

MAY 31 2011

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May 31, 2011

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City of Seattle
700 Fifth Avenue, Suite 2000
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Seattle, WA 98124-4019

Re: *Seattle Shoreline Master Program Update*

Dear Ms. Sugimura:

Thank you for the opportunity to comment on the proposed update to the Seattle Shoreline Master Program. CD Stimson owns and operates the Salmon Bay Center, located adjacent to, and on the north side of Salmon Bay, just east of the Ballard Locks. The site is the former home of the Stimson Mill, a saw mill and later a shingle manufacturer which began operation in the late 1800's. The mill and its pier facilities were converted in the late 1950's to the office, light manufacturing and marina uses now known as Salmon Bay Center.

Our central concern is that the proposed update does not go far enough to recognize existing, long standing, legally established uses within the shoreline environment. Under the current draft, many of the uses which are now permitted at Salmon Bay Center will become nonconforming as those uses would be prohibited or subject to shoreline conditional use approval by the Department of Ecology. The proposal as written would make it difficult to maintain and renovate existing buildings and structures on the site as well as execute future development plans.

We understand that the City will work on a second draft of the update that will be circulated for public review and comment. We request that the second draft (1) recognize existing legally established developed sites within the shoreline, (2) provide more flexibility for such sites to be maintained and renovated, and (3) improve the provisions for legal nonconforming uses and structures.

I. Background.

The Salmon Bay Center site ("SBC") is zoned Industrial General, and about the western one-third of the dry land portion is within the UI shoreline environment. The shoreline district boundary bisects the SBC site, and in fact, runs right through two of the existing buildings. The 11-acre site is developed with a covered fresh water marina and

multiple one-, two-, and three-story buildings on dry land, where space is leased predominantly to commercial and light industrial tenants. The site includes a mix of uses, including office, light manufacturing, warehouse, lab, storage, marina, and accessory uses.

In 2009 a short subdivision was approved with the specific use of five office buildings of 100,000 square feet each. Short Subdivision No. 3008464. (See plat note 10 regarding vesting to this size of office building.) The development concept was, and is, to construct a multi-phased office development on the property. The first phase of this development is currently under review at DPD, and issuance of a Master Use Permit for the first office building is expected this year. Future phases are anticipated to be submitted as the economic forecast improves.

The SBC site is extensively altered and has been developed for decades. The site is 100% covered with impervious surfaces. We believe it is very important for the SMP to acknowledge existing developed conditions and to allow for site maintenance and redevelopment. For sites already developed with non-residential uses, in particular, it is not possible or desirable to try and turn back the clock to when the shoreline in Seattle was undeveloped.

II. Regulatory Changes for Nonconforming Uses and Structures Are Too Stringent.

Most of the existing uses at the SBC site will likely become nonconforming uses because they will either be prohibited or will not have the required special or conditional use permit required by the proposed code. As written, the proposal will further constrain such uses in the UI which is inconsistent with the concept that nonconforming uses have rights to continue and modernize as long as nonconformity is not increased.

We are similarly concerned about the standards for nonconforming structures. Such a structure may be improved; however, the standards are restrictive and subject to a complex process of mitigation sequencing. Update at 23.60.124.D.2. In addition, reconfiguration of a structure is allowed only if the reconfiguration results in an improvement that provides equal *or greater* protection of ecological functions. Update at 23.60.124.D.3. What the Update does not recognize here and elsewhere is that on previously developed sites, there may be no ecological function or habitat value to the area abutting the water and a reconfigured structure does not decrease that function or value at all. The current language seemingly prevents reconfiguration of a nonconforming structure even if there is no impact on environmental functions.

We also note that a 12-month limitation on use discontinuance is proposed, whereas a 24-month limit for uses in the UI environment is currently allowed. Update at 23.60.122.A.1. The proposed code is more stringent than what is required by the state. WAC 173-27-080(9). Additional restrictions are also placed on such uses if they are destroyed, for example, by fire

or other natural events. Also of concern is the removal of the word “renovation” from the type of maintenance activities that can occur for nonconforming uses, as well as a narrowing of the restrictions on reestablishing uses destroyed by fire. Update at 23.60.122.B.1.

In sum, the proposed restrictions on nonconforming uses and structures are onerous, especially since so many uses in the shoreline will become either prohibited or without the required special or conditional use approvals. Some amount of preference and flexibility in the code needs to be provided for existing uses and development sites, since the vast majority of the developable land in non-residential shoreline areas is already intensively developed.

III. Mitigation Sequencing Is Overly Complex.

The rules for mitigation sequencing are unclear, especially with respect to nonconforming structures. What is the starting mitigation sequencing step for mitigation required under 23.60.124 (nonconforming structures)? Furthermore, we note that mitigation is tied to a permit type and not to the actual degree of impact. This seems arbitrary. At the very least, the next draft should modify the mitigation sequencing steps to acknowledge nonconforming structures.

IV. ECA and Shoreline Regulations Should Be Consistent.

Seattle has a second, and largely duplicative, set of shoreline restrictions in its Environmental Critical Areas (“ECA”) code for shoreline habitat areas. Parcels containing shoreline habitat are required to have a 100-foot buffer from the Ordinary High Water Mark. Development is prohibited within a shoreline habitat buffer, unless certain exceptions are met. Such exceptions apply, generally, to existing developed areas where vegetation is not removed and where no new impervious surface is being added. SMC 25.09.200.B.3. This exception for sites without shoreline habitat function was specifically added to the ECA Code in recognition of existing developed sites.

The proposed SMP apparently incorporates by reference the standards and procedures of the ECA into the SMP, stating that the standards and procedures of Ch. 25.09 “are modified as set out in subsections 23.60.156E through N for environmentally critical areas in the Shoreline District.” Further, if there are conflicts between the ECA and the SMP, “the requirements most protective of ecological functions apply.” Update at 23.60.156. However, subsections E through N do not incorporate the above cited ECA exception for when no vegetation is removed and new impervious surface is being added in shoreline habitat areas. It is essential that this exception be carried forward in the shoreline regulations. In addition, the definition of “no net loss” needs to make clear that the baseline for comparison is the existing, actual conditions on the site. For a fully developed non-residential lot with 100% impervious surface and no vegetation, there is no habitat function and maintaining that condition, even if development is added elsewhere on the site, is still consistent with “no net loss.”

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Further, we ask that the two sets of regulations be made consistent. Incorporating by reference portions of the ECA into the SMP is very confusing. There has to be a better way to "synchronize" each, if you insist on keeping regulations on the same topic in two different codes.

Conclusion

Thank you for considering our comments on the proposed code. We would ask that you focus in the second draft on streamlining the regulations, reducing overlap, and providing clarity, especially as it relates to the concerns of landowners with pre-existing, developed sites.

Very truly yours,



Melody B. McCutcheon

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