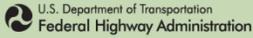


Alaskan Way Viaduct & Seawall Replacement Program



March 21, 2011

Maggie Glowacki
City of Seattle Department of Planning and Development
700 Fifth Avenue, Suite 2000
Seattle, WA 98124-4019

Re: Shoreline Master Program Update – Draft Shoreline Master Program Update Review

Dear Ms. Glowacki:

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to review the draft Shoreline Master Program (SMP) update, which was released by the City of Seattle Department of Planning and Development (DPD) on February 10, 2011. This letter includes comments from WSDOT's Alaskan Way Viaduct and Seawall Replacement Program, Washington State Ferries Division, and WSDOT's Northwest Region office on the draft SMP update. As part of this review, WSDOT compared the draft SMP with the Washington State Department of Ecology master program guidelines, as described in Washington Administrative Code (WAC) 173-26. Comments from the SR 520 Bridge Replacement and HOV Program will be provided in a separate letter.

The comments provided in this letter are divided into two tables to distinguish between general comments on the SMP update (Table 1) and comments specific to the definitions of development, shoreline modification, and uses (Table 2). Per the Revised Code of Washington 90.58.140, a "substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter." A permit is not required for uses. Therefore, the comments in Table 2 seek to obtain clarity on the definitions of development, shoreline modification, and uses. As the draft SMP currently reads, the lines between development and uses are unclear.

DPD response

WSDOT would appreciate receiving DPD's response to our comments to ensure that they are adequately addressed. We look forward to coordinating with you further on the development of the SMP update. If you have any questions, please contact me at (206) 805-2880 or hanson@wsdot.wa.gov.

Sincerely,

Allison Hanson

Director of Environmental Services, ESO Mega Projects (AWV and SR 520)

cc: Kimberly Farley, WSDOT
Kojo Fordjour, WSDOT/WSF
Terry Drochak, WSDOT
Heather Page, Anchor QEA, L.L.C.

Attachments: Table 1. General Comments on the Draft SMP Update
Table 2. Comments on the Draft SMP Update for DPD Coordination – Development, Shoreline Modification, and Uses Clarification

DPD Response

While no SSDP is required unless there is “substantial development,” it is well established law that uses must obtain City permits consistent with the SMA and the SMP, even though no SSDP is required.

The legislative findings for the SMA state, “It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable uses.” RCW 90.58.020. The SMA further says that the City’s regulations “constitute the use regulations for the various shorelines of the state.” RCW 90.58.100(1). It has long been recognized that the SMA authorizes the City to regulate uses in the Shoreline District, regardless of whether they constitute “development” or “substantial development” as defined by the SMA. Clam Shacks v. Skagit Co., 109 Wn.2d 91, 97 (1987). WAC 173-27-140(1) states, “No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.”

Therefore, activity that is not “development” or “substantial development” still must comply with the City’s SMP and obtain appropriate City permits, even though an SSDP is not required.

For example, if the state were to convert the car loading area at the Coleman Dock to a public pay-parking lot, this would require a use permit from the City under the SMP, even though no "development" is associated with this change of use. The City would apply the SMP to determine whether the proposed change from a water-dependent activity to an activity that is not water-dependent and generally prohibited is allowed under the SMP and consistent with the SMA.

In addition, activities that are not “development” must also obtain approval from Ecology if the activity is a conditional use or variance. RCW 90.58.140(10); Twin Bridge Marine Park v. Ecology, 162 Wn.2d 825, 835 (2008).

Also, the WAC requires the City to regulate certain activities, whether they are categorized as uses, shoreline modifications, or development. See WAC 173-26-221 and 231 *passim*.

WSDOT’s specific concerns are addressed in the table below..

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
1	23.60.020	SMC 23.60.020 describes elements within the Shoreline District that are exempt from requiring a Shoreline Substantial Development Permit (SSDP). WSDOT believes that activities such as installation of guardrail and signs will be exempt when meeting the other overall requirements in this section.	Please allow for de minimis (guardrail, signs, etc) permanent structures to be included specifically within the exemption language or provide a response to WSDOT that clarifies that these types of structures can qualify for exemptions.	The definition of substantial development and the exemptions are set out in state statute and WACs. The City has no authority to amend the state's permit authority. Whether they are de minimis depends on whether they meet the state's thresholds.
2	23.60.020. A.3	SMC 23.60.020.A.3 currently reads as though a development, shoreline modification, or use could require a conditional use permit even if the activities do not require an SSDP (or exemption). Does that mean that any activities that are not development (such as a use) or subject to the Shoreline Management Act (SMA) could still require a conditional use permit?	Please clarify intent of SMC 23.60.020.A.3.	Yes, the analysis in the comments is correct: activities that are not development, such as a use, could require a conditional use permit. The statement that such activities are not "subject to the SMA" is incorrect. See comments above to letter. This result is required by RCW 90.58.140(10). The City has no authority to change this.
3	23.60.020. A.4	SMC 23.60.020.A.4 currently reads as though a development or shoreline modification could require a shoreline variance, even if the activities do not require an SSDP (or exemption). Does that mean that any activities that are not development (such as a use) or subject to the SMA could still require a shoreline variance?	Please clarify intent of SMC 23.60.020.A.4.	Yes, please see response to #2.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
4	23.60.020. B.4	SMC 23.60.020.B.4 states that conditions may be added to the SSDP exemption to ensure consistency of the project with the SMA and SMC 23.60.	Please provide more detail on the types of conditions the Director may attach to the approval of an exemption.	<p>The authority for this provision is RCW 90.58.140(1) and WAC 173-27-140(1), which require “development” to be consistent with the SMA and SMP, regardless of whether the authorization for the development is via SSDP or an exemption.</p> <p>Examples of conditions on exemptions that might be needed for consistency are those needed for NNL of ecological function, or protection of water-dependent uses, or public enjoyment.</p>

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
5	23.60.027	SMC 23.60.027 describes an ecological restoration and mitigation program to be developed and implemented by the DPD Director.	Please clarify timing for implementing the program, process for implementing the program, and responsibilities of applicants.	<p>Section 23.60.027 has been revised to help clarify and to separate the ecological restoration and enhancement WAC requirement</p> <p>There is no set timing for when the mitigation measuring program will be set up.</p> <p>Regarding the responsibilities of applicants: are to comply with development standards and to provide mitigation for any remaining impacts to ecological functions to the extent needed to achieve NNL. This latter obligation would complement the ecological restoration program.</p>
6	23.60.032. D	SMC 23.60.032.D states that a special use may be approved if the Director finds that the applicant has demonstrated that use meets certain requirements, including that the use can mitigate all adverse effects to ecological functions.	Please clarify whether this provision could be satisfied by off-site compensatory mitigation or payment in lieu (as provided in SMC 23.60.027).	<p>Section 23.60.032 Section has been revised to clarify the requirements.</p> <p>And depending on the ecological function and its location, mitigation might be off-site. If a program for payment-in-lieu is developed, that might be used.</p>
7	23.60.040. A	There is an extra word after "approximate."	Please delete extra "a," which currently follows "approximate."	Thank you.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
8	23.60.062. A	Section 23.60.062.A states that a Letter of Exemption or “other documentation satisfactory to DPD is required for all development the Director determines is exempt.” What “other documentation satisfactory to DPD” is being referred to here?	Please clarify or define “other documentation satisfactory to DPD.”	A letter of exemption is the required document in most circumstances. Some exemptions; however, can be evaluated quickly so these do not require the letter. This provision allows for the “over the counter exemptions” .
9	23.60.067. C.1.b and 23.60.067. C.2.b	Utility lines require special use permits in the Urban Harborfront environment. SMC 23.60.067.C.1.b and 23.60.067.C.2.b imply that a decision on an Optional Plan Shoreline Permit for utility lines shall be made by the Director as an SSDP. The way the draft SMP reads is that general standards are set that apply throughout the shoreline environments and additional or more stringent standards can be applied in individual shoreline environments.	It is assumed that Optional Plan Shoreline Permit could apply in the Urban Harborfront environment. Utility lines are a special use in the Urban Harborfront environment. Please clarify if these are permitted as a special use permit or an SSDP.	The City’s permit is a special use permit; whether a SSDP is needed depends on whether the project is “substantial development,” and if it is, whether it is exempt. That is determined based on the proposed project. See also WAC 173-26-241(3)(l)
10	23.60.076. B	The section refers to revisions of issued SSDPs. If the applicant is granted an SSDP under the existing code, but seeks to revise the issued SSDP within the scope and intent of the original permit once the new code has been implemented, will the applicant be grandfathered under the existing code?	Please clarify whether revisions to an issued SSDP would be subject to the code it was originally granted or if new code standards would apply.	Revisions are subject to the new code.
11	SMC 23.60.152	This is the first time that “land disturbing activities” are included under development as a separate type of development. Land disturbing activities seem to fall under the definition of “development” and “shoreline modification.”	Recommend deleting “land disturbing activities” since it is defined under the umbrella of development and shoreline modifications.	Code revised as requested.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
12	23.60.072. A	Construction requiring an SSDP shall not commence until 21 days from the date of receipt of Director’s final decision granting the SSDP. How is “receipt” defined?	Please clarify the meaning of the term “receipt.” Is this the date of “issuance” of the Director’s final decision? If so, suggest using the term “issuance.”	This requirement and the related definition of “receipt” are in RCW 90.58.140(5) and (6), which were amended this session. Please see SSBH 1662. A cross reference to RCW 90.58.140(6) was added to subsection 23.60.074.B.3
13	23.60.152. M	SMC 23.60.152.M states that a spill prevention and response plan may be required by the Director. WSDOT requires that a Spill Prevention Control and Countermeasures plan that follows WSDOT Standard Specifications be submitted by the contractor prior to the start of construction, not prior to permit issuance.	Recommend that DPD include language to note that a permit may be conditioned to require a spill prevention and response plan. If DPD requires mandatory measures to be incorporated into a spill prevention and response plan, this could also be a condition of the permit.	SMC 23.60.152.M is now 23.60.152.Q and this standard has been revised to address the concerns.
14	23.60.152. T	This section should add a statement that any “discharge” will also need to meet state water quality standards WAC 173-201A.	Please include clarifying statement.	This standard has been deleted.
15	23.60.154. A	SMC 23.60.154.A mentions archaeological “significance.” How is “significance” being defined? Does this mean eligible for the National Register of Historic Places?	Please revise for more specificity. It is important to have this clarified and tied to pre-existing criteria of “significance” to ensure consistency with existing federal and state laws and regulations.	To clarify “as defined by the Washington State Department of Archaeology and Historic Preservation” after “significance” and before “shall” was added

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
16	23.60.154. B	SMC 23.60.154.B states that the City is given “approval” over archaeological reporting. WSDOT understands that there is currently no individual on City of Seattle staff that meets Secretary of Interior (SOI) Standards for archaeology and is qualified to review the technical document adequately. How will the City of Seattle review a technical document requiring SOI qualifications without qualified individuals currently on City of Seattle staff?	Please clarify how the archaeological reporting will be reviewed and approved by the City of Seattle.	DPD is working with DON, Ecology and Washington State Department of Archaeology and Historic Preservation to clarify.
17	23.60.154. B	SMC 23.60.154.B references “a site inspection and a draft written report.” This requirement does not fit within the current structure of reporting for archaeology. This is further confused by the phrase “a final report that includes any recommendations from affected tribes and the State Office of Archaeology and Historic Preservation.” It is not clear what is being required. In addition, such reports seldom include the recommendations of tribes and other agencies.	Please revise this section for clarity and ensure consistency with existing federal and state laws and regulations.	See response to comment #16.
18	23.60.154. B	“The State Office of Archaeology and Historic Preservation” should be “Washington State Department of Archaeology and Historic Preservation.”	Please revise per comment.	Code revised as requested
19	23.60.154. B	SMC 23.60.154.B currently requires Department of Archaeology and Historic Preservation/State Historic Preservation Officer (DAHP/SHPO) involvement, but it is not necessarily tied to Section 106 of the National Historic Preservation Act (NHPA) or Executive Order 05-05. Unless this is tied to Section 106 of the NHPA or Executive Order 05-05, DAHP/SHPO is not likely to provide comment, as it is outside of their purview as an agency.	Please revise this section for clarity and ensure that the process is consistent with existing federal and state laws and regulations.	See response to comment #16.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
20	23.60.154. B	Given that “the Director” is likely to not meet SOI standards for archaeology, this section should be more specific as to how the permit will be conditioned.	Please revise for clarity.	See response to comment #16.
21	23.60.154. C	23.60.154.C references “a site inspection and a draft written report.” This requirement does not fit within the current structure of reporting for archaeology.	Please revise this section for clarity and ensure consistency with existing federal and state laws and regulations.	See response to comment #16.
22	23.60.154. C	23.60.154.C references “all possible valuable archaeological data.” This language is not clear and can include a large range of possibilities.	In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA.	See response to comment #16.
23	23.60.154. C	23.60.154.C references “how to handle the data properly.” This language is not clear.	In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA.	See response to comment #16.
24	23.60.154. D	23.60.154.D references “identified historical or archaeological resources” and needs to be clarified. It is not just that these are present, but that they are significant.	In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA.	See response to comment #16.
25	23.60.154. D	SMC 23.60.154.D states “maximum protection,” which is vague and not consistent with federal and state regulations. For archaeology, data recovery rather than preservation in place may be the most appropriate treatment, and this is not necessarily captured by a phrase like “maximum protection.”	Please clarify to stress that the characteristics that make the resource significant should not be altered.	See response to comment #16.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
26	23.60.154.E	SMC 23.60.154.E states: “retrieve or preserve artifacts or data.” Is the intention to “preserve in place” or “curate?”	Suggest revising for clarity.	See response to comment #16.
27	23.60.156.D.2	SMC 23.60.156.D.2 states that any development that is exempt under Section 25.09.245 from other standards and requirements shall mitigate adverse impacts. It is assumed that this means any development regulated under the SMA.	Recommend revising to “Any development within the Shoreline District that is exempt...”	Proposed new language is unnecessary. This section and chapter only applies to activity within the Shoreline District. See SMC 23.60.010.B, .012, and .016A.
28	23.60.158.A	This section states that mitigation shall prevent no net loss of ecological functions. How will this criterion be assessed?	Please clarify the criteria that will be used to assess the prevention of no net loss of ecological functions and achievement of ecologic functions.	Section 23.60.158.A states that impacts to each ecological function will be identified and mitigation used to create equivalent functions. This is consistent with NNL as described in WAC 173-26-201(2)(c) (paragraph following the bullet points).
29	23.60.158.B	SMC 23.60.158.B states that mitigation under this section is not intended to duplicate similar regulations under state and federal permits and that the permit condition most protective of the ecologic functions shall be enforced. If another agency issues the most protective conditions, how will City enforce those conditions?	Please clarify – is the intent that the City will be enforcing state and federal permit requirements?	Customarily, the City’s permit will require obtaining and complying with the state/federal agency permit, and the City relies on the agency to determine compliance with the agency’s permit and enforce it. If the final decision on compliance with the agency permit is that the permittee is out of compliance, then DPD will issue a notice of violation on DPD’s permit.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
30	23.60.162. C.4.c	This section states that loading zones are allowed to be located over water on existing structures if the applicant demonstrates that there would be no increase in overwater coverage. This will make it difficult to improve capacity at Colman Dock. Since Colman Dock is a water-dependent essential public facility (highway of statewide significance), Washington State Ferries proposes that this provision be struck out, or allow increased overwater coverage with mitigation. The condition also contradicts 23.60.162.C.4.a and 23.60.162.C.4.b.	Recommend deleting 23.60.162.C.4.c.	Do not see the conflict with other provisions. An increase in overwater is allowed for water-dependent uses. And this provision allows for additional overwater coverage if the equivalent amount of over water coverage is removed.
31	23.60.212. B.2	The WSDOT Alaskan Way Viaduct and Seawall Replacement Program proposes to expand a section of the eastern side of Alaskan Way S. within the Shoreline District approximately 10 feet to the east to accommodate ferry traffic during construction. It is likely the temporary roadway widening will be returned to the pre-project condition following construction; however, in coordination with the City of Seattle, the temporary roadway widening may remain in effect to support the City of Seattle Central Waterfront construction and likely exceed the 4-year timeframe described in this section. What is the rationale for the 4-year limit?	Consider adding language that will allow extension of the temporary relocation or expansion beyond 4 years.	Additional language added to this section to allow an additional 2 years if the re-location is accommodating 2 projects.

TABLE 1. GENERAL COMMENTS ON THE DRAFT SMP UPDATE				
#	SMC Section	Comments	Requested Action	City response
32	23.66.212. C.3	SMC 23.66.212.C.3 requires that new streets and the expansion or relocation of existing streets shall be located and designed to minimize adverse effects on unique or fragile shoreline features, including minimizing the amount of impervious surface. In areas that are completely impervious, this requirement does not seem to apply—even if the applicant were to replace existing impervious surface with new impervious surface.	Please clarify whether this requirement would apply if the applicant were to replace existing impervious surface with new impervious surface.	The standards apply.
33	23.60.446. A.1	Add “as measured from Alaskan Way” after locations, which was rescinded from the original SMP.	Suggest adding “as measured from Alaskan Way” after locations.	The Historic Character area in original A1 is the same as the Central Waterfront Landmark Designated Area in proposed A2; therefore, there is no change from original to proposed.

TABLE 2. COMMENTS ON THE DRAFT SMP UPDATE FOR DPD COORDINATION ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION				
#	SMC Section	Comments	Requested Action	City Response
34	23.60.016. B	<p>Including shoreline modification in SMC 23.60.016.B implies that a shoreline modification is a use. Per WAC 173-26-231, local governments “are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses...Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use.”</p> <p>The draft SMP defines shoreline modifications as “those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element.” That definition is more consistent with “development” than “use.”</p>	Delete “shoreline modification” from SMC 23.60.016.B.	Some modifications don’t fit well into development or use, yet the WAC requires that they be regulated. Therefore, the City is including shoreline modifications to ensure development standards apply to them.
35	23.60.016. C	<p>Shoreline “uses,” as defined in the draft SMP and WAC 173-26-241, as “a purpose for which land or a building is designed, intended, or for which it is occupied or maintained, let or leased.” Whereas “development” means a “use consisting of the construction or exterior alteration of structures” and other physical modifications to the land.</p> <p>Within the draft SMP, “uses” and “development standards” are also categorized separately in each shoreline environment (separate “parts” in each shoreline environment), which further substantiates that “uses” are not development and should not be regulated under development standards unless associated with a specific development proposal.</p>	Delete “or use” from SMC 23.60.016.C.	Incorrect understanding of the law. The SMA and the SMP regulate uses regardless of whether they are development. See comments in letter.

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#	SMC Section	Comments	Requested Action	City Response
36	23.60.020. A.2	A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not belong in this section.	Delete “or use” from SMC 23.60.020.A.2.	Incorrect understanding of the law. The SMA and the SMP regulate uses regardless of whether they are development. See comments in letter. 23.60.020 applies to all permits, including those issued by the City for activity in the Shoreline District that are not required to obtain a SSDP. Subsection A.1 pertains to SSDP, and A.2 pertains to other permits.
37	23.60.020. A.5	A “use,” as defined in the draft SMP, is not something that can be “repaired.” In addition, 23.60.020.C.1.a does not include “use” in the definition of normal maintenance.	Delete “or use” from 23.60.020.A.5.	Repair activities take place for a use and this section is to ensure that procedures for these activities, including uses, is spelled out. C.1.a. pertains to exemptions from the SSDP requirement, which only applies to substantial development.
38	23.60.029	This entire section implies that a use, in and of itself, will require an SSDP. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not require an SSDP.	Delete “or use” from SMC 23.60.029 or clarify that uses that are being reviewed as part of a development proposal will need to meet the criteria established in SMC 23.60.029.	This section does not state that a use that is not substantial development will need a SSDP; a use may need the other authorizations covered by this section, such as special use permit or a conditional use permit, which apply regardless. See comments to letter.

TABLE 2. COMMENTS ON THE DRAFT SMP UPDATE FOR DPD COORDINATION ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION				
#	SMC Section	Comments	Requested Action	City Response
39	23.60.030. A.4	This section implies that a use, in and of itself, will require an SSDP, special use authorization, shoreline conditional use permit, and shoreline variance permit. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not require an SSDP. In addition, please clarify if a use in and of itself would require a special use authorization, shoreline conditional use permit, or shoreline variance permit.	Delete “or use” from SMC 23.60.030.A.4 or clarify that uses that are being reviewed as part of a development proposal will need to meet the criteria established in SMC 23.60.030.A.4. In addition, please clarify if subject permits are required for a use, even if no development is proposed.	See response to comment #5
40	23.60.030. B	This section implies that a use, in and of itself, will be denied a permit if it is a prohibited use or if it is not a prohibited use and cannot be conditioned to meet the applicable standards.	Delete “or use” from SMC 23.60.030.B or clarify if a use, in and of itself, would require a permit (or be denied).	Comment is correct analysis, and no change is needed. The SMA and the SMP regulate uses, regardless of whether they are development. Please see the comments in the letter.
41	23.60.034. A.1 and 23.60.034. A.2	This section implies that a use, in and of itself, will require a shoreline conditional use permit. Including shoreline modification in SMC 23.60.034.A.1 and SMC 23.60.034.A.2 implies that a shoreline modification is a use. Per Comment 1 of this memorandum, a shoreline modification is not a use; a shoreline modification best meets the definition of “development.”	Delete “shoreline modification” from SMC 23.60.034.A.1 and SMC 23.60.034.A.2.	Yes, the analysis in the comments is correct: a use in and of itself may require a shoreline conditional use permit. No change is needed. See the comments in the letter. Not all shoreline modifications are necessarily development.

<p style="text-align: center;">TABLE 2. COMMENTS ON THE DRAFT SMP UPDATE FOR DPD COORDINATION ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION</p>				
#	SMC Section	Comments	Requested Action	City Response
42	23.60.062	This section implies that a use, in and of itself, may be exempt from an SSDP. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it would not require an exemption from the SSDP.	Delete all references to “use” from SMC 23.60.062.	<p>Incorrect interpretation of the section.</p> <p>The title of the Section is:</p> <p>Procedures for determining consistency with the chapter and for obtaining exemptions from Shoreline Substantial Development Permit requirements</p> <p>In A the section addresses the process for getting an exemption.</p> <p>In B the section describes the process for determining that every activity that is not processed as a SSDP is consistent with the SMA and the SMP as required under WAC 173-27-140(1).</p>
43	Part 3 – Development Standards	Similar to Comment 2 in this table, shoreline “uses” are not development and therefore should not be regulated under development standards unless associated with a specific development proposal.	Delete “use” from Part 3 – Development Standards or clarify that uses that are being reviewed as part of a development proposal will need to meet the standards established in Part 3 – Development Standards.	<p>Please see comments to the letter.</p> <p>Additionally, the SMP, consistent with the WAC, is structured to regulate activity based on its purpose or function, which is customarily described as a “use.” Whether it is “development” is irrelevant for this purpose.</p>

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#	SMC Section	Comments	Requested Action	City Response
44	23.60.940	Shoreline modifications and utility lines are defined under “use.” Shoreline modifications and utility lines meet the definition of development. Shoreline modification and utility lines could be considered a “use” if part of a development proposal.	Delete “shoreline modifications and utility lines” from definition of use.	<p>Please see comments to the letter and also see response to # 10 re the function of the use tables..</p> <p>In addition, not all shoreline modifications fit the definition of development.</p>