

From Futurwise and People for Puget Sound

May 31, 2011

Maggie Glowacki
Seattle Planning & Development
700 Fifth Ave., Suite 2000
Seattle, WA 98124-4019

Sent by email to: margaret.glowacki@seattle.gov

**Subject: Comments on the Seattle Shoreline Master Program
Jan 2011 Draft**

Dear Ms. Glowacki:

Thank you for the opportunity to comment on the Seattle Shoreline Master Program (SMP). We appreciate the time and effort that Seattle staff, stakeholders, and residents are devoting to this important update. Washington's shorelines need improved policies to manage them, and the shoreline master program is an opportunity to adopt those policies. **Futurewise** is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. **People For Puget Sound** is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

We Strongly Support the SMP Update

We support the comprehensive update of the Seattle SMP. It needs to protect the threatened species that use Seattle's shorelines. For example, Puget Sound, Lake Washington, and Lake Union are the habitats of the threatened Chinook salmon, the threatened steelhead trout, and the threatened bull trout.¹ These threatened species are one of the reasons we need to better manage our shoreline habitat. Other shorelines, including lakes, rivers, and streams are similarly important.

¹ United States Department of Commerce National Marine Fisheries Service, *Puget Sound Chinook Salmon ESU* map accessed on April 29, 2011 at: <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Maps/upload/chinpug.pdf>, the United States Department of Commerce National Marine Fisheries Service, *Puget Sound Steelhead ESU* map accessed on April 29, 2011 at: <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Maps/upload/Steelhead%20Puget%20Sound%20map.pdf>, and the United States Fish and Wildlife Service, *Critical Habitat for Bull Trout (Salvelinus confluentus) Unit: 2, Puget Sound, Sub-unit: Lake Washington* map accessed on April 29, 2011 at: http://www.fws.gov/pacific/bulltrout/finalcrithab/washington/Unit_02_Lake_Washington.pdf. Maggie

We would like to commend those that have participated in the effort. While there are changes we recommend in this letter, the SMP does include some significant improvements over the current SMP. While there will be pressure to weaken these elements, we urge you to retain them.

There are some areas that we recommend be strengthened to meet the requirements of the Shoreline Management Act (SMA) and the Shoreline Master Program Guidelines

(SMP Guidelines).² We have attached three of our guidance documents that we hope can inform the update effort. Our comments for improvements reference the information in these guidance documents.

² While the SMP Guidelines are called “Guidelines,” they are actually binding rules that provide standards that SMPs must meet although local governments have flexibility to meet local circumstances. WAC 173-26-171(3)(a).

³ Accessed on August 27, 2010 through: <http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/FEMA-BO.cfm>

Futurewise’s Guidance on No-Net-Loss of Ecological Function, Cumulative Impact Analysis and Restoration Planning. This document focuses on the SMA and SMP Guidelines requirements for a framework that accomplishes no-net-loss, including the need to build mitigation sequencing into the structure of the SMP. It also discusses the pitfalls in actually making it happen, including erroneous assumptions about accounting for impacts allowed by the SMP that have no logical basis in science or the practice of assessing development impacts. Of particular importance is the SMA preference that control uses that cause degradation. Lastly it describes the jurisdiction’s responsibility to compensate for impacts allowed by the SMP.

Futurewise’s Guidance on Establishing Shoreline Environments. This document focuses on the SMA and SMP Guidelines requirements for protecting the remaining areas of intact shorelines using protective environments, and their importance in accomplishing mitigation sequencing. It also discusses the pitfalls in actually making it happen, including erroneous assumptions about accounting for impacts allowed by the SMP that have no logical basis in science or the practice of assessing development impacts. Lastly it describes the jurisdiction’s responsibility to compensate for the impacts allowed by the SMP.

Futurewise’s Guidance on Buffer Options Using Science. This document describes the SMA and SMP Guidelines requirements, and the pitfalls in establishing a buffer system that is compatible with buffer science. It includes methods for dealing with the range of different buffer conditions from intact areas to heavily developed areas, and covers using small buffers for heavily developed locations. It explains why small buffers don’t work to protect ecological functions unless they are accompanied by built-in mitigation in the form of enhancement requirements to offset the built-in impacts that come with small buffers. We understand that small buffers are not consistent with the buffers in the National Marine Fisheries Service - Northwest Region’s *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document – Puget Sound Region*.³ The city will need to carefully consider the potential consequences of using such small buffers.

Uses That Damage the Environment Must be Prohibited or Include Special Protections

A number of our comments in this letter are based on the incorporating the SMA preference of water-dependency in both use limits and the vegetation management system. The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraphs 2 and 3 are described in our guidance documents. Paragraph 4 -

the implementation paragraph – is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines. Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]:

“In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.”

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses. ...

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don't need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy. Such uses must be prohibited or carefully controlled with special requirements. They cannot be treated the same as preferred uses are treated, otherwise there is no effect to the preference.

Since the majority of ecological functions come from native intact vegetation, degrading that vegetation (including further degrading already degraded vegetation) causes damage to the environment. Uses and development that meet a science-based buffer go far in preventing damage. If such a buffer is not applied, the development will harm the environment - so there must be a good reason to allow it. This is why the SMA establishes the preference for water-dependency, and establishes the Shoreline Variance and Conditional Use Permit processes – they ensure there is a hardship or other good reason for not meeting a buffer (or other regulation). And of course, like all development, the SMA and SMP Guidelines require that the impacts be compensated for.

This makes water-dependency criteria a critical factor in accomplishing mitigation sequencing for two reasons. First, if a development has no need to be near the water, it should not be allowed in shoreline jurisdiction, unless limited to specific instances. For example, commercial and industrial development have SMP Guideline requirements that carefully get at these limited instances. Hardship conditions, such as for a Variance in situations of existing development, would also be such an instance. And the SMA and the SMP Guidelines give a priority to single family residences that control pollution and prevent damage. In general, allowed uses should be limited to water-oriented uses and single family residences.

Second, for any development that is allowed in shoreline jurisdiction, if a development has no need to be in the water or providing access to the water, it should be outside an intact, science-based buffer, where it will cause the least amount of damage. Development within a science-based intact buffer that is not water-dependent or water-related development would cause damage, is the opposite of the SMA policy, and is non-preferred. It must be prohibited or somehow carefully limited, as the Guidelines require. Thus, water-dependent and water-related uses need to be in the buffer and are preferred. But water-enjoyment and non-water-oriented development can meet the buffer while still maintaining their function. They must prevent harm to the environment, and the primary means of doing this is to meet the buffer. Of course degraded buffers, whether small or science-based, cannot work to mitigate development impacts. As an extreme example, even a completely concreted shoreland area that is converted from a use with low human presence to intense human presence will have new impacts, because the human presence will drive off or disturb sea life.

Because of the high level of competition for Seattle’s very valuable, but limited, shorelines; shorelines need to be reserved for water-dependent uses, such as ports, shipyards, fish and shellfish processing plants, and marinas. These businesses, both historically and currently, play important roles in the economies of Seattle and Washington State and provide valuable family wage jobs. Our organizations support this. Our guidance document dealing with buffers provides a detailed discussion of this issue. Our guidance documents dealing with both buffers and no-net-loss both provide a detailed discussion of the impacts of development, including many incorrect assumptions that some development has no impacts. At least one of these is apparent in the Seattle buffer system.

#	comment	response
1	There is one assumption that a 15, or 35, or 50 foot buffer, regardless of whether it is intact, will prevent impacts of new development as if it is a science-based buffer.	DPD Mitigation sequencing still applies, so that if the buffer is not sufficient, other mitigation will still be required. Sec. 23.60.152.A & B and 158.B. Also vegetation regulations apply.
2	Another assumption is that by meeting the small setback width (again regardless of whether it is intact), unlimited new development outside that width will have no impacts.	DPD See response to #1

As you are aware, the terms mitigation and mitigation sequencing encompass a broad range of actions that are focused on avoidance, minimization (multiple sequence steps are forms of minimization), and compensation.

#	comment	response
3	We have noticed that the usage of the term mitigation is often used to describe compensatory mitigation exclusively. We recommend that in these cases the term “compensation” be accurately used to clearly indicate that some form of enhancement/replacement work is expected. We have observed a very common misconception in the practical application of “mitigation” that seems to skip the step of compensatory mitigation, so correct usage of terms is important. It is especially common for road and street projects.	DPD The WAC’s description of mandatory “mitigation sequencing” includes a range of actions. The SMP requires “mitigation sequencing.” Subsection 23.60.152.A and Section 23.60.158 of the proposed regulations describe mitigation sequencing in the same way as the WAC, requires mitigation for the specific environmental function affected, and requires>NNL. Also note the requirements of Section 23.60.152.B, which allow DPD to consider the need for modifying the action.

Shoreline Alternative Mitigation Plan not described

The Proposal Summary that was issued with the draft regulations describes the Shoreline Alternative Mitigation Plan (SAMP), which appears to be a means of establishing compensatory mitigation.

#	Comment	response
4	The name implies that this is an alternative to conventional compensatory mitigation. However, it is not clear in the regulations that it is required to be used. In the absences of such a requirement, conventional compensatory mitigation provisions are needed.	DPD Sections 23.60.152 and 23.60.158 require conventional mitigation sequencing in all cases, regardless of the program described in Section 23.60.027. Also, that section has been revised to clarify the “shoreline alternative mitigation program”. Part of clarifying this program was to rename it to more accurately reflect its purpose and how it works.

Our recommendations on these are provided in more detail in the Vegetation Conservation section below.

Vegetation Conservation

For Seattle, where only a small part of the shoreline is still intact, the above issues have ramifications in the buffer system.

#	comment	response
5	The lightly developed and intact areas – mainly the Conservancy environments - need science-based buffers and vegetation management to protect these remaining intact areas.	DPD The environment that has intact or mostly intact ecological functions and areas is CP. Few uses are allowed in this environment and the setback standards, mitigation sequencing and vegetation requirements will protect this area.

Heavily developed areas, however, must deal with the issues discussed above.

#	comment	Response
6	Specifically, almost all development allowed by the SMP is allowed very close to or in the water, and will cause damage. Such instances must be limited to hardship situations where alternatives are not available (existing developed sites),	DPD SMA policies and the WAC require allowing use of the shoreline for appropriate uses, not just hardship cases. Overwater uses are severely restricted (e.g., SMC 23.60.090 and SMC 23.60.384 in the UC and 23.60.504 in the UM for property with little or no dry land.) Where there is sufficient environmental value to justify more protective shoreline environment designations, those have been adopted. Conditioning location under 23.60.152.B, setback standards, vegetation requirements and mitigation sequencing will protect existing function.
7	then mitigation sequencing must be used (especially avoidance and minimization), and then the remaining impacts must have compensation.	DPD In addition to setback requirements for each environment, SMC 23.60.152 B allows additional consideration of locational adjustments. Vegetation regulations apply, and mitigation sequencing, which includes avoidance and minimization apply.
8	Even with the extensive minimization regulations found throughout the SMP, there will be remaining impacts. The regulations must specify how the compensation will be provided.	DPD The development standards for specific uses identify impacts to consider, where they can be identified in advance. Section 23.60.158 requires NNL and full mitigation for each type of impact affected. Additional language has been added to specify that a mitigation plan for impacts to ecological function is required.

There are some specifics about compensatory mitigation described in many cases, and are well done and well thought out. All other situations, however, also need such attention. Our guidance document dealing with buffers discusses in detail the different

situations that need to be addressed in a buffer system - ranging from intact to heavily developed areas.

DPD requirements regarding mitigation requirements for development allowed in smaller degraded buffers have been included in a new Section 23.60.169.

The buffer system is well thought out and nuanced. It covers many instances; however, there are still gaps that need to be plugged - most specifically, vegetation management in well vegetated areas, and vegetation management outside the established setback.

#	comment	response
9	Since the buffer system is based on environment designations it is critical that the environments actually match the actual vegetation characteristics. It may be necessary to adjust or change some of the currently proposed environment designations.	DPD - Adjustments were made to the environmental designations based on the results of the shoreline characterization report, which included riparian vegetation conditions.

The proposed small buffers need to better match more intact vegetation conditions found in the Conservancy environments.

#	comment	response
10	In the proposed system, the intact vegetation outside the small setbacks is unprotected	DPD See Section 23.60.190.E. Vegetation is protected outside the setbacks, and mitigation sequencing (23.60.158) is required with the intent to direct the placement of development to avoid removing vegetation. Also see subsection 23.60.152.B

- including from additional park development, which can be very intense. As the most extreme example, the SMP description for the Conservancy Preservation environment is a rough equivalent to the Natural environment in the SMP Guidelines, which is appropriate.

#	Comment	Response
11	However, the 50-foot buffer is completely inappropriate given the science for buffers of intact areas	The purpose of a buffer is to establish a starting point for protection that is a consistent minimum standard. The proposed 50-ft buffer, plus the limited uses allowed in the Conservancy Preservation shoreline environment, the vegetation standards, and the requirement to apply mitigation sequencing,

		<p>which includes avoidance and is directed toward planting native vegetation close to the shoreline, will ultimately protect the function of riparian areas within the CP shoreline environment. Additionally the vegetation management section</p> <p>See response to 1</p>
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. Our buffers guidance document recommends buffers of at least 150-feet for such highly functioning locations.

#	comment	Response
12	The details of the buffer system are individually established for each of the 11 shoreline environments, and seem to be customized to some extent, making it very hard to determine what parts are systematic and what parts are not.	DPD The buffers were based on a combination of science, existing development patterns, and the purpose and intended use allowances of the environment. See response to 1.

#	Comment	Response
13	However, we have some general observations about all of them that can be summarized using one example below, which we provide as notes in the body of the regulatory text. Other environments seem to use similar format, but are less protective.	Setback sections revised, and in the CW environment pathways and viewpoints are allowed 15-ft from the shoreline but no other shoreline parks and open space use is allowed.

23.60. 332 Shoreline setbacks in the CW Environment - Shoreline setback requirements are as follows:

A. Development within 15 feet landward of the OHW mark is limited to the minimum necessary to construct and provide access to overwater or water dependent parks and open space uses and to shoreline modifications that are allowed, or allowed as a special use or a shoreline conditional use in the CW Environment.

B. Development in the area within 35 feet landward of the OHW mark and more than 15 feet landward of the OHW mark is limited to the type of development allowed in subsection 23.60.332.A and to pathways and viewpoints accessory to a parks and open space use allowed, or allowed as a special use or as a shoreline conditional use in this shoreline environment or for required public access.

[Note: Encroachment into all of the setback areas should be limited to water-dependent and water-related uses (as is proposed in some SMP environments), except for linear facility crossings, hardship situations, and approved shore

stabilization. The examples above allow recreation and public access facilities that may have no water-dependency, and those should meet the setback. Those that do have water-dependency would be allowed.]

C. All development allowed in the shoreline setback shall be designed to:

1. avoid reducing vegetation coverage;
2. avoid adverse impacts to habitat;
3. minimize disturbance to natural topography;
4. minimize impervious surface; and
5. prevent the need for shoreline stabilization to protect these structures.

[Note: For development that is allowed, these are good criteria.]

D. Vegetation and impervious surface management and restoration and enhancement projects within shoreline setbacks are regulated pursuant to Section 23.60.190 and this shoreline environment.

[Note: Also see our comments on section -.190, which covers vegetation conservation.]

Section 23.60.190 establishes the overall vegetation conservation provisions (providing the details in the environments). It is nuanced and detailed. Paragraph A requires the submittal of a vegetation plan.

#	Comment	response
14	We recommend that the plan components include consideration of compensatory mitigation, but adding an item (6) stating: "Plans shall display the vegetation areas and improvements that are provided as compensatory mitigation for project impacts."	DPD subsection 23.60.190.C.3 was revised to include the suggested language.

Paragraph B and C address vegetation management both waterward and landward of the OHWM. Paragraph B includes a provision describing how to apply mitigation sequencing.

#	Comment	response
15a	Paragraph C does not have a similar paragraph [re mitigation sequencing], but it should.	DPD The purpose of C1 is to allow continued maintenance of vegetation allowed under permits approved under prior critical area regulations, etc. Adding the proposed language would be contrary to that intention. That said, if these actions contribute to NNL, then the SMA anticipates that the City's <i>non-regulatory</i> restoration/enhancement policy will address these impacts.
15b	[It may be that paragraph F is intended to do this, and perhaps should be moved.]	No, F does not apply to C1.
16	The provision (for in-water mitigation sequencing in paragraph B) includes a	DPD This provision already includes loss of habitat and therefore the suggested

	list of potential impacts that should be supplemented to include “incidental loss of habitat during weed control,” and “differences between mature and replacement vegetation features.”	change to include loss of habitat is not needed. Regarding mitigation for the difference between mature and replacement vegetation, we do not consider the loss of the noxious weed as an impact.
17	Both paragraph B and C should include a provision that “no existing native vegetation may be eliminated unless there is no feasible alternative.” This establishes an avoidance provision throughout shoreline jurisdiction.	<p>DPD Re B – This provision is for noxious weed removal. Removal of native in-water vegetation is required to go through mitigation sequencing. In addition the eelgrass and kelp beds and intertidal habitat with vascular plants are priority salt water habitat and are required to follow the provisions set out in Section 23.60.160.B</p> <p>Regarding C: C1 should not contain the proposed condition because it refers to actions allowed under permits issued under former ECA regulations.</p> <p>C2 allows removal of a native tree only if it is a hazard tree.</p> <p>C3 sets standards for minimizing the loss of vegetation at a site, which essentially, achieves your suggested “no feasible alternative” language.</p>
18	Note that there currently does not appear to be a statement protecting vegetation, except within the setback area.	DPD Vegetation protection is required see subsection C, which applies “both within and outside the shoreline setback.”
19	The above two mitigation sequencing provision in paragraphs B and C should also include ratios that capture the greater importance of vegetation in different areas, the failure rate of compensatory mitigation, increased human activity, and losses due to differences between mature and replacement vegetation.	DPD Subsection 23.60.158 A states “Mitigation shall achieve the equivalent ecological functions” and 23.60.152 A says NNL. This is repeated in 23.60.190.F. Additionally F captures the vegetation function in different areas. A new requirement is included in 3.d.2 that captures ecological functional difference between mature and new vegetation. A new requirement that states maintenance and monitoring is required for vegetation management is included in 23.60.190.F.3.d.6. This new requirement addresses the failure rate.
20	It may be that the SAMP includes ratios. Whether it does or not, we recommend incorporating the following	DPD A new Section 23.60.169 was added to the setback section to require vegetation planting in the setback to

	ratios.	compensate for smaller setback and for the allowance to rebuild some structures in setbacks per State Legislative changes to the SMP. No net loss of ecological function standard needs to be used to determine the correct ratios and will be established on a case by case basis, or by a later rule that is scientifically based.
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New development above a de minimus level of approximately 100-200 sq. ft. cumulatively, should compensate for impacts by re-establishing a certain percentage of the setback vegetation so it can actually function to buffer and mitigate impacts. Examples we have seen include the Kirkland SMP (75% of the water frontage), and the draft Issaquah SMP (a complex enhancement provision), and the draft Bellevue SMP (60% of area). The remaining non-vegetated areas are to be focused on access and existing use areas.

Removal of existing native vegetation outside the setback should be compensated at 2:1.

DPD: See response to comment #20

Development inside the setback should compensate for impacts at a ratio of 2:1 for all new use areas, and areas of new impervious surface.

DPD: See response to comment #20

Removal of existing native vegetation inside the setback should be compensated at 3:1. Development in the water should compensate for impacts at a ratio of 3:1 for all new use areas – including areas occupied by boats, swim areas, and similar use areas.

DPD: See response to comment #20

Lastly, paragraph C includes hazard tree removal. This also needs a replacement ratio of 3 new trees when a hazard tree is removed, which is in line with Seattle’s current tree policy.

DPD - Mitigation is required to achieve NNL see Subsection 23.60.190.F.

Paragraphs D and E both include a pair of provisions, one for replacing vegetation, and one for restoring and improving vegetation. Replacing vegetation is allowed without a permit, and

#	comment	response
21	does not include provisions preventing native vegetation from being eliminated and replaced.	DPD Native vegetation can be replaced with native vegetation for areas 300 s.f. or less within the shoreline setback and 750 s.f or less outside of the setback or for

		<p>dead native if the project <u>“promotes maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality, or provides diverse habitat”</u>.</p> <p>Additionally the section was revised to remove the word dying so only dead native trees, shrubs and ground cover can be removed and they are required to be replaced with native vegetation.</p> <p>Added the word only in subsection D.2.b.1 and E.2.b.1 to clarify that there are requirements for this provision.</p>
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Such a provision establishes substantial cumulative impacts, unless it is limited to replacement of “non-native” vegetation. We recommend that change. Restoring or improving vegetation also can cause losses of functions. It specifically allows removal of “dead and dying native vegetation.” But since many people equate mature vegetation that looks old with dying vegetation, there is great room for unintended abuse. In addition, mature vegetation is where you find “dead and dying” plants, but it is also the vegetation with the greatest habitat value for insects and small animals, as well as medium and large animals. We recommend eliminating this provision, unless there is at least a 3:1 replacement ratio.

DPD revised to allow removal only of dead not dying vegetation and see response to Comment #20 regarding replacement ratios. Additionally, these projects will be reviewed and if they do not meet the intent of the section, meaning if the native vegetation that is proposed to be removed is not dead then the project will not be approved.

Our recommended changes to the existing detailed system will ensure that all instances of development impacts will be compensated for by the SMP, and that existing native vegetation will be protected as much as possible.

DPD see above responses.

Environments

We have the following recommendations on the environments:

The environment descriptions have a Purpose and designation criteria, but they are

#	Comment	Response
22	missing the management policies, all of which are required by the SMP Guidelines.	DPD Management Goals and Policies for each environment are included in the Seattle Comprehensive Plan and are provided in a separate document. See Shoreline Comprehensive Plan found on the SMP

	update website in the Draft SMP and Supporting Materials section.
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The Conservancy Preservation environment is described as very similar the SMP Guidelines Natural environment, which is appropriate.

#	Comment	Response
23	However, the purpose and designation criteria to not capture the Guidelines requirement for “very-low-intensity” development	<p>DPD general response to all comments re environments, WAC 173-26-221(2), and (4)(c)(1) recognize that alternative designations are allowed if they are consistent with the purposes of the WAC and are equal to the WAC.</p> <p>Included in a separate document are the analyses for each shoreline designation and the WAC requirements. See “Shoreline Environments and WAC” document</p> <p>Many uses are conditional uses and the criteria for CU take into account significant impacts: “That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;...”</p>

.4 In addition, several uses in the Conservancy Preservation table allow intense development – especially parks and opens space uses, public facilities, research uses, aquaculture, and institutional uses,

DPD Parks and open space uses and institutional uses are limited to “low intensity” types of shoreline parks and open space uses.

Public facilities are limited to public facilities that are similar to the uses allowed, allowed as a conditional use or special use in shoreline environment in which it is proposed.

Research uses standards were revised to restrict this use to no structures are erected.

Aquaculture is now a prohibited use in the Conservancy shoreline environments.

#	Comment	Response
24	which are allowed without limitation by use intensity	<p>DPD Parks and open space uses and institutional uses are limited to “low intensity” types of shoreline parks and open space uses.</p> <p>Standards for research uses were revised to restrict this use to no structures are erected.</p> <p>Public Facilities – Section 23.60.207 covers this by stating that a public facility either is regulated as a named use or is regulated similarly to the most similar named use. So, it is not a use by itself and can only be allowed if a named use or a similar use is allowed or allowed as a special use or a</p>

	conditional use.
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Other Conservancy environments are intended to protect ecological functions, but also allow intense uses that are incompatible with such a purpose.⁵ Use intensity is described in our guidance documents dealing with no-net-loss and shoreline environments. We recommend incorporating use-intensity as use categories or in table notes

#	Comment	Response
25	to prohibit the more intense versions of different uses that are allowed in these low intensity environments.	DPD The types of uses that are allowed are more restrictive based on the shoreline environment in which it is proposed. Shoreline parks and open space uses are less intensive than general parks and open space uses and included in the use tables are special provisions as needed to limit the type of use when appropriate in the environment it is proposed to meet the use requirements.

Further, the urban conservancy environment also provides that “[u]ses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses.”⁶

#	Comment	Response
26	This necessarily limits the uses to low intensity uses.	DPD Please see the provisions in WAC 173-26-211(5)(e) allowing “ a variety of compatible uses” (5)(e)(i); requiring standards for vegetation, and shoreline stabilization etc. so that “new development does not result in net loss” (5)(e)(ii)(B); and allowing not only public recreation but also “water oriented uses” (5)(e)(ii)(D). The uses can be conditioned to be compatible.

The Conservancy Recreation environment’s Purpose statement includes recreation.

#	Comment	Response
27a	However, like all environments, recreation should follow the SMA policy’s implementation statement, which gives priority to “shoreline recreational uses ... facilitating public access to shorelines of the state...” - not just any recreation uses.	DPD: The intent of the SMA is not to say that all land within the shoreline district should be used only for recreation that is similar to piers and marinas. Public access includes areas that provide the public the opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water. Therefore allowing some types of recreational uses on waterfront lots that allow for views and the enjoyment of the aesthetic qualities of the shoreline can be allowed. Depending on the shoreline environment, limitations may be more appropriate, depending on the quality of the

		natural functions. In the CR environment parks and open space uses in the form of natural athletic fields and concessions have been revised to require a 50-ft shoreline setback, and pavilions are required to have a 35-ft shoreline setback.
27b	We recommend limiting the purpose to “water-oriented” recreation.	DPD “Water oriented” recreation as defined by the WAC is what is allowed in the proposed regulations. See response to comment #27.

⁴ WAC 173-26-211(5)(a)(i).

⁵ WAC 173-26-211(5)(e)(i) provides that “[t]he purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.”

⁶ WAC 173-26-211(5)(e)(ii)(a).

#	Comment	Response
28	Green Lake is designated Conservancy Management for reasons that are not clear. It more closely matches the Conservancy Recreation environment.	DPD Green Lake is a highly developed lake with no surface water connection to salmonid bearing or other fish bearing systems; therefore, it is more appropriate to continue to be designated as Conservancy Management, which will continue to allow the path close to the water and other more intense uses.

There are areas of the SMP (detailed in our attachment) where we would like to see better resolution of the environment designations. The ship canal has good resolution but the Duwamish River lacks this.

#	Comment	Response
29	Given the importance of the Duwamish for the recovery of the WRIA 9 salmon run, we would like to see parity (especially for the existing park areas and larger habitat restoration areas).	DPD Shoreline designations were changed based on the results of the shoreline characterization report. Please provide specific information regarding the areas that you would like to see re-designated based on the use or ecological conditions of the shoreline area.
30	The center of the Duwamish River (the navigation channel) should be designated as Conservancy Navigation.	DPD is researching this request.
31	There are areas of intact vegetation on the Puget Sound shoreline of Seattle (see attachment for	DPD The shoreline designation along Puget

	details). We would like to see these areas designated with a protective environment.	Sound were re-designated based on the results of the shoreline characterization report. If there are additional areas that should be protected please provide the specific information, beyond what is in your attachment.
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Uses and Modifications

We have the following recommendations on the use and modification limits:

#	Comment	Response
32	In the Conservancy Preservation environment, intense and structural uses and modifications should be prohibited, including those described in our environments comments. This would include many recreational, boating, and public access structures.	DPD The allowed uses are not intense. Boating is limited to landing areas with design restrictions; public facilities are regulated the same as the non-public uses in the use table under 23.60.207
33	Park facilities should be limited to pervious trails of limited width within shoreline jurisdiction.	DPD Park facilities are limited to non-motorized boat landing areas, and the code was revised to only allow pervious paths and trails and viewpoints. Trails are required to be 50-ft from the shoreline and viewpoints can be located 20-ft from the shoreline accessed by spur trails.
34	Other protective conservancy environments should get similar treatment	DPD The CR shoreline environment was revised to provide larger shoreline setbacks.

The use tables include a broad category for Institutional uses. However, there is no equivalent in the SMP Guidelines. In addition, most of the institutional uses are distinctly commercial in nature. Even those that are more government-related have commercial use equivalents. Private clubs are even listed as institutional uses. The problem is that the SMP does not impose any of the SMP Guidelines very specific requirements for commercial uses on institutional uses – specifically those relating to water-dependency. Jurisdictions cannot create new use categories or make new names to avoid the SMP Guideline requirements.

#	Comment	Response
35	We recommend that all institutional uses be subject to regulation that meets the	DPD The institutional uses are regulated using the SMP guideline

	SMP Guidelines requirements for commercial uses.	requirements. WD and WR institutional uses are given preference, and institutional uses that are not water-dependent or water-related are regulated like non-water-oriented commercial uses and there are restrictions.
36	Preferably, they should be folded into the commercial category.	DPD Because institutional uses are regulated like commercial uses, this is not needed. The reason that institutional uses are a separate category is b/c of the structure of the uses in Title 23 of the Seattle Municipal Code.

In addition, only a limited number of institutional uses are listed. This cannot encompass all institutional uses, and those would be allowed as a conditional use, without built in policies and standards. If they are retained as a separate category,

#	Comment	Response
38	we recommend that a catch-all entry be added for “all other institutional uses” and that they be prohibited in each table.	Code revised as requested.

In some environments, residential uses also include commercial use (assisted living, congregate care, nursing homes, shelters, etc.) that are similar to many of the institutional uses.

#	Comment	Response
39	Similarly, they [assisted living etc] should also meet the SMP Guideline requirements for commercial uses.	DPD These uses are not allowed on water front lots and on upland lots are allowed in only a few environments. UR uses revised to only allow single and multi-family dwelling units and included another category of “other residential uses” are prohibited.

Public Facilities and Essential Public Facilities are both widely allowed in all or almost all environments. This may stem from a misunderstanding of a Growth Management Act provision that these uses have to be allowed everywhere. This is not the case. The law only requires that they cannot be prohibited everywhere in the jurisdiction. Indeed, the Washington State Supreme Court has upheld prohibitions of these uses in specific areas.⁷

#	Comment	Response
40	We recommend that these uses be prohibited in the more ecologically intact Conservancy environments, and their appropriateness should be re-evaluated in all environments.	DPD The use tables say that Public facilities are allowed under 23.60.207. That section says such uses are authorized only to the same extent the proposed activity is allowed in the environment when it is not a public facility. If the use is prohibited it

		cannot be allowed under any process. If conditions are modified it can only be done by the Council and requires Ecology's approval. This is no change from current code.
41	Of particular concern is Section 23.60.207, which allows Essential Public Facilities to simply waive a broad array of requirements, including prohibitions.	DPD See revised Section 23.60.157 regarding Essential Public Facilities. The revised regulations comply with GMA RCW 36.70A.200 (5).
42	If these uses are allowed, they should be reviewed as their similar components in the use table, be they commercial (offices), industrial (maintenance yards), utility (water treatment plants), transportation (terminal facilities), etc.	DPD see Section 23.60.157, that is the way they are regulated.

In some environments, commercial uses are strictly limited in the use table and notes to meet the SMP Guideline water-dependency standards.

#	Comment	Response
43	However, in other environments, it is unclear that commercial uses are limited as required in the SMP Guidelines.	DPD – The WAC allows for non-water oriented uses in existing buildings. In the shoreline environments where there are many existing structures over-water, such as in the UC and UH shoreline environments, provisions have been added that allow for some non-water-oriented uses as allowed by WAC 173-26-241(3)(d)(i). See also, response to # 45.
44	Some environments have almost no limits on commercial uses, and water-dependency is hardly mentioned	DPD One of the locational criteria for the UG shoreline environment is that there is no or very limited direct shoreline access; therefore, water-dependent uses are not possible. The UH environment has many existing buildings overwater; therefore WAC 173-26-241(3)(d)(i) is followed when regulating non-water-oriented uses allowed.

⁷ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 508 – 09, 139 P.3d 1096, 1106 (2006). The dissent/concurrence makes it clear the court upheld the limitation on essential public facilities. *Id.* at 519, 139 P.3d at 1112.

#	Comment	Response
45a	We recommend carefully comparing all environment regulations for commercial uses to the SMP Guidelines for consistency. Some environments may need a descriptive text to explain deviations and to guide	DPD - WAC 173-26-241(3)(d)(i) states that non-water dependent commercial uses can be allowed in existing over-water structures and as part of a mixed use of water-dependent and water-related uses and when a significant public benefit with respect to the objectives of the Shoreline Management Act

	permit review so it stays within the reasons for the deviation.	such as providing public access or ecological restoration. Therefore, DPD is proposing to allow non-water dependent commercial development in buildings overwater when ecological restoration is provided. Additionally, some non-water dependent uses are being allowed as part of mixed uses non-water dependent and water-related uses on dry land when ecological restoration is provided.
45b	Similar to commercial uses, industrial or manufacturing uses also have detailed water-dependency requirements in the SMP Guidelines that are not clearly met for some environments.	DPD Identical standards exists for industrial uses that are not water dependent or water-related as exist for commercial development. WAC 173-26-241(3)(f)(i) allows for non-water dependent industrial uses when included as part of mixed-use of water-dependent and water-related uses and when significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or if there is no or very limited water access.

Modifications are not consistently handled in the different environments.

#	Comment	Response
46	Some modifications are listed consistently in all environments, while others are only in some environments.	DPD See new section 23.60.172, which contains a new shoreline modifications table and addresses concerns raised in this comment.

This raises the question of their status when they are not addressed, and what development standards apply. We recommend that all the modifications be addressed consistently for all environments.

#	Comment	Response
47	Surface water heating and cooling pumps are allowed in many environments. However, such development is fraught with inherent impacts that cannot be understood at the cumulative impacts level. We recommend that they be prohibited at this time, until they can be better understood.	DPD Because of the potential benefits of using this alternative energy and the potential benefits to mitigating climate change issues, DPD believes that regulating heating and cooling pumps as a CU is a good compromise.

#	Comment	Response
48	Animal husbandry is incompatible with most urban environments and	DPD Animal husbandry use was changed to a prohibited use in the Urban General

	should be prohibited.	shoreline environment and was not an allowed use in any other shoreline environment.
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Organization of Modifications

#	Comment	Response
49	<p>The SMP includes a wide variety of general regulations, uses, and modifications, each in its own section. However, we have noticed that some seem to be incorrectly categorized. This is mostly the case for modifications. Part 3 includes sections for general regulations.</p> <p>Essential Public Facilities are grouped with general regulations but should be grouped as a use.</p> <p>Parking standards are grouped with general regulations, but should be in modifications, or possibly with uses.</p> <p>Public access development standards are grouped with general regulations, but should be in modifications. It may be appropriate to place requirements for what uses must provide public access here, but the actual construction standards should be in modifications.</p> <p>Construction standards for development in rights-of-way are grouped with general regulations, but should be in modifications.</p> <p>Bridges and tunnels are grouped with uses, but should be with modifications. The use would be transportation uses (streets, railway, airports, etc.), or utility uses (mains, plants, etc.), but the bridge or tunnel is not a separate use, but rather a modification for the use.</p> <p>Signs are grouped with uses, but they are rarely individual uses (billboards). They should be grouped with modifications.</p>	<p>DPD The organization/categorization of activities/uses in the SMP does not affect how the activity or use is regulated. The issue is whether the SMP regulates the activity/use as required by the WAC. The SMP regulations comply with the WAC principle for modifications (of all types) set out in 173-26-241(2).</p>

#	Comment	Response
50	<p>There are two groups of regulations for "boating facilities" as described in the SMP Guidelines One for marinas, which includes the requirements in the SMP Guidelines. One for yacht clubs, etc. which have almost no standards, even though they would be considered as boating facilities. We recommend that yacht clubs (and similar facilities) be folded into boating facilities, or that it be expanded to meet the SMP Guidelines.</p>	<p>DPD Section 23.60.219.B - A new provision was added to clarify that moorage facilities associated with YBBCs are required to comply with the standards for recreational marinas (23.60.200).</p>

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The reason that correctly grouping development together is important is that the SMP Guidelines applies general standards to each grouping. Modifications are subject to WAC 173-26-231. Paragraph (1) states [with emphasis added]: “Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).”

There are two important consequences.

#	Comment	Response
51	(1) Modifications are not limited to only the seven specific groups listed in Paragraph (3), but include other modifications too – most explicitly structures and hardscaping for the use.	DPD Hardscaping in the form of increase in impervious surface is regulated as a shoreline modification. Section 23.60.190.F. The regulations for structures are addressed in the development standards for the use, use table setbacks and mitigation sequencing. The shoreline modifications section complies with WAC 173-26-231.
52	(2) Modifications are subject to the same use limits as the use that they support, including water-dependency and allowance within buffers. As pointed out previously, only uses that need to be in or near the water can cause pollution and damage to the environment.	DPD The City’s regulations for modifications in each environment address this. A modification is only allowed if the use it is associated with is allowed.
53	All other uses must control pollution and prevent damage to the environment, or else they must be prohibited or have special criteria.	DPD This is addressed in the use standards and tables, the modification standards, and general development standards in 23.60.152.
54a	Modifications for uses not needing to be in or near the water that are placed in the buffer or setback will cause damage and should not be allowed except for special instances.	See response to comments 51, 52 and 53.
54b	Paragraph (2) in the Guidelines includes a page of general requirements that all modifications must meet, generally focused on accomplishing the above paragraph. We recommend that these requirements be incorporated into a general section for all modifications.	DPD The proposed SMP accomplishes the requirements in WAC 173-26-231(2) through limiting where and when shoreline modifications are allowed, providing guidance on the potential ecological impacts caused by each shoreline modification and through the requirements of Section 23.60.158

		Mitigation sequencing. See also response to comment 51.
54c	For the modifications currently grouped together, we noticed an excellent practice of including a regulation that describes impacts that mitigation sequencing should address, and sometimes includes specific guidance on how to accomplish mitigation sequencing. We strongly support this approach, as the SMP Guidelines requires such specificity, as does the protection of shoreline environments. We recommend that the other sections that we identified as modifications also be provided with such a paragraph	DPD reviewed other sections and included additional appropriate standards for mitigation sequencing.

Docks, Piers, and Boating Facilities

The dock regulations are very detailed. We support the regulations for marinas and boating facilities – they are detailed and thorough. The replacement and repair regulations are well thought out.

#	Comment	Response
55a	However, the basic dock regulations for dimensional standards appear to use maximization rather than minimization – specifically longer dock length is allowed even if not needed. We recommend consulting with Ecology on the issue, and reviewing the recent Sammamish SMP decision. In addition, the dock section doesn't really address associated facilities such as launch facilities (ramps and rails), alternative mooring options (buoys and moorage pilings), etc. Pierce County is developing an excellent method of dealing with docks and associated facilities in relation to mitigation sequencing. For example, if an excessive length dock is needed, then alternative mooring should be used.	DPD This section was revised to use the water depth of 8-ft as the determining feature for the length of the pier unless the water depth 100-ft from the OHW mark is less than 6-ft then the pier can extend to where the water depth is 6-ft.
55b	As previously described, we recommend that yacht clubs (and similar facilities) be folded into boating facilities or marinas, or that it be expanded to meet the SMP Guidelines.	DPD suggested edit included in Section 23.60.219.B

#	Comment	Response
56	The dock regulations need to require a compensatory mitigation plan for the impacts that are inherent with them, which could include vegetation enhancement, armoring removal, removal of redundant boating facilities, etc	DPD Section 23.69.152 requires mitigation sequencing for all development/modifications. And a new section was added that clarifies that a mitigation plan is required see revised Section 23.60.158.
57	The mitigation sequencing paragraph (E) can help with this recommendation. However, we	DPD Suggested language was added to subsection 23.60.187. E

	recommend adding additional potential impacts to the list, including: “changes to wave and flow power or patterns, alteration of growing conditions and aquatic productivity, pollution resulting from boat and other uses (including maintenance of facilities and ancillary recreation uses), periodic or continual disturbance by human activity, and remaining shading of habitat after installation of grating.”	
58	The SMP should clearly state that non-waterfront lots may not have moorage facilities that are not approved as boating facilities (marina, etc.). Such situations are the epitome of non-water-dependent uses	DPD 23.60.187.B.5 clarifies that residential piers are limited to waterfront lots. Therefore all other development with moorage would be regulated as a recreational or as commercial marina or as accessory moorage to a water-dependent or water-related use.
59	One major problem with the dock regulations is that multi-family residential uses are considered to be entitled to a dock. This is explicitly contrary to the SMA policy (as previously described), and the SMP Guidelines for Piers and Docks, ⁸ which states: “New piers and docks shall be allowed only for water-dependent uses or public access	DPD WAC 176-26-241(3)(j) says new multi-family development should provide community and or public access. Therefore allowing multi-family to have a pier for public access is consistent with the WACs for piers.
59a	As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for access to watercraft... ”	This provision is in 23.60.187.B.3, standards for piers and floats.

So docks and piers are only allowed for water dependent uses and single-family residences, unless they meet the stricter requirements for Boating Facility uses, as described in the Guidelines.

#	comment	Response
59b	Specifically non-water-dependent uses, such as multi-family residential, cannot have an associated dock. Changes related to multi-family uses will be needed in several places. We also recommend a regulation stating the above requirement, including the provision that the pier/dock/float is only water-dependent if it is designed for access to watercraft	DPD See response to comment #58

⁸ WAC 173-26-231(3)(b).

Review Processes and Exemption Review

We are impressed with the description of the different processes. All parts are covered and correctly described. We only have a few comments on specific items.

#	Comment	Response
60	The pier/dock exemption does not match the SMA exemption, especially in allowing community piers under the exemption.	DPD 23.60.020.C.7 is identical to WAC 173-27-040(2)(h) except that the City says pier and the WAC says dock. A dock is the area in the water which is usually created by piers. City definition adds that a dock is a landing and moorage facility. Therefore this is consistent with the intent of the WAC.

In fact, some community piers are actually “boating facilities” under the SMP Guidelines and subject to many more requirements than a residential dock.

#	Comment	Response
61	In reviewing the exemptions, it appears that some WAC provisions are included and some are not. We recommend that all the WAC requirements be included.	DPD All the WAC and RCW provisions are included.
62	Development on land brought under shoreline jurisdiction by a project that moves the waterline is listed as an exemption. However, this is not an actual exemption under the SMA or SMP Guidelines. It has a separate process that is much more complex.	DPD HB 2199 (2009 Session) subsection 3 says that the property is exempt from a <u>SSDP</u> ; the “more complex process” applies to relief from the actual SMA <u>development standards</u> . So this exemption is correct and should not be deleted.
63	Part of this process is described in the SMP in different locations, but still seems to be missing the requirements of the recent legislation. We recommend deleting the exemption and consulting with Ecology on the language for such instances.	DPD Using the City’s standard format, all the requirements in HB 2199 that apply to the <u>City</u> are in Section 23.60.041 (criteria for relief) and Section 23.60.065 (procedure.) Seattle’s SMP does not include the legislature’s directives to Ecology, because the City does not regulate Ecology.
63	Section 23.60.180 discusses non-regulated actions. This list includes demolition, which often is not regulated. However, if the demolition project includes regulated activities (such as construction of structures, stabilization, fill, dredging, etc.) they would be subject to the SMP. Such a caveat is needed before waiving the SMP requirements	DPD Structures that are unsafe or a public nuisance should be quickly abated outside the permit process, which is recognized in RCW 90.58.270(3) and similar to RCW 90.58.355. If stabilization fill or dredging is proposed this would be outside the scope of demolition and would require a separate shoreline review process.
64	Section 23.60.041 describes criteria for the term “reasonable” as used in the regulations instead of “feasible.” Use of this term may be acceptable, but not if used in place of the term feasible for instances that are	DPD Feasible was used when required by the WAC.

	required in the SMP Guidelines. We recommending checking such instances.	
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Mitigation Sequencing

#	Comment	Response
65	Section 23.60.158 describes mitigation sequencing. However, the table truncates the requirement to use all the steps of mitigation sequencing for many instances. This is contrary to the whole point of mitigation sequencing. We recommend requiring all development to follow the mitigation sequence, as provided in the SMP Guidelines	Section revised as suggested.

Many uses and modifications inherently have impacts that cannot be avoided – especially water-based development and subdivisions.

#	Comment	Response
66	We recommend that a new standard be added to these sections stating a compensatory mitigation plan shall be provided with the application.	DPD Suggested edit included in Section 23.60.158 subsections D and E.
67	We also recommending being specific in how the mitigation should be provided, similar to the proposed buffer compensatory mitigation provisions.	DPD Guidance is provided throughout the proposed regulations regarding how mitigation should be provided. Specifically see Section 23.60.152 and Section 23.60.172 – 23.60.190.

Trails and Recreation

It is unclear how trails fit into the SMP. They are a form of recreation

#	Comment	Response
68	but there is no recreation category that is consistent with the SMP guidelines.	DPD WAC 173-26-241(3)(i) states that “Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State.” And that “Provisions related to public recreational development shall assure that the facilities are

		located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.” Please identify specific inconsistencies that concern you.
69	Many forms of park and recreation development have no water-dependency, and many forms are of high intensity, thus there are forms of recreation that would not meet the SMA or SMP guidelines preferences. Yet the SMP does not make these distinctions.	DPD the proposed regulations distinguish between shoreline recreational uses and general recreational uses and provide setback standards for each type of recreational use in each of the larger categories to meet the WAC requirements.
70	Trails are one example that has no inherent dependence on the water, unless they are providing access to a water dependent activity, and yet they may be acceptable in intact areas. However, like other uses, they should be required to “control pollution” and “prevent damage to the environment” as the SMA Policy requires.	DPD The WAC states that public recreational use should be located, designed and operated consistent with the environment and to meet NNL. That is what the use tables, the setback requirements, and Sections 23.60.152, and 23.60.158 achieve.
71a	Consequently, they should be located outside the buffer, including science-based buffers for intact areas, like other development must do, except for hardship situations. They can then provide spur trails to the water when needed.	Setbacks are one way of preventing damage to the environment and NNL. Mitigation sequencing particularly step A, is another. Trails are allowed in setbacks, and they must be made of pervious surface and designed to: <u>1. avoid reducing vegetation coverage;</u> <u>2. avoid adverse impacts to habitat;</u> <u>3. minimize disturbance to natural topography;</u> <u>4. minimize impervious surface by using permeable surfaces to the maximum extent feasible; and</u> <u>5. prevent the need for shoreline stabilization to protect these structures.</u>

All impacts still have to be compensated for. Other recreation uses need similar consideration.

SMP Policies

#	Comment	Response
71b	We recommend the edits to certain SMP	DPD Revised comprehensive plan

	policies.	goals and policies as suggested (LU244, LU245, LUG52,LU256, LU 260, LU 261, LU274)
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LU244. “Encourage large vessels (cruise ships and cargo container ships) to connect to dock side electrical facilities or use other energy alternatives while in port, to reduce engine idling and exhaust emissions.”

LU245. “Discourage and reduce over time vehicle parking on waterfront lots in the Shoreline.”

LUG52 “Address and minimize the impacts of sea level rise on the shoreline environment with strategies that also meet the three main goals of the SMP; to protect shoreline ecological functions, allow water-dependent uses and provide public access.”

LU256 “Conserve existing shoreline vegetation and encourage new shoreline plantings, especially with native plants, to protect habitat and other ecological functions, reduce the need for shoreline stabilization structures, and improve visual and aesthetic qualities of the shoreline.”

LU260 “Consider the Lower Duwamish Watershed Habitat Restoration Plan when conducting planning or permitting activities within the watershed.” We are unable to determine which plan this is, or which the watershed it applies to (WRIA 9?). If so, the policy should be specified.

LU261 “Allow dredging in the minimum amount necessary and in a manner that minimizes short and long term environmental damage for water-dependent uses, environmental mitigation or enhancement, clean-up of contaminated materials, and installation of utilities and bridges.”

LU274 is already composed of complex editing. Simply stated, we recommend that it should be modified to change its application from “no heavy ship traffic” to “minimal heavy ship traffic” – realistically, we have some level of ship traffic all along Puget Sound shoreline.

Other Development Standards

We have the following recommendations on the development standards:

#	Comment	Response
72	The regulations for bridge should include a mitigation sequencing regulation. Specifically, access points that do not require a crossing should be required to be used when available, options to share crossings should be used and required for subdivisions, crossings should span the floodway or channel migration zone.	DPD suggested language included in subsection 23.60.196.B.1-3.
73	Utility crossings for individual development should use the same kinds of avoidance approaches as described for bridges. In addition, underground utility crossings should share nearby corridors, should use bridge attachment when possible, should use a sleeve under the water feature to assist future replacement/repair, should bore rather than trench, and should prevent	DPD Section 23.60.217 was revised to include suggested changes.

	the french-drain effect in high-groundwater areas.	
74	Fill regulation (F) includes the allowance to create dry land in limited instances. However, regulation (G) contradicts this by allowing it for erosion repair – which is shoreline stabilization. Please note that the SMP Guidelines do not allow creation of dry land for shoreline stabilization, and only very little dry-land backfill is allowed for stabilization. We recommend that regulation (G) be eliminated.	DPD The shoreline modification section has been revised please see new Section 23.60.172. Regarding fill for “pocket erosion”: The WAC does not address this; however, Seattle’s existing code describes how pocket erosion can be addressed and through experience pocket erosion occurs. DPD’s proposal defines pocket erosion and limits how it can be prepared.
75	Fill regulation that describes mitigation sequencing should be supplemented to include “loss or modification of upland and shallow water vegetation functions and habitat (both of high and low quality).”	DPD subsection 23.60.184.I revised to include suggested edit.
76	Restoration Planning and Cumulative Impacts While the draft SMP is one of the better ones we have reviewed, it would still allow development that would adversely impact shoreline ecological functions. These impacts must be identified in the Cumulative Impact Analysis.	233.60.152.A says NNL is required. And these impacts will be identified in the Cumulative Impact Analysis.

Restoration Planning and Cumulative Impacts

Furthermore, these impacts must be compensated for by the City in its Restoration Plan, if not adequately addressed in the regulations. We would instead recommend covering these instances to prevent the impact, or being specific about compensatory mitigation. Our guidance document on no-net-loss, cumulative impacts, and restoration planning address this issue in detail.

DPD Guidance is provided throughout the proposed regulations regarding how mitigation should be provided. Specifically see Section 23.60.152 and Section 23.60.172 – 23.60.190. Additionally Section 23.60.158 Step E requires compensatory mitigation. Any remaining loss of ecological function through actions that aren’t regulated will be addressed in the Cumulative Impact Analysis and the Restoration Plan.

Additional comments (addressed in more detail in the attachment)

Live-a-boards and barge homes. We are concerned about the impact of these uses in marinas, especially the discharge of grey water and other polluted materials. We recommend that the SMP require 100% control of both grey and black water. While it may be acceptable to be somewhat flexible on the final percentage of these that are allowed, it is unacceptable to continue to allow these uses to pollute the Puget Sound.

See revised Section 23.60.

Ecological function. Some uses should include additional language that promotes ecological function, where feasible. These uses include Urban Industrial (UI) and Urban Maritime (UM). Although these areas are used for industrial purposes, habitat restoration has been successfully incorporated and can continue to be in the future as we restore the health of the Duwamish and as we clean up the contamination in the Superfund process.

DPD “and accommodates ecological restoration and enhancement were reasonable” was included in the purpose for the UI and UM shoreline environments.

Overwater parking. We would like to see an incentive for reduction of existing overwater parking incorporated into the SMP.

DPD Please provide additional information regarding the types of incentives that would result in a decrease in the amount of overwater parking.

Aquaculture. We recommend that aquaculture be prohibited in the conservation environment areas.

DPD proposed regulations were revised to include the suggested change.

Extent of shoreline management regulatory area. It would be helpful for the reader if the environments as shown on the map could be extended to the center of Puget Sound, etc. Many readers will be unaware that the regulations extend that far.

DPD is researching this request

Thank you for considering our comments. If you require additional information please contact me at dean@futurewise.org or 509-823-5481; or Heather Trim at htrim@pugetsound.org or (206) 382-7007X172.

Sincerely,

Dean Patterson, Shoreline Planner

Futurewise

Heather Trim, Urban Bays & Toxics Program Manager

People For Puget Sound

Enclosure

The following is an uncategorized list of comments on various parts of the SMP. Comments related to commercial, institutional, and industrial uses should keep in mind our overall position that such uses should be first subject to the water-dependency criteria for commercial and industrial uses in the SMP Guidelines.

Director's report

Table 2. Urban Commercial.

A.2. Aquaculture. Proposed upland use should be CU not A.

DPD Upland uses in the UC are now regulated by the underlying zone and this will result in accessory aquaculture uses being regulated as a CU as suggested.

C.2, C.3, C 4.a.b. and C.10 – Should not expand these waterfront uses to allow CU 72 (which is allowing it if they mitigate)

DPD Because there are many existing multi-storied buildings with no existing water dependent or water related uses on the upper levels the WAC 173-26-241(3)(d) provides guidance that allows for non-water-dependent or water-related uses if they are a mixed use development with water-dependent or water-related uses, if the proposed use is in an existing building overwater and if the project provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

C.4.a. Food Processing. Proposed upland use should be A2, X4 rather than A. If it is not a water dependent food processing facility it should not be allowed.

DPD On upland lots, where there is no water access water dependent uses are not possible. WAC 173-26-211(5)(d) acknowledges that where there is no direct shoreline access water-dependent uses are not required.

C.11.c Retail sales, major durables. Proposed upland use should be A2, X4 rather than A.

DPD See response to previous question.

Table 3. Urban General Shoreline Environment

A. Animal husbandry. Should be X for both areas.

DPD Use table revised as suggested.

C.7 Medical services. A 78 still is appropriate. But should meet water-dependency criteria too.

DPD One of the locational criteria for the UG shoreline environment is that there is no or very limited direct shoreline access; therefore, water-dependent uses are not possible.

Table 4. Urban Harborfront shoreline environment

C.2. Eating and drinking establishments. CU 72 should be removed.

C. 4. Food processing and craft work uses. CU 72 should be removed.

DPD Because there are many existing multi-storied buildings with no existing water dependent or water related uses on the upper levels the WAC 173-26-241(3)(d) provides guidance that allows for non-water-dependent or water-related uses if they are a mixed use development with water-dependent or water-related uses, if the proposed use is in an existing building overwater and if the project provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration

C.5. Laboratories, research and development. Proposed upland use of A should be downgraded to A1, CU3

DPD On upland lots, where there is no water access water dependent uses are not possible. WAC 173-26-211(5)(d) acknowledges that where there is no direct shoreline access water-dependent uses are not required.

C. 11.c. Retail sales, major durables. Proposed upland use should be A2, X4 rather than A.

DPD See response to previous comment.

Table 5. Urban Industrial

G.1 and G.2. – Typo: A4 should be removed for proposed waterfront ??

MG - Don't understand the comment

M.1. Mini-warehouses. A24 – should be 10% not 20% non-water dependent use.

DPD Please explain why 10% instead of 20% and mini-warehouse uses are not allowed in the Duwamish area of the shoreline district.

Many pages: For all of the Conservancy uses, aquaculture should be not allowed.

Conservancy use tables edited as suggested.

Shoreline regulations

Throughout the regulations, references are made to citation numbers without the reader knowing what the purpose of the reference is. References should include the subject that is being referenced to put it in context.

#	Comment	Response
77	23.60.016. C.1. Need to add reference to 25.09 to this section. (Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Area)	DPD Not necessary, 25.09 is incorporated by reference into SMP.
78	23.60.027 - should add language that the program provides "compensatory mitigation":	DPD City doesn't use that term; it uses mitigation sequencing, which includes compensatory mitigation based on the impacts of a proposed development.

		Additionally this section has been revised. See 23.60.158
79	23.60.092 – regarding temporary uses. Modify: “does not remove or harm native vegetation; and”	DPD 23.60.092.B.1.c modified as suggested.
80	23.60.152(H) – The protection should also prevent “harm” similar to the comment above.	DPD Protect means does not harm.
81	23.60.152 General development. There is no mention of pesticide use, and there should be.	DPD See Section 23.60.190 for standards on pesticide use.
82	23.60.157 Essential Public Facilities should be required to perform all mitigation sequencing steps like other development. They are not granted some free pass by GMA.	DPD EPFs are regulated the same as any use and are required to follow mitigation sequencing see comment 65.
83	23.60.176 Standards for breakwaters and jetties, groins and weirs – When demonstrating need, the structure should only be allowed for protecting a navigation inlet. Other purposes are not important enough to allow such a major impact to the shoreline functions.	DPD WAC 173-26-231(3)(d) allows breakwater, jetties, groins and weirs to be installed for the following uses: water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
84	23.60.202 Standards for floating homes and floating home moorages. We object to the expansion of any floating home or moorage opportunities. Any expanded overwater coverage of residential use is contrary to the SMP.	DPD No expansion of overwater coverage is allowed
85	23.60.206 Standards for residences. Apparently expansion of overwater residences is allowed. We object to the expansion of any overwater residence. Any expanded overwater coverage of residential use is contrary to the SMP.	DPD See 23.60.282.E.2 The only expansion that can possibly occur if it is vertical expansion and only if the project includes an improvement to ecological conditions such as removal of creosote piles.
86	23.60.220 Urban Industrial (UI) Environment. Need to add a statement to the purpose section: “Ecological function shall be protected and improved where feasible.” This is a requirement for industrial uses in the SMP Guidelines.	DPD The WAC does not require that industrial uses <u>improve</u> ecological function where feasible. Protection is part of mitigation sequencing.
87	23.60.220 Urban Maritime (UM) Environment. Need to add a statement to the purpose section: “Ecological function shall be protected and improved where feasible.” This is a requirement for industrial uses in the SMP Guidelines.	DPD the WAC does not require that industrial uses <u>improve</u> ecological function where feasible. Protection is part of mitigation sequencing

23.60.041. A.2.b. Typo: “Additional regulatory requirements apply do DUE to a landward shift in required shoreline setbacks or other regulations of this Chapter 23.60”

DPD correction made

23.60.152(G) – The reference to a policy has no meaning to the reader. The subject should be listed too.

DPD The reference is to a Director’s Rule that describes what best management practices should be used during construction. The subject of the Director’s Rule was included as suggested.

23.60.152(T) – There appears to be a grammar problem or missing coma.

DPD Requirement deleted

23.60.152 General development. Some deleted items seem like they are important. While they may simply be moved to other locations, it is extremely difficult to tell.

DPD The deleted items have either been combined with other standards or moved to the specific section where the use or development is being regulated.

23.60.164 Standards for regulated public access: the list of facilities in B.1 should include other modes such as “hand boat launch or pullout, beach.” The widths required should be adjusted lower and pervious surfaces used for walkways that are in Conservancy environments – especially Conservancy Preservation. Hours of availability should only be allowed to be limited by approval of the Director (two locations in regs). For the determination of adequate public access, item 2 should include the incorporation of bike stands.

DPD Section revised as suggested except did not reduce the widths.

23.60.170.B. View corridors. The view corridor width for the downtown area does not seem wide enough given the typical height of development. It would be benefit the public to provide additional width as long as native vegetation is removed to accommodate doing so. In addition, additions to the corridors obstruct the view. Landscaping should be maintained to preserve views, as long as it doesn’t impact native vegetation areas. Benches, sculptures, etc. should be reviewed before placement, and not be allowed to obstruct views.

DPD 30% of the lot width is provided for views, which we believe is adequate. Additionally, with the redevelopment of the waterfront it is anticipated that there will be many viewing opportunities provided. There are standards provided for placement of structures in the view corridors to limit the view blockage within the view corridors.

23.60.174 Standards for artificial reefs – standards should prohibit the use of materials that contain toxics.

DPD revised as suggested.

23.60.186 – Grading. (D) spray on concrete is not allowed, and “similar materials” should also not be allowed.

DPD revised as suggested

23.60.187 Standards for piers and floats. Swimming floats dimensional standards (10) should be required to be offshore a set distance (30 feet?) from the OHW so that they minimize impacts the shoreline?

DPD revised as suggested.

23.60.188 Standards for bulkheads shoreline stabilization. In the hard engineering priority list, add terraced and stepped bulkheads as options.

DPD Code Section revised as suggested.

23.60.190 Vegetation and Impervious Surface Management in the Shoreline District, Subsections A, B, and G. The language relating to noxious weeds requires that mechanical treatment (hand-pulling, harvesting and cutting, bottom barriers, weed rolling, etc.) be given priority over use of herbicides. Further, the use of herbicides must be approved by the Director of DPD and the applicant must demonstrate that the use of herbicides will have no adverse impact to fish and wildlife. While we are pleased that integrated pest management principles are included, as well as the CAO 50 foot restriction near waterbodies, we would like to see stronger language restricting aquatic pesticides per the CAC report: *“that prohibit or limit application of specific pesticides and fertilizers within the SMP shoreline jurisdiction.”*

DPD These provisions limit the application of herbicides and set the standards that they can only be used when all the methods that do not use herbicides are not feasible, not applicable or is more effective in reducing impacts to ecological functions.

23.60.190.C. Shoreline District landward of OHW. Item 3 needs to be strengthened so that re-landscaping does not include any existing, new, or previously required native vegetation.

DPD revision is not needed because re-landscaping with non-native vegetation is only allowed where there was non-native vegetation existing prior to the land disturbing activity.

23.60.217 Standards for utility lines. Modify: “G. All disturbed areas shall be restored to pre-project configuration or a more habitat friendly configuration subject to approval by the director, and planted with native vegetation upon completion of utility line installation or maintenance projects, pursuant to an approved maintenance plan that ensures that the newly planted vegetation is re-established.”

DPD subsection modified as suggested

23.60.220 Environments established. We recommend differentiating environments for submerged lands in most cases – at least for shallow water. This is done for the ship canal and should be considered for other areas such as the Duwamish River. In addition, there are some areas of Seattle that should be in Conservancy Protection such as Discovery Beach, rather than less protective environments. This is an area with actual intact ecological function, not just potential for it.

DPD we evaluated separating the aquatic areas into a distinct or separate shoreline environment and we believe that the current shoreline environments work in our regulations. The use regulations differential what is allowed overwater and what is prohibited overwater and we believe that this achieves the intent of your comment.

23.60.236 Regulated public access. The 600 foot exemption for multi-family is inappropriate, and instead should be based on the scale of the development.

DPD 23.60.236.B.2.b was deleted because residential development is not allowed in the CM shoreline environment.

b. Multifamily residential development containing more than four units with more than 100 feet of shoreline, except if located on saltwater shorelines where public access from a street is available within 600 feet of the lot line of the proposed development; and