mitigate all adverse effects to ecological functions</p>	<p>Analysis: W/R heavy manufacturing is allowed as a shoreline conditional use (Note cement terminals are considered WR under the definitions.)</p> <p>Request: See above comment for special uses.</p>
<p>23.60.036 Variiances may be approved, conditioned, denied if an applicant has demonstrated all of the criteria ... 4. the development can mitigate all adverse effects to ecological functions unless a variance from this requirement is granted</p>	<p>Analysis: The criteria grant no preference for WD/WR uses (see in contrast, view corridor waiver or modification 23.60.170C.f).</p> <p>The proposal also sets up a standard that likely cannot be met; it is not very workable to have a “variance” from a variance criteria. The regulation already requires compliance with the WAC, which has strict criteria related to mitigation, so there is no reason to layer on additional requirements. It will likely result in litigation over legislative intent, on whether stricter criteria were intended and would be allowed, since a purpose of the variance under the Act is to allow for flexibility in unforeseen situations.</p> <p>Request: The criteria should be deleted; the section already requires conformance with the WDOE WAC on variances. Additional criteria are not warranted and will only create confusion. If any new criteria are added, they should provide more flexibility for WD and WR uses in the UI environment.</p>
<p>23.60.039 If the regulations require that an action be feasible, such as a project, mitigation or preservation requirement, then the applicant shall demonstrate the following standards are met: 1. the action can be accomplished with technologies and methods that have been use in the past or studies or test demonstrate are available 2. the action provides a reasonable likelihood of achieving its intended purpose 3. the action does not physically preclude achieving the project’s primary intended legal use Criteria for feasible/infeasible actions</p>	<p>Analysis: No preference is given to water-dependent uses; the test criteria viewed per least impact to ecological function and impacts to the public.</p> <p>Request: The criteria should be revised to reflect the statutory preference for WD/WR uses, and the Comp Plan policies supporting industrial uses in the industrial area</p>

<p>23.60.040 Criteria for determination of reasonableness A....least impact to ecological function B. ...lowest level of impacts to the ecological function</p>	
PART 3 PROCEDURES	
Code Section	Analysis and Requested Changes
<p>23.60.066 requires WD component or phase and public access must be done by final inspection</p>	
<p>23.60.066 Plan shoreline permits allowed, but just for utilities</p>	<p>Analysis: The SSMP proposal contains very limited opportunities for early shoreline permitting.</p> <p>Request: Consider whether more phased developments or general “programmatic” permits should be allowed. If for example programmatic permits for pile replacement or dredging could be accomplished that would streamline permitting and help to implement the Comp Plan policies to retain and expand industrial uses on industrial lands.</p>
SUBCHAPTER III GENERAL PROVISIONS PART 1 USE STANDARDS	
Code Section	Analysis and Requested Changes
<p>23.60.090 A. In all shoreline environments, ...overwater uses prohibited unless the use is allowed or allowed as a special use, cond. use, or CCU and is 1. “boat moorage, off loading goods from boats , dry docks, swimming platforms, uses on vessels and other use components that by their nature require over water 2. rail, rail transit, street and bridges, tunnels... 3. allowed, allowed as a special use, conditional use or CCU overwater in specific use regulations....</p>	<p>Analysis: This section is too narrow for the UI environment. It is unclear why this outright prohibition with few exceptions should apply equally in all zones. Criteria #3 may save the section, but note that it says the overwater use must be allowed in specific use regulations, and does not mention a shoreline environment, such as UI. The text is also repetitive (e.g., the requirement for special use, shoreline cond. use or CCU appears twice)</p> <p>Request: Criteria #3 should at least add the words “or shoreline environment.”</p>
<p>23.60.092 allows temporary uses of 4 weeks, up to six months with Director approval</p>	

PART 2 NONCONFORMING USES AND STRUCTURES

Code Section	Analysis and Requested Changes
<p>23.60.122 Nonconforming uses b. deletes renovations from what is allowed</p>	<p>Analysis. Because the draft SSMP is so draconian toward industrial uses, many uses that are allowed now will become nonconforming. They may become nonconforming by virtue of the fact they do not have a conditional use or special use permit, because they were built at a time when they were allowed outright. They may also become nonconforming structures, if they no longer conform to current development standards, setbacks, buffers, view corridors.</p> <p>The best approach is to revise the SSMP to ensure industrial uses are fostered and preferred, and to that end, they should be allowed outright and not made into a nonconforming use. Similarly, existing structures should not be made nonconforming.</p> <p>If manufacturing and industrial uses are suddenly made into nonconforming uses, then this Part 2 section becomes critical. It is not clear why “renovation” is deleted. Note that a conforming structure containing a nonconforming use that is destroyed cannot be substantially improved or rebuilt except as provided. If the industrial areas are to be saved for industrial uses and protected from competing uses such as recreation or commercial or residential uses, then the SSMP should assist industry in renovating, expanding or rebuilding.</p> <p>Request: Revise the use tables to allow industrial uses outright. Add renovation back into the section. Make sure the new development standards do not create nonconformities for existing industrial uses. New standards should only apply to “new” development.</p>
<p>23.60.124 Nonconforming structures D. Maintenance and Repair— 1. total footprint may not increase 3. portions of existing principal structures on dry land may be reconfigured as part of a repair if b. views from neighboring residences are not affected</p>	<p>Analysis: This section is very strict. Also, in some cases, a larger footprint might be better for the environment if other measures, such as open decking, were used. Private view protection not afforded by SMA, so why does it appear in the criteria? Water dependent uses should have preference rights.</p> <p>Request: Delete the reference to residential views, at a minimum, for uses in the UI Duwamish area. Revise the criteria to provide more flexibility as needed for industry in the UI area.</p>

<p>H. The Director shall require compliance with 23.60.152 (general standards, minimize impacts, etc) if a nonconforming structure is substantially improved, replaced or rebuilt under this section, if the Director finds that continued nonconformity will cause adverse impacts; if an impact cannot be mitigated, the application shall be denied with some exceptions</p>	<p>Analysis: This section could be a significant obstacle to maintaining nonconforming uses. It does not appear to provide any flexibility for WD/WR industries.</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>
<p>I. Nonconforming structures destroyed by fire, act of nature may be rebuilt only if conditions are met 1.a same or smaller configuration 1.b. reconfigured to result in reduced impacts on ecological functions</p>	<p>Analysis: Some industries are concerned that reconfiguration requires a showing of reduced impacts, but this section could help provide flexibility from the general rule that nonconforming structures be rebuilt at same or smaller configurations.</p> <p>Request: Clarify and rewrite this section to allow more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>

PART 3 DEVELOPMENT STANDARDS

Code Section	Analysis and Requested Changes
<p>23.60.152 General Development standards B. all shoreline development shall be located designed, constructed and managed to first avoid and second to minimize adverse impacts... C. prevent shoreline stabilization D. minimize adverse impacts E. manage shoreline uses to protect the public health and safety F. minimize land clearance I. all in and over water structures shall be designed, located and managed to keep adverse impacts on habitat to a minimum J. requires nontoxic treatments consistent with AWWA K. requires creosote pilings replaced L. light transmitting to be controlled to maximum extent feasible S. regulates water related uses on waterfront lots</p>	<p>Analysis: This section requires minimization of impacts; no preference is given for WD/WR uses. Non-shoreline issues become regulated, like references to protecting public health and safety; this section should be revised to delete reference to areas regulated by other laws, such as safety laws, air quality laws, or clean water laws.</p> <ul style="list-style-type: none"> • Section B is inconsistent with mitigation sequencing and should be deleted; not all uses should be treated to require avoidance and minimization; the UI area should be preserved for industrial uses; WD and WR uses should not have to avoid the area as they are preferred uses for the shoreline and industry is preferred along the Duwamish • Some of the standards (section K) are internally inconsistent, like the AWWA which actually advocates for some of the chemicals the reg. would ban (see Port comments). • Some sections should be deleted or at least revised (e.g., section I, L) to provide for a balancing and mitigation sequencing; sometimes safety requirements may require a walkway width that

	<p>needs to be balanced against light transmission.</p> <ul style="list-style-type: none"> • Many water related and water dependent uses are so intertwined, it is impossible to separate as would be required for section S; this should be revised so that it does not apply to industrial uses in the MIC <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish. WR and WD uses both should have priority; convene a technical working group to make sure these standards fit the real world Duwamish MIC.</p>
<p>23.60.156 ECA incorporated by reference; if there are any conflicts, the more protective applies</p>	<p>Analysis: the Port had asked for and obtained ECA amendments for developed areas; these should be incorporated into the SSMP.</p> <p>Request: The two sets of regulations should be made internally and externally consistent.</p>
<p>23.60.158 Mitigation sequencing; means the steps required to achieve no net loss of ecological functions</p>	<p>Analysis: No preference given for Water-dependent uses in Table A; compare Essential Public Facilities.</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>
<p>23.60.160 Establishes priority habitat prohibits structures from intruding into or over priority saltwater habitats unless conditions are demonstrated by the applicant and those include: a. public need; b. not possible to avoid; c. state interest in resource protection and species recovery</p>	<p>Analysis. The exact area of the priority habitat is not clearly defined; note there is no map of the areas? The section seems like it would create a new critical area. The City should make clear that the UI area of the Duwamish is preserved for industrial uses. Species and resources again are the focus here; no focus on need for WD/WR uses.</p> <p>Request: Drop the notion of a new critical area. At a minimum, drop it for the Duwamish MIC or significantly revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish. The preference for WD/WR uses should be added as a consideration in the criteria.</p>
<p>23.60.164(I)(3) Public Access requires public access; may seek exception from Director; must show some hazard or inherent security issue</p> <p>23.60.170 View Corridors</p>	<p>Analysis: It would be difficult for industrial users to provide public access or view corridors. It would also be difficult to show why they meet the criteria for an exception or modification; these sections appear to be inconsistent with shoreline policies supporting water dependent industry.</p> <p>Request: Make it clear that UI areas in the Duwamish are not subject to the public access or view corridor requirements; do not make the applicant have to make a</p>

	<p>case in these areas where lands are to be preserved for industrial uses and protected from incompatible uses.</p> <ul style="list-style-type: none"> • The Comp Plan has policies that seek to keep view corridors out of the Duwamish. LU237.6, LU 152. • At a minimum, the public access and view corridor requirements must be N/A (not applicable) in the Duwamish MIC.
PART 4 STANDARDS APPLICABLE TO SHORELINE MODIFICATIONS	
Code Section	Analysis and Requested Changes
23.60.182 Standards for Dredging	Industry should review in detail with City staff or a working group.
23.60.184 Standards for fill	Industry should review in detail with City staff or a working group.
23.60.186 Standards for grading, landfill and slope stabilization	Industry should review in detail with City staff or a working group.
23.60.187 Standards for Piers and overwater structures C. Nonresidential development 1. piers and floats allowed if applicant demonstrates they are necessary to accommodate boat repair or off-loading of goods 2. covered moorage prohibited; over water work sheds allowed in UI if accessory to legitimate vessel repair and light permeability retained to extent feasible	Industry should review in detail with City staff or a working group.
D. Slip-side vessel maintenance-limited to interior vessel repair and cleaning, replacement of running gear and other cleaning and repair activities excluding hull scraping which is prohibited exterior scraping, sanding or cutting is limited to one person per 10 linear feet of one side of a vessel during any period where material may escape into air or water	Industry should review in detail with City staff or a working group.

<p>23.60.188 Shoreline Stabilization</p> <p>D. new hard engineering is prohibited unless geotech report shows all of criteria are conclusively met E. Replacement of existing hard engineering is prohibited unless strict criteria are met</p>	<p>Industry should review in detail with City staff or a working group.</p>
<p>23.60.190 Vegetation and impervious surface management</p> <p>F. vegetation alteration and increase in imperious surface requires all adverse impacts to ecological functions shall be mitigated</p> <p>G. Application of pesticides and fertilizers regulated</p>	<p>Analysis: This is a new requirement for an application and a plan for all actions allowed. Again--Ecological protection elevated above other goals of the SMA.</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>
<p>PART 5 STANDARDS APPLICABLE TO SPECIFIC USES</p>	
<p>Code Section</p>	<p>Analysis and Requested Changes</p>
<p>23.60.199 Intakes and outfalls</p>	
<p>23.60.210 Signs</p>	<p>Analysis: Business signs are stricken from allowed signs; would such signs be allowed under one of the other categories?</p> <p>Note also, safety signs are required for most industrial uses. The text should make clear these are allowed.</p>
<p>SUBCHAPTER IV SHORELINE ENVIRONMENTS</p>	
<p>SUBCHAPTER XIII THE URBAN INDUSTRIAL (UI) ENVIRONMENT</p>	
<p>Code Section</p>	<p>Analysis and Requested Changes</p>
<p>23.60.482 Use chart</p>	<p>Analysis: Industry should review the use chart in detail. The new regulations appear to be going in a direction inconsistent with the Comprehensive Plan. The proposed SSMP appear to make it more difficult, burdensome and impossible to retain and expand industrial uses. Uses are no longer allowed outright in many cases; they become special uses, conditional uses, or uses with many strings attached.</p>
<p>B. General sales and services, Outdoor and warehouse storage uses, Light Manufacturing and General Manufacturing on</p>	<p>Industry should review in detail. These uses should be permitted outright in the UI, especially in the Duwamish area.</p>

<p>waterfront lots allowed if they are WD or WR and comply with 23.60.482.B.2.</p> <p>D. Certain listed uses are prohibited on submerged land, except allowed on existing pier structure at existing terminals if WD or WR or an accessory office as provided ; listed uses include cargo terminal and light manufacturing and accessory office less than 1000 sf for WD use or as allowed as a special use or as a shoreline conditional use</p> <p>E. Heavy commercial services are prohibited on waterfront lots except as provided in E</p> <p>F. Heavy Manufacturing uses on waterfront lots are allowed as a special use if they are water dependent; if not WD they are allowed on upland lots as a special use and on waterfront lots as a shoreline conditional use if the meet conditions of subsection F</p>	
<p>L.2 Storage, outdoor 23.60.482B</p>	<p>Analysis: Many industrial uses have outdoor storage areas; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses.</p> <p>Request: The use should be allowed when related to WD/WR uses.</p>
<p>L.3 Warehouses 23.60.482 B, D and H</p>	<p>Analysis: Many industrial uses have warehouses; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses.</p> <p>Request: The use should be allowed when related to WD/WR uses.</p>
<p>M.2. Cargo Terminal WD/WR-see 23.60.482.D</p>	<p>Analysis: 23.60.482.D prohibits cargo terminal uses on submerged land, except as allowed on existing pier structures at existing terminals if water dependent water related or an accessory use and other requirements are met; this appears to be unduly restrictive and at odds with recent comp plan amendments to support marine trade terminals.</p>

	Request: The section should be rewritten to support cargo terminals.
M.8 Vehicle storage and Maintenance-X/ prohibited	Analysis: Many industrial uses have vehicle storage and maintenance; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses. Request: The use should be allowed when related to WD/WR uses.
23.60.484 Shoreline Modifications in the UI	Industry should review in detail with City staff or a working group.
D. Dredging Dredging is allowed as a special use if a.necessary for a WD use, or b. to provide navigational access for existing navigational uses ...	Industry should review in detail with City staff or a working group. Request: Develop a programmatic permit or other process for maintenance dredging that is routine and necessary for WD/WR uses.
F. Fill 1. allowed as a special use if part of an ecological mitigation 2. allowed as conditional use if necessary for bridges, utilities, cleanup of contamination, or transportation facility. 3. prohibited otherwise	Analysis: Industry should review in detail. The definition is too strict; stockpiling seems to be considered fill, and such uses are often integral to WD/WR uses that import materials and off load them from barges, stock pile the materials, and then transfer to vehicles to transport the material to market. If such use is “fill”, then the regulations need to be more flexible. Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.
G. Grading	Analysis: Industry should review in detail. Same concerns as noted under Fill, above. Request: An example of a section that needs refining is the definition of fill; cleaning out of drainage swales or stormwater channels could technically be considered grading; these types of routine maintenance services should be exempt.
H. Piers and Floats	Industry should review in detail with City staff or a working group.
PART 2 DEVELOPMENT STANDARDS	
Code Section	Analysis and Requested Changes
23.60.486 Height: Maximum height is 35 feet but water dependent uses may have cranes, lights, conveyers above max	Analysis: Industry should review in detail with City staff or a working group. It would seem additional height for other structures should be allowed in the UI, Duwamish industrial area where off-loading of goods, storage towers, silos, cranes and such are needed.

	Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.
23.60.488 Lot Coverage may not exceed underlying zone	
23.60.490 Shoreline Setbacks Require a 15 foot setback in UI	Analysis: Industry should review in detail. No setback should be required in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed. Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.
23.60.492 View Corridors 35% of the width of the lot shall be provided and maintained as a view corridor on all waterfront lots, except I water dependent or water related uses occupy more than 50% of the dry land area of the lot	Analysis: Industry should review in detail. It would seem no view corridor should be required in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed. Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.
23.60.494 Regulated Public Access public access must be provided on private lots for developments that are not water dependent except on certain lots in the Lake Union area.	Analysis: Industry should review in detail. It would seem no public access should be required on individual sites in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed. Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.
SUBCHAPTER XVI DEFINITIONS	
Code Section	Analysis and Requested Changes
	Analysis: Industry should review the definitions in detail with City staff or a working group. Request: Revise the definitions if needed to provide more clarity or consistency
Fill means the addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM	
Grading means excavation , filling, in place ground modification, removal of roots or stumps, stockpiling of earth materials, establishment of a grade following	

demolition of a structure	
<p>Cargo terminal means a transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or accessory warehouses, rail yards, storage yards, and offices</p>	
<p>Manufacturing-- defined in the zoning code</p> <p>23.84A.025 Manufacturing, general means mnf. use having the potential of creating moderate noise, smoke, dust, vibration or other env. impacts including: ...a) production of items made from stone or concrete</p> <p>Manufacturing, heavy means a mnf. use typically having the potential of creating substantial noise, smoke, dust, vibration and other impacts or pollution including but not limited to ...b. processing or refining of raw materials</p>	
<p>Shoreline Modification means those actions that modify the physical configuration or qualities of the shoreline area usually through construction... Shoreline modifications can be other actions such as clearing, grading adding impervious surface, altering vegetation or applying chemicals</p>	<p>Has the City Law Department reviewed this section? It would seem that it would be expanding the jurisdiction of the SMA. Would the spraying of chemicals such as WD 40 on machinery be covered? the expansive definition appears to go beyond what would reasonably be considered shoreline development.</p>
<p>Water Dependent use means a use which cannot exist in other than a waterfront location and is dependent on the water by reason of intrinsic nature of its operations; includes marine construction and repair, cargo terminal for marine commerce or industry, tug and barge operations; water dependent use includes businesses that receive or transport 50% or more product used</p>	

<p>in the business via the water adjacent to such business.</p>	
<p>Water Related means a use or portion of a use not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a location in the shoreline because; 1. the use has a functional requirement such as the arrival or shipment of materials by water or the need for large quantities of water 2. the use provides a necessary service supportive or WD uses and the proximity of the use to its customers makes its services less expensive and more convenient ... The following uses are often considered water related: ...sand and gravel companies and concrete mix and cement plants if operating materials for any of the foregoing uses arrive by boat ...</p>	<p>Note: A business that is otherwise water-related would be water dependent if it meets the definition above; the water dependent definition should control if there is a conflict.</p> <p>Our company depends on material arriving by barge for over 50% of its product; we request that the example either be deleted or clarified by adding “unless it meets the definition of water dependency above.”</p>