

**Port of Seattle and Commercial and Industrial Comments and DPD’s responses**

	Draft SMP Section	Port comments and suggested edits	DPD’s Response
1.	SMC 23.60.002. B.1 1. Protect and restore the <del>((ecosystems))</del> <u>ecological functions</u> of the shoreline areas;	Inconsistent with WAC guidelines. City shoreline use policy LU231 only calls for protection and enhancement of shoreline areas. WAC 173 -26-201-2(d) calls for reservation of appropriate areas for protecting and restoring ecological functions.  Amend as follows: “Reserve appropriate areas for protecting and restoring ecological function, and restore appropriate areas of the shoreline;”	1 - Created a new 23.60.001 to identify 3 components of the Master Program; restoration and enhancement plan is one; 2 –Updated the directive in the Comp Plan for restoration plan as required by WAC 3 – Deleted restore from 23.60.002.B.1. 4 – Did not use suggested language because reserving areas in the tool that is used to protect shoreline areas and is therefore not a goal.
2.	SMC 23.60.002. B.2 2. Encourage water-dependent uses;	Inconsistent with protections of water –dependent uses in the RCW and WAC, which protect the use of shorelines for economically productive uses that are dependent on a shoreline location or use. See RCW 90.58.020 and WAC 173-26-201(2) (d) (ii).  Amend as follows: “Reserve shoreline areas for water-dependent and associated water-related uses.”	The suggested language is inconsistent with SMA – SMP’s are required to encourage WD and WR uses, “Reserving” areas for water dependent and water-related uses does less for these uses than “encouraging” WD and WR uses.  Reserving shoreline areas is only one way to encourage w-d uses – reserving is a tool, to achieve the goal of encouraging WD and WR uses.
3.	SMC 23.60.004 Shall be considered in making all discretionary decisions in <u>and adjacent to the Shoreline District, et seq.</u>	The language to is too broad and implies that the SMP applies equally to the shoreline jurisdiction and adjacent lands  Amend as follows: “Shall be considered in making all discretionary decisions in <u>...</u> ”	This is a requirement and not a substantive change with respect to areas adjacent to the shoreline district. See RCW 90.58.340: City must review regs for areas adjacent to the “shorelines” to consider SMA policies for uses. By RCW definition, “shorelines” are the shoreline district and so lands adjacent to shorelines are outside and adjacent to the Shoreline District.  The City complies with this statute by having regulations for those areas refer to the shoreline policies specifically for discretionary decisions when appropriate. The proposed change is to not have every discretionary decision under 23.60 consider the shoreline goals, only those decisions where consideration of the goals is needed. This is because under GMA the regulations are supposed to reflect the Goals already; so consideration of the Goals is needed only in special circumstances, such as a variance or Council waiver where the regulations are being altered.
4.	SMC 23.60.016.C. 2	All of C is redundant and/or more consistent with	This is not a change.

	<p>2. The height <del>((permitted))</del> limit for a structure in the Shoreline District <del>((shall be))</del> is the lower of the height <del>((s permitted by the applicable))</del> limit provided in the shoreline environment, <del>((and))</del> the underlying zone, or overlay district, except in the Urban Harborfront (UH) Environment where the shoreline height limit <del>((s shall))</del> controls.</p>	<p>underlying land use code or specific standards related to individual environmental designations. It is only necessary to state A and B. C.1 restates B. C2 and C3 and C4 are located in specific conditions per individual area already and 5, 6.7, should be moved or are already in the measurement section 23.60 subchapter XVII.</p> <p>Delete C and eliminate redundancies within the section.</p>	<p>1- B is not the same as C, and C1 does not repeat B. B says that the use must be allowed in the underlying zone. C addresses which development standards apply to the use if it is allowed under B and the SMP.</p> <p>2 - A is a general statement that does not contain the specificity of C. A could state the provisions of C1, but it does not because it is a general statement.</p> <p>3- C 2-5 identify provisions where the shoreline code does not automatically control.</p> <p>4 C-6 is arguably covered by C-1 but by setting it out there is no need to determine whether there is an irreconcilable conflict under C-1</p> <p>5. C- 7 could be a separate section but has traditionally been here.</p>
5.	<p>SMC 23.60.016.3</p> <p>3. The floor area ratio (FAR) of the underlying zone may not be exceeded, regardless of whether <del>((or not))</del> the maximum height and lot coverage <del>allowed((permitted))</del> in the applicable shoreline environment can be achieved.</p>	<p>See above.</p>	<p>See above</p>
6.	<p>23.60.027 Ecological restoration and mitigation program</p>	<p>In relation to this section, it is important to note of the existence of previously approved shoreline plans from Port of Seattle that should be integrated into planning process as the Port has identified many potential restoration and mitigation sites. The Port is concerned with the implication that rules related to this program would be adopted as a Director's Rule without sufficient public input, and that these post-adoption rules may be beyond the scope of the SMP.</p> <p>The section should be altered to make clear that this is an alternative to compensatory mitigation in areas where it is difficult to plan and permit. Applicants opting for compensatory mitigation would skip this requirement, and any associated fees or payments. Eliminate reference to "best available science" which is a GMA term, and inappropriate within the SMP.</p> <p>Suggested language: 23.60.027 Shoreline Alternative Mitigation Program</p>	<p>The provisions in subsection A of the suggested proposal are part of the mitigation sequencing analysis that is done regardless of whether the mitigation is physical or compensatory. They do not need to be set out here and will add to the complexity and length of the code if they are included here.</p> <p>Defined best available science as WAC 173 -26-201(2)(a) and revised this Section.</p>

		<p>A. To support compliance with general development standards (SMC 23.60.152), mitigation sequencing requirements (SMC 23.60.158), and the environmental protection objectives of this Chapter, the Director is authorized to develop and implement a program that will identify practical methods for measuring:</p> <ol style="list-style-type: none"><li>1. baseline ecological conditions in proposed project areas;</li><li>2. the type and extent of potential impacts to ecological functions resulting from a proposed development, shoreline modification and/or shoreline use, relative to baseline ecological conditions;</li><li>3. the type and extent of compensatory mitigation that may be required to offset a net loss of ecological functions; and,</li><li>4. the type and extent of ecological functions that are created, restored or enhanced through a proposed compensatory mitigation project.</li></ol> <p>B. If compensatory mitigation actions have been required to offset a net loss of ecological functions pursuant to SMC 23.60.152.A and 23.60.158, the Director is authorized to allow the payment of fees in-lieu of an applicant-constructed compensatory mitigation project. The "in-lieu fee" (ILF) option shall be developed and operated consistent with the federal standards for ILF programs enumerated in 33 CFR 332. All fee payments shall be used by the Director for ecological restoration or enhancement in the Shoreline District.</p>	
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7.	23.60.032.D Criteria for special use approvals(.) D. ((That the)) <u>The proposed use ((will cause no unreasonably)) can mitigate all adverse effects to ecological functions ((the shoreline environment in which it is to be located))</u> ; and	The uses of this phrase “mitigate all adverse effects” (and repeated elsewhere within the draft SMP are an unreasonable expansion of scope of Master Program. The goal of the plan is to foster reasonable uses, protect ecological functions, and while protecting the public right of navigation and corollary uses. (See WAC 173-26-176(3)). To set a standard of mitigation of all adverse effects to ecological functions does not a.) recognize the state’s goal to achieve no net ecological loss. and b.) does not explicitly recognize a distinction between existing development vs. new development .  Amend as follows: D. The proposed use can prevent, minimize or replace the loss of ecological functions that may result from shoreline development, shoreline modifications and/or shoreline uses such that there is no net ecological loss associated with the proposed use.	Code section revised to address comments see 23.60.032
8.	23.60.034.B.4 <u>4. Can mitigate all adverse effects to ecological functions.</u>	As above	Code section revised to address concern see revised section 23.60.034
9.	23.60.034.A.4 <u>4. the proposed development can mitigate all adverse effects to ecological functions unless a variance from this requirement is granted.</u>	As above	Code section revised to address concern see revised section 23.60.034
10.	SMC 60.036.C Criteria for shoreline variance permits C. No variance is allowed from the requirements to mitigate all adverse impacts to ecological functions	As above  Amend as follows: “ C. No variance is allowed from the requirement to prevent, minimize or replace the loss of ecological functions that may result from shoreline development, shoreline modifications and/or shoreline uses such that there is no net ecological loss associated with the proposed use.”	Code section revised to address concern see revised section 23.60.036
11.	<u>23.60.039 Criteria for determination of feasible and infeasible actions</u>	Since the term “feasible” is defined in the Ecology guidelines, this section appears unnecessary , and adds to the length and complexity of the SMP. Delete section and incorporated definition of “feasible” from WAC 173-26-020(13) into the definitions section.	Required by WAC 173-26-221(2)(c)(iii).  DPD has moved this to the definition section as requested.

12.	SMC 23.60.090.B. C. and D. Identification of principal uses. B. <del>((Unless otherwise stated in this chapter all principal uses on waterfront lots shall be water dependent, water related or non-water dependent with public access.))</del> <u>Any principal use allowed, allowed as a special use, allowed as a shoreline conditional use, or as a Council conditional use in a specific shoreline environment may be an accessory use and shall be administered as an allowed use, or as a special use, shoreline conditional use or Council conditional use, using the same process as the principal use.</u>	These sections are vague and ambiguous. These sections appear to redefine all accessory uses as principal uses, and to require the regulation accessory uses as principal uses under the SMP. Would a separate permit approval now be required for accessory uses?  Delete or substantially revise to clarify intent and impact on regulated uses. The language appears to redefine all accessory uses as principal uses, and regulate them identically.	This language is replacing the language in current 23.60.092.A.  Code section language revised to clarify as requested.
13.	SMC 23.60.092 Temporary uses and developments A. Development, shoreline modifications, limited to floats, and uses that will occur for four weeks or less may be exempt from obtaining a Shoreline Substantial Development Permit as provided in Section 23.60.020; developments that are exempt shall comply with the Shoreline Management Act and the standards and provisions of this Chapter 23.60.	It is unclear why the definition of a temporary modification limited to "floats". The rule simply should be applied consistently to all shoreline developments.  Again, language should be consistent with RCW and WAC, and refer to shoreline uses and developments without particular emphasis on "modifications".	This is a special provision that we are including to accommodate boat shows. We are limiting temporary uses to allow only docks not other shoreline modifications because of the long term impacts of other shoreline modification such as hard shoreline stabilization, vegetation removal, and dredging.  Additionally see WAC 173-26-231 Shoreline Modifications, which contains the requirements for regulating shoreline modifications., floats, and uses"
14.	SMC 23.60.122.A.2 Nonconforming uses 2. Any nonconforming use <del>((which))</del> that has been discontinued for more than <del>((twelve (12)))</del> consecutive months <del>((in the CN, CP, CR, CM, CW, UR, UH and US Environments or more than twenty four (24) consecutive months in the UM, UG or UJ Environments))</del> shall not be reestablished or recommenced.	Inconsistent with WAC 173-27-080 (9), which defines a discontinuance to a nonconforming use as "...discontinued for twelve consecutive months or for twelve months during any two-year period..."  The WAC allows greater flexibility and would allow for the realities of maintaining shoreline developments during periods of economic uncertainty or hardship. The WAC definition should be adopted instead of the restrictive 12 month limit offered in the current draft of the SMP.	Regulations revised as suggested.
15.	23.60.150 Applicable development standards All <u>development, and uses</u> ((and developments)) in the Shoreline District <del>((shall be))</del> are subject to the <del>((general development))</del> standards <del>((applicable to all environments, to the development standards for the specific environment in</del>	This section does not make clear allowance for vested uses and for associated permitted infrastructure or legal non-conforming uses. There is the implication that a positive obligation is created immediately upon adoption with enforcement obligations.  Redraft and clarify. At the minimum, the word	The regulations have been revised to include the following to address comment: 1. Restored "shall be" in Section 23.60.150;  Additionally, this is no change from existing language. By operation of law this language results in vested or existing uses that do not comply with new standards being (legal)

	which the use or development is located, and to any development standards associated with the particular use or development.) <u>set out in Subchapter III of this Chapter 23.60 and to the standards for the specific environment in which the development, shoreline modification or use is located.</u>	“new” should be inserted in front of “development and uses” throughout this section.	nonconforming uses, as stated in 23.60.122 and 124. The City has always construed this language this way.
16.	23.60.152 General Development	<p>This whole section is redundant, and selectively incorporates language from other sections of the code. Some developments are singled out for mitigation sequencing, when these provisions are laid out separately in 23.60.158 as they apply to all shoreline developments. Unless clarified to apply to <i>new</i> developments, the whole section implies that the existing condition requires mitigation.</p> <p>Redraft, clarify, and simplify. Insert “new” before “development and uses” throughout. Avoid repetition of requirements and redundancy with separate city codes, such as the stormwater ordinance. Eliminate the use of “managed”, which implies that the City SMP will be applied to facility operations. “Managed” should be replaced with “maintained”.</p>	<p>See response to comment #15. re the code intent to regulated proposed uses and development.</p> <p>Section 23.60.158 does not require mitigation sequencing; it states how mitigation sequencing is carried out.</p> <p>This section was reviewed for redundancy; however some overlap remains because of the structure of the code and the fact that Section 23.60.158 is meant to capture mitigation that hasn’t been captured in other sections of the regulations.</p> <p>Setting out conditioning authority here allows the City to apply SMP conditioning authority if similar regulations in other codes have objectives that are different from SMA objectives and provides uniformity from project to project.</p>
17.	23.60. 152.D D. All shoreline developments, shoreline modifications and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.	<p>Unclear, and appears to expand the SMP jurisdiction to an undefined area.</p> <p>This concept is covered in multiple sections elsewhere in the SMP. Delete.</p>	<p>We do not see where this concept is covered in other SMP sections. It is partially covered in mitigation sequencing, but that is only to address NNL of ecological functions, it does not address other adverse impacts or compatibility with the affected area.</p> <p>The City has general planning authority to consider impacts of actions in the Shoreline District on surrounding land whether it is in the Shoreline District or not. The SMA is not the only source of the City’s authority.</p>
18.	SMC 23.60.152. I I. All ((shoreline developments and uses)) <u>in- and over-water structures</u> shall be ((located and)) <u>located</u> and managed to ((minimize interference with or adverse impacts to beneficial natural	<p>This requirement is covered elsewhere in the code e.g. in mitigation sequencing and requirements for “no net loss” of shoreline ecological functions.</p> <p>Delete.</p>	<p>Including the General Development Standards Section 23.60.152 provides additional guidance on what potential impacts exist for certain types of projects. It is good policy to keep these general development standards because they will facilitate consistent and fair review and mitigation</p>

	shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion)) <u>keep adverse impacts, such as increased salmonid predator habitat and those adverse impacts due to shading, to a minimum.</u>		requirements between planners. And the applicant will know up-front what impacts they need to address prior to submittal of an application.
19.	SMC 23.60.152.J. J. Durable, non-toxic components are the preferred materials for in-water and over-water structures. Wooden components that will be in contact with standing water or floodwaters shall not contain polycyclic aromatic hydrocarbons, pentachlorophenol, creosote, chromate copper arsenate (CCA), arsenic, or comparably toxic substances. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.	As written, this would prohibit all use of treated wood. The AWPA standards for aquatic use allow for the use of ACZA-treated piles, and use of such materials has been approved in adopted SMPs in other jurisdictions.  Amend as follows: “Durable, non-toxic components are the preferred materials for in-water and over-water structures. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.”	Subsection revised and “arsenic” was deleted.  Treated wood will be allowed as follows and we continue to evaluate comments from Western Wood Preservers.  WAC 173-26-231(3)(b) says “piers and docks should be designed and constructed to avoid, or if that is not possible to minimize and mitigate the impacts. . . . Master programs shall require that structures be made of materials that have been approved by applicable state agencies.” Mitigation sequencing requires this to be proven infeasible; therefore, added “unless it is infeasible,” to the first sentence which is what mitigation sequencing uses.
20.	SMC 23.60.152.K K. Pilings treated with creosote shall not be repaired to extend the life of the piling. Such pilings in need of repair shall be replaced and shall comply with subsection 23.60.152.J.	As written, this would prohibit the use of casings, or fresh heading of piles. In some cases (e.g. historic piers) repair of the existing pile is the only option.  Amend as follows: K. Pilings treated with creosote shall not be repaired to extend the life of the piling. Such pilings in need of repair shall be replaced and shall comply with subsection 23.60.152.J. Creosote piling may be repaired to increase life is permitted when it can be demonstrated that aquatic area effects are minimized.	DON has worked out language with DNR that allows creosote piles to be replaced.  Regulations revised to allow “casing” or “sleaving” of creosote piles.  Also will work with the mitigation money to remove creosote piles that are not underneath buildings.  Additionally, the Port’s proposed language is inconsistent with mitigation sequencing: saying “effects are minimized” does not meet the standards of NNL, which requires effects to be minimized and mitigation for any remaining impacts.
21.	SMC 23.60.152. L L. Light transmitting features are required to be installed for all replaced covered moorage, piers and floats, over-water boat repair facilities and similar structures to the	This is an example of language that is too detailed and prescriptive, and which could prevent other innovations. Avoidance of impacts of over-water coverage is covered in section requiring mitigation sequencing and “no net loss”. In some cases such	See response to comment #18. This standard is included to guide planners and for uniformity in conditioning.  Additionally relying on mitigation sequencing as

	maximum extent feasible.	as heavy industrial piers, “light transmitting features” are impractical. Delete, and rely on mitigation sequencing	suggested would result in putting in these features unless it was “infeasible.” That is what this sub section already says.  Additionally, worked with Port staff and NSIA members to include standards for replacing solid decking with solid decking therefore not requiring grating or other light transmitting surface.
22.	SMC 23.60.154 D Standards for archaeological and historic resources D. If identified historical or archaeological resources are present, site planning and access to such areas shall be designed and managed to give maximum protection to the resource and surrounding environment and any permit issued shall be revised.	The use of the term “maximum protection” does not account for the relative significance of a resource.  Revise to be consistent with WAC 173-26-221 (1), which allows for consultation with the OAHF and affected tribes in the event that a resource is uncovered.	To address concern deleted term “maximum”  DPD’s proposal is consistent with the WAC – but the WAC “standards” section stops at what is our subsection 23.60.154.C and doesn’t say what to do after consulting. The WAC “principles” section says we have to “protect” historic resources. That is the function of our 154.D.
23.	SMC 23.60.156 Standards for environmentally critical areas A. Applicable regulations. The standards and procedures in Chapter 25.09, as set out in Ordinance 122050, and amended by Ordinances 122370, 122738 and the 2011 ordinance are incorporated by reference into this Chapter 23.60. These standards and procedures are modified as set out in subsections 23.60.156. E through N for environmentally critical areas in the Shoreline District. If there are any conflicts between the standards and procedures in Chapter 25.09 incorporated into this Chapter and other provisions of the Shoreline Master Program, the requirements most protective of ecological functions apply.	This section appears to require that the ECA ordinance would apply whenever it might contain more protective regulation of ecological functions. This is in direct contradiction of the guidance of the Legislature (ESHB 1653) regarding the SMP/CAO interface. It is essential that the SMP not compromise this approach by carefully considering how incorporating CAO regulations will affect priority uses, such as Port uses, under the SMA.  Revise and incorporate this language, which appears in the adopted Anacortes SMP: “In the event a conflict occurs between the provisions of this Master Program and the laws, regulations, codes or rules of any other authority having jurisdiction within the City, the regulations that provide more protection to the shoreline area shall apply, EXCEPT when constrained by federal or state law, or where specifically provided otherwise in this Master Program.”	DPD Proposal: A. Applicable regulations. The standards and procedures in Chapter 25.09, as set out in Ordinance 122050, and amended by Ordinances 122370, 122738 and the 2011 ordinance are incorporated by reference into this Chapter 23.60. These standards and procedures are modified as set out in subsections 23.60.156. E through N for environmentally critical areas in the Shoreline District. If there are any conflicts between the standards and procedures in Chapter 25.09 incorporated into this Chapter and other provisions of the Shoreline Master Program, the requirements most protective of ecological functions apply except when preempted by federal or state law or where this Shoreline Master Program expressly states that these regulations do not apply.
24.	SMC 23.60. 158	The Port is concerned that the proposed language	Regulations revised to address main comments.

	Standards for Mitigation Sequencing	<p>introduces new and vague concepts to a well-established understanding of mitigation, especially as established under SEPA.</p> <p>Amend as follows:</p> <p>A. Mitigation, as used in this Chapter, is the action taken to prevent, minimize or replace the loss of ecological functions that may result from shoreline development, shoreline modifications and/or shoreline uses. Determinations regarding the type and extent of affected ecological functions shall consider at a minimum the location, design, materials, construction methods, construction timing, and post-construction operation of the development, modifications and/or uses.</p> <p>B. <b>1.</b> Application of the mitigation sequence below shall be undertaken to prevent net loss of ecological functions and includes six steps:</p> <p>Step A. Avoiding the impact altogether by not taking a certain action or parts of an action;</p> <p>Step B. Minimizing the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;</p> <p>Step C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to its ecological function at the time a permit for development is issued;</p> <p>Step D. Reducing or eliminating the impact over time by preservation and maintenance operations);</p> <p>Step E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments);</p> <p>Step F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.</p> <p><b>2.</b> The mitigation sequence shall be applied in the order of steps listed in subsection</p>	<p>Additionally, SEPA mitigation, cited by the Port, is not the relevant test here; the SMA WACs, RCW 82.02.020 and constitutional standards are the operative principles for the City to apply.</p>
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		<p>23.60.158.B, except where otherwise indicated for specific project types listed in Table A. If a project includes more than one type, the mitigation sequence shall start at the higher step.</p> <p>3. Lower priority measures shall be applied only if the higher priority measure is infeasible or inapplicable to achieve NNL [roproty measures are determined to be infeasible or inapplicable. [from the WAC]</p> <p>C. Mitigation shall be designed and undertaken to achieve no net loss of ecological function and shall achieve equivalent ecological functions relative to pre-project baseline conditions, as determined by the Director.</p> <p>D. In the event that the requirements of this Section are duplicative, inconsistent or in conflict with other local, state and federal environmental regulations, conditions which are most protective of ecological functions shall apply.</p> <p>E. moved to B 2.</p> <p>Add City D: the scope of the mitigation actions allowed in a shoreline environment shall be consistent with the standards for the shoreline environment where the mitigation action will occur and with all regulations applicable to the type of mitigation action undertaken.</p>	
25.	<p>SMC 23.60. 160 B.3 Standards for priority habitat protection 3. No structure, including but not limited to bulkheads, bridges, fill, floats, jetties, utility crossings, and piers, except for piers that are regulated under subsection 23.60.160.B.4 and for Essential Public Facilities regulated pursuant to, shall intrude into or over priority saltwater habitats unless the applicant demonstrates that all of the conditions below are met: a. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW</p>	<p>The proposed outright prohibition for bulkheads, bridges, fill, floats, jetties, utility crossings, and piers in a saltwater habitat is far too restrictive to allow for reasonable protection of container port uses, a mandatory element of the City's comprehensive plan (see RCW 36.70A. 085).</p> <p>The section should be revised to allow for periodic refurbishing and upgrades to support existing uses at marine industrial facilities</p>	<p>Required by WAC 173-26-221-(2)(c)(iii)(C).</p>

	<p>90.58.020;</p> <p>b. It is not reasonable to avoid adverse impacts to priority saltwater habitats by an alternative alignment or location or avoidance would result in unreasonable and disproportionate cost to accomplish the same general purpose; and</p> <p>c. The project is consistent with the state's interest in resource protection and species recovery.</p>		
26.	<p>SMC 23.60.162.C</p> <p>Standards for parking requirements</p> <p>2. Existing over water parking areas shall not be expanded or restriped to create additional parking stalls.</p> <p>3. Existing over water parking areas may be relocated over water if the relocation results in a 20% reduction in parking area.</p> <p>4. Loading zones are allowed to be located over water on existing structures if the applicant demonstrates that:</p> <p>a. loading zones are necessary for the operation of a water-dependent or water-related use;</p> <p>b. no reasonable alternative location exists; and</p> <p>c. there is no increase in overwater coverage.</p> <p>D. Accessory parking is not allowed unless it is accessory to a use allowed in the shoreline environment in which the parking is located.</p>	<p>This section appears to disallow restriping of existing parking unless the parking is reduced by 20%. This would make some existing parking non-conforming, and could create a significant issue for Pier 69, and other UH piers. We need to be able to manage existing approved uses including minor revisions to parking and circulation.</p> <p>Delete #3.</p>	<p>DPD proposal:</p> <p>Revised as follows:</p> <p>3. Existing over water parking areas may be relocated over water if the relocation results in a 20% reduction in parking area <u>or if the relocation results in greater protection of ecological functions:</u></p>
27.	<p>SMC 23.60. 162E</p> <p>Standards for parking requirements</p> <p>E. The design and construction of parking facilities shall remove to the maximum extent feasible contaminants from surface water runoff prior to its entering adjacent waters and shall prevent erosion of soil or beaches. Control measures may include oil separators, retention ponds, and pervious materials where there is sufficient separation from the shoreline to allow for complete filtration of pollutants.</p>	<p>This is storm water regulatory language and has the risk of introducing duplications and/or inconsistencies with other sections of the city code, as well as state and federal regulatory requirements. It is an impractical standard for overwater facilities.</p> <p>Delete.</p>	<p>We do not see where parking is allowed overwater in any environment. See 23.60.090.A.</p> <p>The proposal to delete this standard is inconsistent with the WAC. WAC 173-26-221(6) (b) and (c) states the City is supposed to protect storm water, ensure consistency with other regulations, and “the regulations that are the most protective of ecological functions shall apply.”</p> <p>DPD analyzed the stormwater code and concluded that for the majority of the SMP requirement we can rely on that code. However, when there is a specific way to implement a stormwater code</p>

			requirement we have included that standard in the SMP. The proposed standard is a specific way to implement a stormwater requirement from the stormwater code
28.	SMC 23.60 162F. Standards for parking requirements F. Parking facilities in non-industrial areas shall be screened from residential, recreation, and natural areas using a 5 foot wide landscaping strip with native evergreen plantings at least 3 feet tall. The screening shall be located outside any required sight triangle. The requirement for screening may be waived or modified by the Director to address traffic safety.	It is not clear what is meant by “non-industrial”. For example would this include existing marinas? This should be covered by zoning and development standards for the development, and does not belong in the SMP. It introduces the risk of duplications or inconsistencies with other sections of the city code. If those conditions are adopted, existing parking could become non-conforming  Delete or clarify the intent of the regulation, and whether the standards are to be applied to new construction.	Revised 23.60.162.F to state “areas not zoned IG1, IG2, IB and IC” instead of “non industrial”.  Regulations in Title 23, unless expressly stated otherwise, apply when projects come in for approval and are not enforced against existing facilities. This is controlled by Washington common law principles.  Existing facilities that do not have the screening would be non-conforming, whether this change is made in Chapter 23.60 or other chapters of Title 23.
29.	SMC 23.60.164 I Standards for regulated public access. General exceptions I. General Exceptions. 1. The requirement for one ((4)) public access site for each ((major)) terminal or facility ((shall)) <u>may</u> be waived if the terminal or facility is included in a public access plan approved by the Council and the applicant complies with the plan.	Fails to allow for full flexibility in public access planning when the Port has an adopted public access plan, as indicated in state SMP regulations.  Revise and insert language consistent with WAC 173-26-221(4)(c): “ Where the Port or other public entity has incorporated public access planning into its master plan , that plan may be serve as a portion of ...public access planning. This planning may justify more flexible off-site and special area public access provisions in the master program.” Where public access requirements are referenced in the environment designation rules (e.g. -164, -236, -392, etc.) the process should defer to the Port’s adopted public access plan for Port facilities.	The WAC states that such a Port plan “ <u>may</u> serve as portion of the <u>local government’s</u> public access planning” if it meets certain requirements.  The proposed code (identical to the current code) does not preclude the City from including the Port’s plan as part of the council’s approved plan. The determination should be made by the council.
30.	SMC 23.60. 170 B View corridors B. <u>Minimum Standards.</u> ((When a view corridor is required the following provisions shall apply:)) <u>1. View corridors shall provide a view of the water through the lot from the public right-of-way.</u> ((4))2. A view corridor or corridors of not less than the percentage of the width of the lot ((indicated in the development)) <u>pursuant to the standards for the applicable shoreline environment shall be provided and maintained.</u>	The Port is concerned that view corridor requirement could be interpreted to apply to marine terminal equipment and cargo marshalling; transshipment; moored vessels, and/or stacks of cargo, including containers.  Amend language to make clear that marine terminal cargo and equipment are not structures subject to view corridor requirements.	See section 23.60.170 The following uses are allowed to be in view corridors under the existing code and the proposed code.  a. Open wet moorage; b. Storage of boats  undergoing repair; and c. Outdoor storage of items accessory to water-dependent or water-related uses.  Every item described would be and has been allowed using these standards.

	<p><u>Applicants may meet their total percentage by providing multiple view corridors on a lot if each view corridor has a minimum width of 10 feet except in the UH environment, where the maximum number of view corridors is two and each view corridor has a minimum width of 20 feet.</u></p> <p><u>((2))3. Structures, including but not limited to buildings, fences, and covered walkways, may not be located in view corridors ((#))unless the slope of the lot permits full, unobstructed view of the water over the structures. Eaves and open railings may be located in view corridors.</u></p>		
31.	<p>SMC 23.60. 182C Standards for dredging C. Dredging for the purpose of establishing, expanding, <del>((#))</del>relocating or reconfiguring navigation channels and basins is allowed if the applicant demonstrates <del>((shall))</del> dredging is necessary for assuring safe and efficient accommodation of existing navigational uses.</p>	<p>By limiting dredging only to “existing navigational uses” the proposed codes does not comply with the mandate in Ecology SMP rules to accommodate water-dependent uses, and incorporate port plans. See WAC 173-26-201(3)(d)(ii). New dredging could be a component of a cleanup and restoration plan as part of a terminal expansion, and this should be allowed under the SMP.</p> <p>Delete “existing”.</p>	<p>“Existing” comes directly from WAC 173-26-231-(3)(iii)(f), second paragraph.</p>
32.	<p>SMC 23.60. 182D Standards for dredging D. Maintenance dredging of established navigation channels is restricted to maintaining the location, depth, and width previously authorized by the Army Corps of Engineers.</p>	<p>It is important to make the distinction between “authorized” (which refers to congressional approval of navigation channels) and “permitted” which refers to previously allowed, and thus defines what maintenance is.</p> <p>See main comment letter. Replace “authorized” with “permitted”.</p>	<p>“Authorized” comes directly from WAC 173-26-231-(3)(iii)(f), second paragraph; Regulations have been revised to include “permitted” as well.</p>
33.	<p>SMC 23.60.182 E E. Dredging shall be timed to be consistent with state and federal regulatory agencies standards for state aquatic priority species and aquatic species protected under the Endangered Species Act.</p>	<p>This sections introduces a risk of confusion and/or inconsistency with other state and federal regulations.</p> <p>See main comment letter. Replace with: “Dredging shall be timed to comply with requirements imposed by state and federal agencies with jurisdiction.”</p>	<p>Regulations revised to address comment Section 23.60.182.E of the proposed regulations.</p>
34.	<p>SMC 23.60,182K.2. Standards for dredging 2. The dredged material will be disposed of at a dry-land or contained submerged disposal site that has been approved by</p>	<p>Dredged material is not solid waste and in-water disposal is not regulated by the health department, but by the interagency Dredged Material Management Office.</p>	<p>Regulations revised as suggested. See subsection 23.60.182.K.2, which references EPA and the DMMP.</p>

	the federal Environmental Protection Agency and the Director of the Seattle/King County Department of Public Health, or any successor agency.	See main comment letter. Omit reference to Director of Seattle/King County Department of Public Health.	
35.	SMC 23.60.184. A Standards for fill A. In shoreline environments where fill is allowed or allowed as a special use or a conditional use it shall comply with the standards for fill in the applicable shoreline environment and in this Section 23.60.184.	The section requires compliance with both general development standards for fill <i>and</i> the standards in each shoreline environment. However the standards here are a mixture of engineering standards and use standards and are not consistent with fill standards under specific shoreline environments. For example F,G, and H is the section below are allowed actions in all environments, but are not mentioned in any environment designation. It is not clear whether these uses therefore would be prohibited. The same comment about consistency applies to the dredging language in 23.60.182A.  Clarify requirements here and in shoreline environment regulations. Suggest preparing a table that clearly shows what is allowed for each designation.	Table for Shoreline Modifications was created see Section 23.60.172 Table A  All uses/modifications require compliance with the standards in each environment and all the general standards. See subsections A and B of Section 23.60.172. It states that the general standards apply when the placement of fill is allowed (or allowed as a special or conditional use).
36.	SMC 23.60.184.F. <del>((J))E. ((Incidental landfill which does not create dry land and is necessary for the installation of a utility line intake or outfall may be placed on submerged land if it will not have long-term adverse impacts to water quality, sediment quality, aquatic life or human health.))</del> <u>Fill shall not result in the creation of dry land except where necessary for transportation projects of statewide significance as part of ecological restoration and enhancement, beach nourishment, mitigation or where necessary to repair pocket erosion as allowed in Section 23.60.184.G.</u>	Without the allowance in the first sentence, utility pipe bedding and new fill necessary for geotechnical considerations would be restricted. Fill is often <i>required</i> as a temporary or permanent cap, as an anti-degradation layer after some dredging actions.  The deleted paragraph should be retained, and other regulations affecting fill in the draft SMP should be reviewed so that these types of incidental fill would be allowed. Fill should be allowed as a special use in all sections as part of habitat mitigation, restoration and enhancement, or beach nourishment project, or when allowed as a regional interagency-approved open-water disposal site, or as an anti-degradation layer.	Port's proposal to retain J is inconsistent with WAC 173-26-231(3)(c).  Proposal to allow fill as a special use for habitat mitigation, restoration and enhancement, beach nourishment (a type of restoration and enhancement) or anti degradation layer (a type of mitigation or restoration and enhancement) is in the draft in the new Section 23.60.172 Table A.  Additionally revised code to allow fill as dredge disposal as a conditional use. WAC 173-26-231(3)(c) requires this type of fill to be a conditional use.
37.	SMC 23.60. 187 C. 3. Standards for piers and floats and over water structures  3. Wood treated with pentachlorophenol, creosote, chromate copper arsenate	This section would effectively prohibit all use of treated wood, and introduces an impractical standard.  Insert language consistent with general development standard as amended: "Durable,	Arsenic was deleted and section revised to allow treated wood.  See response in #19

	(CCA), arsenic, or comparably toxic compounds is prohibited for decking or piling.	non-toxic components are the preferred materials for in-water and over-water structures. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.”	
38.	SMC 23.60.188 E.1 Standards for shoreline stabilization E. Replacement hard engineering 1. Replacement of existing hard engineering structures is prohibited unless: a. the applicant demonstrates need for the replacement structure. In all circumstances, except ecological restoration, enhancement or remediation of hazardous substances and site areas of water-dependent uses, need for replacement of hard engineering shall be demonstrated in one of two ways:	The use of double negatives, with multiple exceptions, makes this section difficult to understand.  Amend as follows: E. Replacement hard engineering 1. Replacement of existing hard engineering structures is allowed when there is a demonstrated need for the replacement structure and when there is a need for t ecological restoration, enhancement or remediation of hazardous substances or the protection of water-dependent uses, The need for replacement of hard engineering shall be demonstrated in one of two ways:	Regulations revised to address concerns. See 23.60.188.E.1  Included standards with input from Port staff and NSIA members for allowing replacement that meets the “infeasible” requirement.
39.	SMC 23.60.188 E. 2 Standards for shoreline stabilization 2. Replacement of hard engineering shall not encroach waterward of the ordinary high-water mark or existing structure unless it is to protect a residence that has been continuously occupied since December 31, 1991, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.	We need to understand the significance of the December 31, 1991 date. This section may create an unnecessary burden for water-dependent uses. It needs to amended so that it is clear that replacement of existing shoreline stabilization is allowed for water-dependent uses both as an exemption and as a substantial development permit. As written, it appears to imply that there would be loss of upland devoted for marine terminals when shoreline stabilization is replaced. This section creates an unnecessary burden for water dependent uses. The continuity of these uses fluctuates with economic conditions. These built and committed uses within the shoreline are also very often scale dependent and a loss of area limits their viability. Flexibility is needed in order to improve and reinvest in Port and other water-dependent facilities.  Amend as follows: 2. Replacement of hard engineering shall not encroach waterward of the ordinary high-water mark or existing structure unless it is to protect a water dependent marine industrial use or there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing	Port’s proposal is not consistent with WAC 173-26-231(3)(a)(iii)(C) 2 <sup>nd</sup> bullet.  The date comes from the same WAC.

		shoreline stabilization structure.	
40.	SMC 23.60.188 G Standards for shoreline stabilization. G. Mitigation sequencing 1. In applying mitigation sequencing for new or replaced hard engineering stabilization pursuant to Section 23.60.158, adverse impacts on ecological functions to be addressed include, but are not limited to, disturbance of underwater substrate, turbidity, loss or disturbance of food, shelter, spawning, and migration habitat, and loss or disturbance of fish runs, biological communities and biodiversity, particularly benthic productivity.	Standards for mitigation are incorporated in the general development standards, and should not be partially excerpted here. This introduces risk of confusion and/or inconsistency.  Delete. This section is redundant, and this is an opportunity to simplify the code.	DPD proposes to retain this standard. In all cases the list is not inclusive or restrictive and the regulations allow for the applicant to use different methods of mitigation if other methods exist that are as effective or more effective than the listed methods. The methods will guide applicants and planners and this will result in more efficient and fair project review.
41.	SMC 23.60.190. B3 Vegetation and impervious surface water management 3. In applying mitigation sequencing pursuant to Section 23.60.158, adverse impacts on ecological functions to be addressed include, but are not limited to, disturbance of underwater substrate, turbidity, loss or disturbance of food, shelter, spawning, and migration habitat, and loss or disturbance of fish runs, biological communities and biodiversity, particularly benthic productivity. Note: similar language appears in F2.	Standards for mitigation are incorporated in the general development standards, and should not be partially excerpted here. This introduces risk of confusion and/or inconsistency.  Delete B3 and F2. This section is redundant, and this is an opportunity to simplify the code.	DPD proposes to retain this standard. In all cases the list is not inclusive or restrictive and the regulations allow for the applicant to use different methods of mitigation if other methods exist that are as effective or more effective than the listed methods. The methods will guide applicants and planners and this will result in more efficient and fair project review.
42.	SMC 23.60.190.F3c Vegetation and impervious surface water management c. replicating the function of the pervious ground through methods that are engineered and designed according to the requirements of Chapters 22.800 through 22.808, Stormwater Code.	The specific code reference may change in the future, and require revision to the SMP.  Simply refer to "City Stormwater Code" here. . This section is redundant, and this is an opportunity to simplify the code.	DPD proposes to retain language as proposed. The Port's proposed edit does not eliminate the requirement to submit new or revised Stormwater Code sections to the Department of Ecology for approval if changes are made to the Stormwater Code.
43.	SMC 23.60. 200 B.3. Standards for marinas 3. Marinas are required to provide upland restrooms for use by any patron of the marina facility. At a minimum, the facilities are required to include one toilet and one washbasin for men and one toilet and one washbasin for women. The Director shall	This is prescriptive and intrusive regulation of operations, and should not be applied to public marinas.  See general comment letter. Delete.	Regulations revised to address comment see Section 23.60.200.B.3

	determine hours of operation and the need for additional facilities to provide reasonable hygiene based on the number of slips, percentage of live-aboard slips, and the number of transient moorage slips within the marina.		
44.	SMC 23.60. 200 B.7 Standards for marinas 7. All buildings and open areas used for boat and/or trailer storage are required to be screened with natural existing vegetated buffers or planted landscaped areas.	It is unclear whether this would make existing facilities non-conforming. In many cases, this requirement may be impractical due to site limitations.  Delete.	DPD still addressing comment.
45.	SMC 23.60. 200 B.8 Standards for marinas 8. In Lake Washington and the Puget Sound overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 30 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less. In Lake Union and Portage Bay overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 15 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less.	This section is unclear and is likely unachievable as written. There is no datum reference (OHW?)  Delete.	DPD proposal:  Revised to include in standard "if reasonable"
46.	SMC 23.60. 200 C. 1.b,c. Standards for marinas b. The minimum public access for a marina providing less than 9,000 linear feet of moorage space is an improved walkway 5 feet wide on an easement 10 feet wide leading to an area located at the water's edge, which shall be 10 feet wide and shall provide 10 feet of water frontage for every 100 feet of the marina's water frontage. c. The minimum public access for a marina providing 9,000 or more linear feet of moorage space is an improved walkway 5 feet wide on an easement 10 feet wide leading to a public walkway 5 feet wide on an easement 10 feet wide located along the entire length of the marina's water frontage. 99	It is unclear to whom would such an easement be granted and whether there would be a maintenance agreement. This should not apply to Port-owned marinas, where public access is provided and is publicly owned.  Delete, or clarify that easement requirements would not apply to publicly-owned marinas	DPD proposal: Revised as follows:  <u>d. Easements are not required for publicly owned marinas.</u>

47.	SMC 23.60. 200 C. 2. Standards for marinas Transient moorage regulations	<p>The definition of transient here is different than used by the Port at SBM, and at other marinas. Marina operators should be free to determine the mix of moorage based on market conditions and the characteristics and location of the individual facility. The Port is opposed to a new live aboard registration program due to administrative costs, and the unnecessary intrusion of SMP rules into marina management and financial decision-making.</p> <p>See main comment letter. The entire section should be withdrawn and revised extensively, so that the regulations (apparently with concern about floating inns) are focused on the intended target.</p>	<p>Requiring transient moorage at marinas is part of the existing code and is good policy to help facilitate boating within the City.</p> <p>Please provide information why this has been a problem in the past and provide specific language that would accommodate transient moorage and address your concerns.</p> <p>Section 23.60.200 revised.</p>
48.	<p>SMC 23.60.207B Standards for public facilities C. Expansion of Uses in Public Facilities. Uses allowed, allowed as a special use, allowed as a shoreline conditional use, or allowed with modifications pursuant to subsections 23.60.207.A or 23.60.207.B may be expanded as follows:</p> <p>1. Major Expansion. A major expansion of a public facility use occurs when the proposed expansion would not meet development standards or exceed either 750 square feet or 10% of its existing area, whichever is greater, including but not limited to gross floor area and areas devoted to active outdoor uses other than parking. Major expansions of uses in public facilities allowed in subsections 23.60.207.A and 23.60.207.B are allowed following the standards and procedural requirements in those subsections.</p> <p>2. Minor Expansion. An expansion that falls below the major expansion threshold level is a minor expansion. Minor expansions of uses in public facilities are allowed subject to Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, for a Type I Master Use Permit if the development standards of the zone in which the public facility is located are met.</p>	<p>It is not clear why there are separate standards for private and public projects. Assuming this is meant to apply to Port projects, this would apparently insert City Council approval into Port plans. The Port is concerned with the additional layer of procedure and potential delay created for public projects. The City needs to harmonize these requirements with the required container port element of the GMA, the goals of the SMA, the Port's independent authority to develop its facilities, and other sections of the proposed SMP update.</p> <p>Delete or clarify how this would apply to Port facilities, if at all.</p>	<p>The Port is a public facility and this is existing language and it is intended to assist public facilities. If a use is not identified in the environment where the facility is located, the WAC requires a conditional use permit. This provides an alternate route.</p> <p>If the Port would rather go through the conditional use approval process with Ecology, rather than through City Council, we can create this as an alternative the public facility applicant can elect.</p> <p>Could add "Public agencies may either apply for a conditional use or"...</p>

49.	<p>SMC 23.60.214 Standards for uses on vessels A. Dwelling units are allowed on vessels as follows:</p> <p>1. A vessel may be used as a dwelling unit for one household for three nights or fewer per week, beginning on Monday, if the vessel is moored at a marina or moorage authorized for the particular type of vessel.</p> <p>2. A vessel may be used as a dwelling unit for one household for four or more nights per week, beginning on Monday, if the vessel is moored at a marina or moorage authorized for the particular type of vessel, and if at a marina, the marina complies with the standards set out in Section 23.60.200.</p> <p>B. Activities and uses on a vessel, except as allowed in subsection 23.60.214.A, that are not customary to that type of vessel are prohibited while the vessel is moored. Customary activities or uses occurring while the vessel is moored are subject to the standards of the applicable shoreline environment unless incidental to the customary use of the vessel or the residential use allowed under subsection 23.60.214.A.</p>	<p>The definition of how a vessel may be used as a dwelling unit is different than that used by the Port at SBM, and at other marinas. Marina operators should be free to determine the mix of moorage based on market conditions and the characteristics and location of the individual facility. The Port is opposed to these standards and an unnecessary intrusion of SMP rules into marina management and financial decision-making.</p> <p>See comments re live aboards above. Withdraw and revise regulation to apply to the targeted issue, rather than all live aboard situations.</p>	<p>Code section revised.</p> <p>Summary of changes: 25% limitation is eliminated Gray water needs to be treated New house barges are prohibited Marinas with liveaboards are required to provide bathrooms and showers.</p>
50.	<p>SMC 23.60.220 10.b.4 Environments established 4) Areas near, but not necessarily adjacent to, residential or ((A))Neighborhood ((e))Commercial zones ((which)) that require ((preservation of views and ))protection from the impacts of heavy industrialization and are therefore inappropriate for a UI Environment designation.((;))</p>	<p>This is an example of detailed and prescriptive language that is inappropriate to the SMP. This regulation belongs in the zoning code, not the SMP.</p> <p>Delete, or revise to eliminate reference to UI environment designation.</p>	<p>The SMP is part of the City's "zoning code," i.e., Title 23, and is an overlay district to the general zoning provisions. WAC 173-26-191(2)(a)(1)(C) requires the SMP to have a description of each shoreline environment.</p> <p>Whether this is in the SMP chapter of Title 23 or in another part of Title 23, it has to be part of the SMP and submitted to Ecology.</p> <p>DPD's proposal is to retain language in the current location.</p>
51.	<p>SMC 23.60.224 Uses in CM Environment (Use table) Use tables and explanatory text.</p>	<p>As written, the table prohibits cargo terminals. This would make the existing conveyance system for Terminal 86 a nonconforming use.</p> <p>Amend to allow existing water-dependent</p>	<p>Code revised to allow existing water-dependent cargo terminals..</p>

		infrastructure within the CM environment.	
52.	<p>SMC 23.60.232</p> <p>Shoreline setbacks in the CM environment</p> <p>Shoreline setback requirements and over water development standards are as follows:</p> <p>A. Development within 15 feet landward of the OHW mark is limited to the minimum necessary to construct and provide access to parks and open space uses and to shoreline modifications allowed, or allowed as a special use or a shoreline conditional use in the CM Environment for water-dependent and water related uses.</p> <p>B. A shoreline setback of 50 feet from the OHW mark is required for uses that are not water-dependent or water-related.</p> <p>C. Development in the area within 50 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 23.60.232.A and pathways and viewpoints accessory to a parks and open space use allowed, or allowed as a special use or a shoreline conditional use in this shoreline environment or for required public access.</p>	<p>The entire section is confusing as written. We were unable to discern what the standards are, and the language is unnecessary complex. Simply state what the requirements are (perhaps in tabular form) so that this is clear to both applicants and city staff.</p> <p>Revise and clarify.</p>	<p>Sections revised, also considering including a table for clarity.</p>
53.	<p>SMC 23.60.240</p> <p>Uses in the CN Environment</p> <p>Use tables and explanatory text.</p>	<p>The DMMP-approved open water dredged material disposal site operated by WDNR is not expressly allowed here. This is approved and existing regional resource, and needs to be allowed.</p> <p>Revise table to include interagency – approved open water disposal of dredged material as an allowed use within CN.</p>	<p>Code revised as requested and working to include requirements of WAC 173-26-231(3)(c) regarding how to regulate it if it were to expand.</p>
54.	<p>SMC 23.60. 246. F</p> <p>Shoreline modifications in the CN Environment</p> <p>F. Fill.</p> <p>1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project;</p>	<p>Per comment above, the regional DMMP open water dredged material disposal site needs to be an allowed use. Fill that is required as an environmental protective measure, such as post-dredging anti-degradation layers, should also be an allowed use.</p> <p>Revise as follows:</p> <p>1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project, <u>or when allowed as a</u></p>	<p>WAC 173-26-231(3)(c) describes when fill is allowed – see new shoreline modification section 23.60.172 where suggested edits have been included in the Fill section of Table A.</p>

		<u>regional interagency-approved open-water disposal, or as an anti-degradation layer.</u>	
55.	SMC 23.60. 254 Shoreline modifications in the CP Environment F. Fill. 1. Fill is allowed as a special use if it is part of an ecological mitigation, restoration and enhancement, or beach nourishment project; 2. Fill is allowed as a shoreline conditional use if it is: a. necessary to install utility lines; b. necessary to install bridges; c. part of the cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan; or d. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible.	Consistent with other sections, fill for cleanup and disposal of contaminated sediments as part of an interagency plan should be a special use, rather than a conditional use.  Revise as follows: F. Fill. 1. Fill is allowed as a special use if it is part of an ecological mitigation, restoration and enhancement, or beach nourishment project; <u>or as an element of cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;</u> 2. Fill is allowed as a shoreline conditional use if it is: a. necessary to install utility lines; b. necessary to install bridges; c. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible.	See response to comment #54.
56.	SMC 23.60. 260. Protection in the CP Environment  ((A-))Development in the CP Environment shall be located and designed to <del>((minimize adverse impacts to natural areas of biological or geological significance))</del> <u>avoid disturbing ecological functions and to enhance the enjoyment by the public of the shoreline environment</u> <del>((those natural areas))</del> .	Note that there may be temporary disturbance to ecological functions during restoration actions.  Revise to allow for temporary disturbances that may occur during construction and restoration activities.	Regulations revised to include suggested edit “permanently” was added before “disturbing” in subsection 23.60.260.A.
57.	SMC 23.60.382 Uses in the UC Environment Use tables and explanatory text. 23.60. 382B.3. 3. To be approved, development that includes any of the uses listed in subsection 23.60.382.B.1 shall comply with one of the following conditions or a combination of conditions if the Director determines the combination would achieve a similar offset for siting a use that is not	This entire section is extremely confusing as written. It sets up a long chain of interdependent criteria, with unclear linkages. We were unable to discern how existing and potential future developments at Port facilities within the UC would be affected.  Re parking: it is our understanding parking at Shilshole Bay Marina is an accessory to the water-dependent use, and that zoning regulations direct the number of spaces. It appears that this section would alter this, and disallow several existing	Revised to clarify as suggested.

	water-dependent or water-related on a waterfront lot: Et seq.	water-related uses, Because a large part of the site is parking, the requirement for 50% of dry-land being water-dependent may have unintended consequences.  Withdraw and revise extensively for clarity. Recommend that statements be in the affirmative (e.g. what is allowed) rather than prohibited with multiple exceptions and caveats.	
58	SMC 23.60. 384 E Shoreline modifications in the UC environment  E. Fill. 1. Fill is allowed as a special use if it is part of a habitat mitigation, or conditional use if it is: a. necessary to install bridges; b. necessary to install utility lines; c. part of the cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan; or d. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible.	Consistent with other sections, fill for cleanup and disposal of contaminated sediments as part of an interagency plan should be a special use, rather than a conditional use. Fill that is required as an environmental protective measure, such as post-dredging anti-degradation layers, should also be allowed.  Revise as follows: 1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project, <u>or when allowed as a regional interagency-approved open-water disposal, or as an anti-degradation layer.</u>	See response to comment #54
59	SMC 23.60.442 Uses in the UH Environment Use tables and explanatory text	Minor repairs are frequently required for cargo, passenger, and other commercial vessels moored at Port facilities within UH environment, particularly Piers 66 and 69. I.  The proposed revisions should not prohibit minor vessel repair, subject to best management practices, as an accessory use within the UH environment, while noting that vessel repair as a primary use is prohibited.	This provision is not changing from existing regulations. Vessel repair is a use and is either minor or major vessel repair.  Incidental maintenance would be considered slip-side maintenance a non-commercial nature; i.e. not minor vessel repair or major vessel repair, which are commercial uses.
60	SMC 23.60.442 B Uses in the UH Environment Use tables and explanatory text	It is unclear what the effect of the proposed changes would be on existing restaurants, conference facilities, and commercial uses at Piers 66 and 69. The draft revisions are not clear if such existing uses would be categorized as non-conforming.	Please provide a list of uses that occur at Pier 69.

		The draft revisions should not prohibit existing uses identical to those at Pier 66 and 69. Such uses would be subject to DPD review and approval, including permit conditioning.	
61.	SMC 23.60.442 J Uses in the UH Environment Use tables and explanatory text: J. Public facilities that are water-dependent or water-related or part of an approved public improvement plan for the Harborfront adopted by City Council.	The Port's principal mission is to provide facilities for water-dependent and water-related uses and activities beneficial to the region. In addition existing shoreline code allows for limited non water-dependent and non water-related uses and activities in the UH environment, subject to DPD review and approval. Requiring City Council approval of "public improvement" plan materials prepared by the Port in the interest of economic development has the potential to create conflict between the interests of the City Council and the Port Commission.  Revise SMP draft to distinguish between intent and specific authority of port improvements plans and "public improvement" plans.	This is an option for a public improvement plan to be adopted by City Council, not a requirement. The Port's Public Improvement Plan is not "required" to be approved by City Council nor would it be considered a "Public Improvement Plan" for the Harborfront.  Included definition of Public Improvement Plan and the definitions state that it is not a Port Improvement Plan.
62.	SMC 23.60. 448 Lot coverage in the UH Environment C. Lot Coverage Exceptions. Piers may exceed <del>((permitted))</del> allowed lot coverage by the addition of floats for open wet moorage. <del>((Maximum float size above ))</del> Existing or new floats may exceed the existing lot coverage or the lot coverage limit, whichever is greater, <del>((is thirty-six hundred (3,600) square feet or an area equivalent to twelve (12) feet times the length of the pier, whichever is greater.))</del> by 1,600 square feet total for all floats. An additional <del>((four hundred (400))</del> square feet of coverage <del>((shall be permitted))</del> is allowed for an access ramp. <del>((Existing floats may be increased in size up to this limit.))</del>	This section is overly prescriptive, and may have unintended future consequences. If mitigation sequencing is followed during the review process, it would be assured the minimum necessary coverage for the proposed project and purpose would be allowed.  Delete.	This provision is an existing provision that allows additional lot coverage and is an exception that would allow more lot coverage.  If we delete this provision then the lot coverage is the set limit and an applicant would need a variance to exceed the lot coverage.
63.	SMC 23.60.450.B Shoreline and side setbacks in the UH Environment B. All development allowed in the shoreline setback shall be designed to: 1. avoid reducing vegetation coverage; 2. avoid adverse impacts to	If mitigation sequencing is followed during the review process, these issues would be covered. The standards are vague, and it is unclear what the expectation is, and how it would be determined.  Delete this section and refer to overall mitigation sequencing requirements. This section is redundant, and this is an opportunity to simplify the	#5 in the suggested edit is not likely to be part of mitigation sequencing.  This level of specificity provides guidance to applicant and City planners so that it is clear as to what is being mitigated. We believe that this is a helpful addition to the regulations and proposed to keep these standards in the proposed regulations.

	<p>habitat;</p> <p>3. minimize disturbance to natural topography;</p> <p>4. minimize impervious surface;</p> <p>and</p> <p>5. prevent the need for shoreline stabilization to protect these structures.</p>	code	
64.	<p>SMC 23.60. 452.1.</p> <p>View corridors in the UH Environment</p> <p>1. View corridors shall allow views of the water from the street. View corridors shall maintain and enhance pedestrian views from Alaskan Way along traditional view corridors established by submerged street rights-of-way, as well as views from upland areas along east/west rights-of-way. View corridors shall provide views past pier development out into the open water of Elliott Bay and to the Olympic Mountains where possible;</p>	<p>This requirement is already covered under 23.60.443. and it appears that a different standard is described here. The Port has a substantial public investment in water-dependent moorage facilities at Pier 66. We are concerned that this would apply to vessel moorage, and that exemptions for vessels been deleted in this section.</p> <p>Revise to be consistent with general development standards in 23.60.170 (5) that allow for open wet moorage. Open wet moorage should not be considered non-conforming use.</p>	<p>This is in addition to what is required in Section 23.60.170 and does not supersede those general provisions.</p> <p>Added clarifying language to Section 23.60.170.</p>
65.	<p>SMC 23.60. 456</p> <p>Moorage requirements in the UH Environment</p> <p>A. Developments in the UH Environment shall <del>((provide))</del> offer moorage on a regular basis <del>((either))</del> through:</p> <p>1. Using <u>on-site</u> moorage as an integral part of their operation;</p> <p>2. <u>Offering</u> <del>((Leasing their))</del> <u>on-site</u> moorage <u>for lease</u> for use by commercial or recreational watercraft; <del>((or))</del></p> <p>3. Actively advertising the availability of <u>on-site</u> transient moorage; <u>or</u></p> <p>4. <u>Complying with subsection 23.60.456.D.</u></p> <p>B. To facilitate moorage<del>((,))</del> developments shall provide<del>((either))</del>:</p> <p>1. Cleats on the two sides of the pier sufficiently strong for the moorage of vessels <del>((one hundred))</del> 100 feet in length;</p> <p>2. Floats<del>((, for moorage of smaller vessels,))</del> that are at least <del>((one thousand eight hundred))</del> 1,800<del>((,))</del> square feet with a minimum width of <del>((six))</del> 6<del>((,))</del> feet, <u>for moorage of smaller vessels</u>; or</p> <p>3. Alternative moorage facilities providing</p>	<p>This section is puzzling and overly prescriptive. It is unclear why moorage would be <i>required</i> (as opposed to simply allowed) within the UH. It is also unclear why floats are specifically called out, when piers are allowed elsewhere, and presumably allowed for moorage uses .</p> <p>Delete.</p>	<p>This is existing language and it is to promote the UH purposes of public access and recreational enjoyment.</p>

	<p>an equivalent amount of moorage, as determined by the Director.</p> <p>C. To facilitate access to moorage(,) developments shall provide:</p> <p>1. A pier apron of a minimum width of ((<del>eighteen</del>(-))18((+))) feet on each side and the seaward end of the pier or wharf; and</p> <p>2. Railings and/or ramps designed to ((<del>permit</del>))facilitate access to the pier apron or roadway from moored ships and boats.</p>		
66.	<p>SMC 23.60.482</p> <p>Uses in the UI Environment</p> <p>Use tables and explanatory text.</p>	<p>The tables need to expressly allow existing and potential future WD/WR marine cargo uses, including WD/WR commercial and industrial moorage (M.3), vehicle storage and maintenance (M.8), passenger terminals and cargo terminals (without the proposed restrictions of 482D). See comments below.</p> <p>Revise tables to expressly allow existing and future WD/WR uses as noted within UI environment.</p>	<p>Commercial moorage and WD and WR cargo terminals are allowed, (23.60.482 Table A)</p> <p>See revised section 23.60.482 Table A</p> <p>However vehicle storage is not water dependent</p> <p>See below re: cargo terminals</p>
67.	<p>SMC 23.60.482 D</p> <p>Uses in the UI Environment</p> <p>D. The following uses are prohibited on submerged land, except they are allowed on existing pier structures at existing terminals if water-dependent, water-related or an accessory office as provided below and the requirements of subsection 23.60.482.B.2.c are met:</p> <p>1.Cargo terminal;</p> <p>2. Passenger terminal;</p> <p>3. Food processing and craft work use;</p> <p>4. Light manufacturing;</p> <p>5. Warehouse Storage;</p> <p>and</p> <p>6. Accessory offices less than 1000 square feet for water-dependent uses allowed, or allowed as a special use or a shoreline conditional use provided in Section 23.60.482.</p>	<p>As written, the section is unclear and confusing, and creates a decision loop that would prohibit new or expanded cargo terminals. This is inconsistent with the policy objectives of the SMA as well as specific directives of the SMP rules (again, see WAC 173-26-201(3)(d)(ii)). It is also inconsistent with the required container terminal development element of the Seattle Comprehensive Plan, and with the Port's adopted Shoreline Plan, which describes potential terminal expansion areas.</p> <p>Revise tables to expressly allow existing and future WD/WR cargo terminal uses as noted within UI environment.</p>	<p>Regulations revised to include suggested edit. See Section 23.60.482 Table A.</p>
68.	<p>SMC 23.60.486 D</p> <p>Height in the UI Environment</p> <p>p. 302</p> <p>D. Rooftop Features.</p> <p>1. Radio and television receiving</p>	<p>This section is overly prescriptive, and may have unintended future consequences. If mitigation sequencing is followed during the review process, it would be assured that impacts of rooftop features would adequately mitigated. . Industrial edifices,</p>	<p>Incorrect: mitigation sequencing addresses impacts to ecological functions. These regulations address different impacts.</p>

<p>antennas, flagpoles, chimneys, <del>((and-))</del> smokestacks, <u>and religious symbols for religious institutions</u> are exempt from height controls, <del>((except as regulated in Chapter 23.64, Airport Height Overlay District,))</del> provided <del>((such features are))</del>:</p> <p>a. <u>The feature is</u> <del>((N))</del> no closer to any adjoining lot line than <del>((fifty-))</del>50((+)) percent of their height above existing grade; or</p> <p>b. If attached <del>((only))</del> to the roof, <u>the feature is</u> no closer to any adjoining lot line than <del>((fifty-))</del> 50 ((+)) percent of their height above the roof portion where attached.</p> <p>c. <u>The width of the feature does not obstruct the view of the shoreline of a substantial number of residences within the Shoreline District on areas adjoining such shorelines.</u></p> <p>2. <u>Open</u> <del>((R))</del> railings, skylights, clerestories, solar collectors, parapets, <u>planters, green roofs, greenhouses,</u> <del>((and))</del> firewalls, <u>communication utilities, and accessory communication devices</u> may extend <del>((four-))</del>4(( )) feet above the maximum height <del>((set in subsections A and B of Section 23.60.632))</del> limit where allowed in the underlying zone.</p> <p>3. The following rooftop features may extend <del>((ten-))</del>10 feet above the maximum height <u>limit</u><del>((set in subsections A and B of Section 23.60.632, so long as-))</del>, if the combined total coverage of all features listed in this subsection <u>23.60.486.C</u><del>((subparagraph C3))</del> does not exceed <del>((fifteen-))</del>15((+)) percent of the roof area, or <del>((twenty-))</del>20((+)) percent of the roof area if the total includes screened mechanical equipment <u>and where allowed in the underlying zone or special district, except where the width of such features obstructs the view of the shoreline of a substantial number of residences within the Shoreline District on areas adjoining such shorelines; in which case the Director may authorize a lower height:</u></p>	<p>including rooftop features, may be necessary for a variety of WD/WR uses. They should not be restricted. Automation of cargo terminals may require radio controls, antennas, security measures, etc, that are a necessary component of the WD/WR use. The shoreline is a dynamic environment that needs to change and accommodate our customers' needs with changing economic paradigms. On occasion, rooftop features may block some component of the viewshed exposed to neighboring zones/environments.</p> <p>Section 1.c is overly restrictive and vague regarding what would constitute an obstruction. Revise to clarify .</p>	
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	<p>a. <u>Solar collectors</u></p> <p>b. <u>Stair and elevator penthouses;</u></p> <p>and</p> <p>((b))c. Mechanical equipment.</p> <p>4. Structures may extend 18 inches above the maximum height limit if the proposed roof insulation exceeds the current energy code requirements.</p>		
69.	<p>SMC 23.60. 502</p> <p>Uses in the UM Environment</p>	<p>This is helpful, and accommodates existing and some potential future uses at Fishermen's Terminal. This flexibility is needed for to maintain the economic vitality of this unique maritime complex.</p> <p>No change proposed.</p>	<p>Thank you!</p>

John Houlihan Fremont Dock Company and Nautical Landing			
	Code Section/Issue	Comment	DPD Response & Port Comment
70	23.60.039	Include cost and economic consideration in the definition of feasible doesn't include cost or economic consideration r	Definition of feasibility comes from the Department of Ecology and therefore where the WAC uses the "feasible" requirement the City is required to have that same standard. Additionally, feasible is also the standard for mitigation sequencing; therefore when "feasible" is used to meet the mitigation requirement <i>feasible</i> is in italics.
71	23.60.090.A.3	Duplicative of subsection A - delete	No, these are two standards use needs to be allowed in the environment as stated in subsection A and then specifically allowed overwater in the specific shoreline environment as stated in subsection A.3
72	23.60.090.C	Allow accessory uses over water	Revised code to include new sections that regulates property with little or no dry land and accessory uses will be allowed. See Section 23.60.384 and 23.60.504
73	23.60.090.D	allow accessory uses on adjoining lots especially where structures may cover more than one specific tax parcel.	Accessory uses are allowed on adjacent lots to the principal use unless they are a prohibited use, in which case they are required to be located on the same lot as the principal use. Accessory uses have been regulate in this manner for 24 years and it makes regulatory sense to continue this standard.
74	23.60.122.A.2	provide a minimum 24 month period of nonuse before non-confirming use status is extinguished. Allow for additional extension based on economic conditions.	See Comment #14
75	23.60.122.B.1 and 2	Revise to apply to non-confirming structures as well. As written, it appears that maintenance and repair of a non-confirming structure with a non-confirming use is prohibited.	Clarification made – maintenance of a non-confirming structure with a non-confirming use is allowed.
76	23.60.122.D.2	Delete, a switch from one non-confirming use to another (e.g. general office to general sales and service) in an over-water structure does not impose any adverse impact on the baseline ecological function. Exacting 36 habitat units per square foot bears no relationship to actual impact of the nonconforming use. This imposition of impact fees to address impacts that are unrelated to the use does not comply with Washington law.	WAC requirement 173-26-241(3)(d)(i) and (ii), the requirement has to do with not meeting one of the three goals of the SMP. This will not impact uses on small lots that have W-D and W-R uses.
77	23.60.124.D.2	Delete requirement to mitigate impact to ecological function. Rebuilding an existing structure does not result in a "net loss" of ecological function. The existing structure is already included in the ecological function baseline – as such rebuilding the structure does not impose a net loss.	Non-confirming structures are regulated differently than conforming structures. Because the City is allowing them to be rebuilt overwater impacts to ecological function will be reviewed at the time the structure is replaced because of the non-confirming status of the structure.
78	23.60.124.D.2	delete the language "to the extent reasonable" relating to overwater structures. Overwater structures on lots with little or no dry land should be allowed to rebuild to their existing footprint without a determination of "reasonableness".	See new Sections 23.60.382 and 23.60.504, which are new sections that address uses on small lots.

79	23.60.124.H.1	<p>revised to be consistent with SEPA requirements re[ ]substantial, adverse environmental impacts. As written, even minor or inconsequently adverse impacts would trigger mitigation and if such minor impacts were not capable if mitigation then the application MUST BE DENIED.</p> <p>This standard creates the risk that any permit to rebuild, substantially improve or replace “nonconforming development” would be denied. In addition, the term “nonconforming development” is a not a defined term which creates uncertainty as to the application of this subsection (e.g. does it apply to non-conforming structures? Overall projects with a small portion that is non-conforming?).</p>	Existing standard and consistent with the goals of the SMA and SMP guidelines non-conforming uses and structures by nature have a higher bar to meet when redevelopment occurs.
80	23.60.124.H.2	deleted. Existing overwater structures on lots with little to no dry land should be allowed to be replaced without mitigation of ecological impacts especially where the replacement is due to loss of the structure to an act of nature. The existing structure is already included in the ecological function baseline. Replacement of the structure does not create a net loss of that baseline ecological function requiring mitigation.	See response to Comment #78
81	23.60.152	The general developments standards articulated and the associated standards of addressing any adverse impact may contravene or conflict with SEPA mitigation standards. The general development standards should be revised to incorporate the SEPA standard of substantial adverse environmental impact.	SEPA and Shoreline Regulations are different SEPA is the regulation that captures impacts not mitigated through other regulations. SMP regulations are required to meet the goals of the SMA and the SMP guidelines. See WAC 173-26 and 173-27 and RCW 98.58
82	23.60.152.D	deleted. First, the language is not limited to uses within the Shoreline Zone and is therefore beyond the authority of the SMP. Second, the term “compatible” is not defined and would allow great discretion in determining if an allowed use is “managed” in way that is compatible with the surrounding area. Finally, the language seems to allow DPD to impose management requirements on uses (i.e. businesses) if the business has an adverse impact on surrounding “land or water uses” (i.e. other businesses). The SMA does not provide DPD with authority to impose management requirements on businesses.	See Comment #17
83	23.60.152.H	deleted. It imposes best management practices and “other control measures” without any link to whether there are substantial adverse environmental impacts or any “net loss of ecological function.” The “other control measures” include bioretention, permeable paving, rainwater harvesting, unspecified “filters” (air filters? water filters? sediment filters? or fences?). These “control measures” are potentially cost prohibitive and may contradict or conflict with other development requirements.	Clarified to indicate that mitigation is required to meet the NNL standard. If it is determined that loss of ecological function will occur as a result of a proposed project then mitigation is required.
84	23.60.152.J	Revise to allow use of treated wood if it complies with the AWPA standards without any determination of whether such treated wooden components are “necessary.”	See Comment #19

85	23.60.152.K	Delete, repair of existing creosote pilings does not result in “net loss” of ecological function. The existing pilings are already part of the baseline condition. Repair or capping of existing pilings does not result in a net loss. There is no legal basis within the Shoreline Management Act or the “no net loss of ecological function” policy that requires the removal of creosote pilings.	See Comment #20
86	23.60.152.L	delete the language “the maximum extent feasible”. As set forth above, the feasible/infeasible determination currently excludes any consideration of cost. This Subsection should be revised to incorporate a “to the extent reasonable” standard.	See #21
87	23.60.152.M and N and O	deleted because they overlap, conflict or may be inconsistent with other federal, state and local laws concerning hazardous substance release and response obligations. There is a comprehensive and robust federal and state regulatory regime in place governing the hazardous substance release and response especially with respect to release and response activities on the water. The draft SMP does not need to add additional duplicative or conflicting regulatory requirements.	These are common best management practices that help prevent damage to the ecological condition of the shoreline. The WAC requires, through local SMPs, to govern development and uses that can impact the ecological condition of the shoreline; therefore these standards are warranted.
88	23.60.160.1.c	should be revised to specifically define the “hyporehic zones” that are critical habitat and provide a map designating “hyporehic zones” in the Seattle Shoreline environment. As written and defined in the draft SMP, any groundwater to surface water interface or mixing zone could be considered a “hyporehic zone.”	Hyporehic zones are defined and are required to be protected. DPD will collect existing information regarding the location of hyporehic zones within Seattle’s Shoreline District.
89	23.60.162.C	allow existing over-water parking to be restriped, reconfigured or relocated in or on overwater structures. For properties with little to no dry land, the ability to reconfigure and restripe their existing parking overtime is critical to their continued economic survival and flexibility.	See Comment #26
90	23.60.162.D and F	deleted because they may conflict with other development requirements (e.g. landscape code, stormwater management code). Moreover, for overwater structures it simply may not be possible to achieve the screen requirements.	See Comment #27 and #28 And DPD continues to evaluate landscaping standards
91	23.60.187.C.1	revised to establish that piers and floats are outright allowed accessory uses without requiring that the applicant “demonstrate” that they are “necessary” for moorage, boat repair, or loading or off-loading goods or materials to and from vessels.	WAC requirement WAC 173-26-231(3)(b)
92	23.60.187.C.2	revised to allow covered moorage, subject to mitigation if there is a net loss of ecological function. • Overwater work sheds should not be prohibited nor relegated to the UI and UM environments. For example, work sheds should be allowed in the UC environment for water dependent uses (e.g. Lake Union Dry Dock).	One of the reasons for the prohibition of covered moorage in Lake Union is to preserve views of the water, another is to protect ecological functions. Covered moorage will continue to be prohibited for the above reasons. Work sheds are allowed if accessory to a use that requires the work sheds for their operation and are required to meet a development coverage standard. See revised code section.
93	23.60.187.C.3	use of certain treated lumber for decking or piling should be deleted because it is duplicative or revised to allow use of treated lumber in accordance with AWPA management practices.	See Comments #19 and #37

94	23.60.187.D	<p>concerning slip-side vessel maintenance should be deleted in its entirety. The section is too limiting in its description of allowed slip-side vessel activities and intrudes on the day to day business operations of boat owner, marina owners and numerous marine service providers. If the provision will not be deleted, then the language should be revised to simply prohibit bottom paint removal or scraping and adherence to industry best practices to minimize deposition of materials into the water during maintenance activities.</p>	<p>Slip side maintenance was revised to clarify see subsection 23.60.187.D.</p> <p>And BMPs are required per the Department of Ecology's Resource Manual For Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811</p>
95	23.60.188.D and E	<p>concerning new and replacement hard engineered shoreline stabilization are clearly designed to prohibit new and replacement hard engineered shoreline stabilization regardless of whether the hard engineering results in a "net loss of ecological function."</p> <ul style="list-style-type: none"> <li>• It does not appear that any geotechnical report could meet the requirements to "conclusively demonstrate" the enumerated criteria. For example, could any report ever conclusively demonstrate that non-structural or soft engineering methods are "infeasible" when the standard for "feasibility" is devoid of any cost considerations?</li> <li>• The provisions should be revised to: <ul style="list-style-type: none"> <li>o Allow new hard engineered shoreline stabilization where it is reasonable for protection of land, property or shoreline uses, and that mitigation be required where there is a "net loss of ecological function".</li> <li>o Replacement hard engineered shoreline stabilization should be allowed outright as long as it does not increase the footprint of the pre-existing hard engineered structures.</li> </ul> </li> </ul>	<p>See Comments #38 and #39</p>
96	23.60.190	<ul style="list-style-type: none"> <li>• The regulatory regime articulated in this section would likely require permits for routine landscape maintenance and replacement especially on larger upland properties.</li> <li>• The provisions are overly complex and burdensome.</li> <li>• The provisions should be simplified and substantially reduced especially for the UC, UM, UG and UH and UI environments.</li> </ul>	<p>Section revised to clarify and DPD continue to work to clarify this section.</p>
97	23.60.200	<ul style="list-style-type: none"> <li>• The marina standards as proposed reveal that DPD has a complete misunderstanding of the operational practices and needs of commercial and recreational marinas.</li> <li>• The imposition of BMPs through the SMP is not needed and may conflict with existing BMPs.</li> <li>• The commercial and recreational marinas already have comprehensive BMPs developed in conjunction with the Department of Ecology. At most, the Marina standards in the draft SMP should incorporate by reference the existing BMPs, not impose additional, duplicative and potentially conflicting BMPs.</li> </ul>	<p>Section revised so that BMPs are required per the Department of Ecology's Resource Manual For Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811.</p>

98	23.60.200.B.3	mandating separate “upland” restrooms for men and women and vesting the Director with the power to regulate the hours of operation of such restrooms and the ability to require more restrooms should be deleted. For marinas with little to no dry land, it may simply be impossible to provide “upland” restrooms. Moreover, the term upland is confusing. Does it mean on dry land or is it intended to actually mean “upland” as defined in the SMP i.e. locate the bathrooms on property which is separated from the water by a street?	Upland means on dry land. Section revised to clarify and the standard for gender specific restrooms was deleted.
99	23.60.200.B.6	concerning slip side maintenance should be deleted or substantially reduced in its application by solely prohibiting slip side bottom paint removal and mandating compliance with industry BMPs re vessel maintenance.	See Comment #94
100	23.60.200.B.9	Delete the “to the maximum extent feasible” language for grating in piers and floats. Either the standard for “feasible/infeasible” must be revised to include cost consideration or this section should be revised to require grating only where reasonable and practicable.	WAC requirement 173-26-231(3)(b) The regulations were revised to define what circumstances exist at a site that necessitates solid decking. See revised section.
101	23.60.200.C.1	exemption from the public access requirement for recreational marinas should be expanded to apply to marinas with less than 5,000 linear feet of moorage space.	Please provide reasoning for an exemption for marinas with 5,000 linear feet rather than the existing requirement of 2,000 linear feet. Additionally subsection revised to provide exemptions for marinas with a lot depth of less than 35 linear feet.
102	23.60.200.E	imposing additional standards on marinas providing slips to live aboard vessels requires substantial review and revision in conjunction with the marina industry. o The definition of live aboard (4 or more days out of any seven day period) is so broad that almost every marina would be classified as providing liveaboard moorage. A holiday weekend stay on a boat just once a year would render it a “live aboard” vessel. o The limitation of 25% live-aboard vessels in a marina is arbitrary and capricious and must be deleted. o The Registration Requirement is overly broad and simply a new tax on marina operations. A single boat used for a holiday weekend sleep over would require that the marina owner register and pay an undisclosed “fee.” This is simply not workable and must be deleted.	See revised section 23.60.204 and 23.60.214  Summary of changes: 25% limitation is eliminated Gray water needs to be treated New house barges are prohibited Marinas with liveaboards are required to provide bathrooms and showers.
103	23.60.204	<ul style="list-style-type: none"> <li>This section should be deleted in its entirety.</li> <li>These new provisions governing “house barges” appear to infringe upon and violate federal maritime jurisdiction because they specifically apply to U.S. Coast Guard licensed vessels. Please explain the legal authority to prohibit a licensed vessel from navigating or otherwise using the waters of the United States.</li> </ul>	DPD and the City Law Department respectfully disagree. The SMA provides the authority to DPD to regulate uses within the shoreline district and this includes uses on vessels.

104	23.60.204.A	<p>The section is vague and ambiguous. Does the City intend to prohibit House Barges in any area of the Shoreline Environments? Does the City mean that House Barges are prohibited from navigating the waters of the United States within the Shoreline Environment?</p> <ul style="list-style-type: none"> <li>Existing house barges with permits that date to June 1990 are allowed. Please explain the significance of June 1990. Does the City intend that house barges that were constructed post-1990 are also prohibited? Are they a nonconforming use?</li> </ul>	New house barges are prohibited.
105	23.60.214	<ul style="list-style-type: none"> <li>Please explain the legal authority that allows the City to regulate “dwelling uses” on licensed vessels navigating on the waters of the United States.</li> <li>It appears that these standards violate federal maritime law and exceed the statutory authority of the Shoreline Management Act.</li> <li>What uses are “customary” for a moored vessel? What uses are not customary such that they are prohibited? How is “customary” determined and by whom?</li> </ul> <p>The director? The DPD compliance inspector?</p> <ul style="list-style-type: none"> <li>This section should be deleted in its entirety.</li> </ul>	<p>Local jurisdictions do not regulate the operation of vessels; however, where vessels are moored and how they are used can be regulated through the City's SMP.</p> <p>See Comment #102.</p> <p>Additionally, DPD continues to work on defining “customary” uses for moored vessels.</p>
106	23.60.216	<ul style="list-style-type: none"> <li>Please explain the legal authority under the Shoreline Management Act that allows the City to regulate uses on vessels.</li> <li>This section should be deleted in its entirety.</li> </ul>	SMP regulates uses in the Shoreline District therefore uses on vessels are regulated it is the operation of vessels that are not regulated.
107	23.60.310.K	<p>Delete. The limitation on moorage of vessels in the CW to 7 days for repairs and 24 hours in all other instances is inconsistent with the regular and customary usage of the Waterways and will impose substantial economic hardship on the water-dependent and water-related uses currently utilizing the Waterways in their businesses.</p> <ul style="list-style-type: none"> <li>Any limitation on the moorage of vessels in the CW should be constrained to moorage that unreasonably obstructs navigation and commerce which are the intended and dedicated purposes of the waterways.</li> <li>Please provide clarification on whether existing permits to use and occupy street ends / waterways will be terminated or superseded by the SMP if it is adopted as currently proposed.</li> </ul>	Section revised as suggested.
108	23.60.402.A	<ul style="list-style-type: none"> <li>Boat moorage should be changed to an allowed use.</li> <li>Piers and Floats should be an allowed use if accessory to another allowed use.</li> </ul>	Section revised as requested.
109	23.60.404.C.2	<ul style="list-style-type: none"> <li>Breakwaters should be an allowed use – not a conditional use – when accessory to a water-dependent use.</li> </ul>	Required by WAC
110	23.60.404.H	<ul style="list-style-type: none"> <li>Piers and floats should be an allowed use – not a conditional use – when accessory to an allowed use in the UG environment especially boat moorages.</li> </ul>	Section revised as requested.
111	23.60.406.D.1.c	<p>deleted or revised to limit obstruction of nearby residential views to those residences located within the shoreline zone. As drafted it is vague and could be interpreted to mean any residence that has a view of the water no matter how far away from the shoreline zone the residence is located.</p>	Revised for clarification – required per RCW 90.58.320.

112	23.60.410	<p>As set forth above in the general comments, shoreline setback should be limited to 15ft landward of OHW.</p> <ul style="list-style-type: none"> <li>• 35ft setback for non-water-dependent and non-water-related uses should be deleted.</li> <li>• The ship canal is a man-made navigational canal which will remain a highly modified artificial shoreline environment. Increasing set-backs will not provide for continuous, connected habitat because the shallow and near-shore habitats will, as a matter of federal navigational requirements remain in their current armored condition.</li> </ul>	Setbacks are appropriate in the urban environment and are a good way to protect ecological function. See WAC 173-26-221(5)(b)
113	23.60.412	<ul style="list-style-type: none"> <li>• Please provide the map referenced to determine which upland properties are required to have view corridors.</li> </ul>	DPD will work to provide this information.
114	23.60.414	<ul style="list-style-type: none"> <li>• Delete public access requirement for marinas.</li> </ul>	WAC requirement per 173-26-241(3)(c).
115	23.60.502.H	<ul style="list-style-type: none"> <li>• New recreational marinas should not be prohibited. The City's own economic study evidences a growing demand for recreational marinas in the Lake Union area. The combination of this prohibition and the new operational limitations imposed on marinas under section 23.60.200 will substantially adversely impact this growing segment of the maritime industry. Recreational marinas and the boat ownership that accompany them support the maritime industry in Seattle. Marinas should be encouraged and incentivized in the UM, especially in the Lake Union area -- not prohibited.</li> </ul>	Section revised to allow recreational marinas in the UM environment in the Lake Union Ship Canal area..
116	23.60.502.H	<ul style="list-style-type: none"> <li>• Existing recreational marinas should not be prohibited from expanding. If expansion is to be limited, then "expansion" should not include larger boats or "additional boats." The SMP as drafted will slowly but surely cause the failure of the recreational marina businesses in the UM environment.</li> <li>• For example, if a 50 foot boat leaves a recreational marina, then it appears the SMP would prohibit replacement of that lost moorage tenant with two 20 foot boats because of an increase in the number of boats even though the net overwater coverage would be reduced.</li> </ul>	Section revised so that this standard no longer applies and recreational marinas are allowed in the Lake Union and Ship Canal in the UI and UM with standards.
117	23.60.382	No uses are enumerated for submerged lots. To simplify the provisions, a third column should be added for submerged lots. Maximum flexibility in uses should be afforded submerged lots.	Section 23.60.384 is a new section that provides for uses on lots with little or not dry land.
118	23.60.382.B and D	<ul style="list-style-type: none"> <li>• Limitations and conditions on the following uses should be eliminated to encourage vibrant, mixed use developments in the UC environment: <ul style="list-style-type: none"> <li>o Office;</li> <li>o Eating and drinking establishments;</li> <li>o Entertainment;</li> <li>o General Sales and Services; and</li> <li>o Small and Large Boat Sales, Rentals and boat parts and accessories.</li> </ul> </li> <li>• Habitat Unit monetary value needs to be defined or a set formula developed that is reasonable, calculable and certain.</li> <li>• Habitat Unit payments for uses in existing structures should be deleted.</li> <li>• Prohibition of office over water should be eliminated or at least clarified to apply only to office as a primary use. Overwater office as an accessory use to any other allowed, condition or special use should be an allowed use.</li> </ul>	<p>There are no limitations for small and large boat rentals. Limitations for the other uses help achieve the SMP goal of providing for WD and WR uses.</p> <p>Clarification regarding the types of offices allowed was included</p> <p>Habitat Units are defined and is available for review.</p> <p>Habitat units are required for uses that are not water dependent or water related whether they are in existing buildings or new buildings and this is a WAC requirement. See WAC 173-26-241(3)(d) and (f).</p>

119	23.60.384.C.2	<ul style="list-style-type: none"> <li>• Breakwaters should be an allowed use – not a conditional use – when accessory to a water-dependent use.</li> </ul>	WAC requirement 173-26-231(3)(d).
120	23.60.384.G	<ul style="list-style-type: none"> <li>• Piers and floats should be an allowed use – not a conditional use – when accessory to an allowed use in the UC environment especially boat moorages.</li> </ul>	Piers and floats are an allowed use when accessory to an allowed use including boat moorage.
121	23.60.384.H.2	Hard shoreline stabilization should be an allowed use – not a special use -- if it is repair, replacement or maintenance of existing hard stabilization.	This section of the regulations for new uses. Maintenance, repair and replacement of existing hard stabilization are an exempt activity; however, even though they are exempt they are required to comply with the SMP regulations per WAC 173-27-040(1)(b) and (e).
122	23.60.386.D.2	Delete or revise to limit obstruction of nearby residential views to those residences located within the shoreline zone. As drafted it is vague and could be interpreted to mean any residence that has a view of the water no matter how far away from the shoreline zone the residence is located.	Revised as suggested
123	23.60.388.A.1	Revise to increase the lot coverage to at least 75% for lots with little to no dry land.	The lot coverage is the same for both overwater and dry land so it doesn't matter if the lot has little or no dry land.
124	23.60.392	<ul style="list-style-type: none"> <li>• Public access on private property should not be required. The public safety and liability implications and exposure are absolutely untenable for marina owners.</li> <li>• If DPD retains public access requirements, then a complete exemption from public access requirements should be made for lots with little or no dry land or wholly submerged lots. Requiring public access to such lots would likely entail requiring public access to the privately owned structures themselves and not the "shoreline."</li> </ul>	<p>Public access is required per WAC 173-26-221(4). The regulations have been revised so that lots with a lot depth of 35-ft or less are not required to provide public access at recreational marinas.</p> <p>If there is a small lot and there is are uses that are not water dependent then public access is required except as provided in 23.60.164.I</p>
Coastal Transportation's			
125		Prohibited repair of treated wooden pilings Pulling and replacing wooden pilings under warehouses or docks is financially prohibitive and unrealistic	See Comment #20
126		<ul style="list-style-type: none"> <li>• Public access in industrial areas <ul style="list-style-type: none"> <li>○ This is an unwarranted additional requirement in industrial areas which poses a safety and security risk to maritime terminals</li> </ul> </li> </ul>	<p>Public access is required per WAC 173-26-221(4) for uses that are not water dependent. Can consider ecological restoration in lieu of public access per WAC 173-26-241(3)(d)(i) and (ii) and 173-26-241(3)(d)(i) and (ii).</p> <p>Section modified to exempt recreational marinas with less than 35-ft of dry land.</p>
127		<ul style="list-style-type: none"> <li>• No new recreational marinas or expansion <ul style="list-style-type: none"> <li>○ The property that Coastal Transportation resides on is home to a variety of other businesses, including wooden boat repair shops, yacht sales, and boat houses</li> <li>○ Limiting the expansion of these businesses impacts their economic viability as well as the ability of the landlord to adapt to tenants' needs</li> </ul> </li> </ul>	<p>See Comments #116 and #117.</p> <p>Additionally, code revised to allow recreational marinas in the Lake Union and the Ship Canal in the UI and UM shoreline environments.</p>

128		<ul style="list-style-type: none"> <li>• View corridors</li> <li>○ This is also an unreasonable new requirement for the UI overlay</li> </ul>	<p>This is not a new requirement and has been a part of the existing code since 1987.</p> <p>There are exceptions for view requirements in 23.60.492.</p> <p>Continuing to evaluate view corridor criteria for water dependent uses on the submerged area of the lot.</p>
Commercial Marine Construction			
129		<p>INABILITY TO ADD MORE BOATS TO MARINA. The number of vessels at our docks depends on the size of each vessel. We are limited by the dock length as to how many vessels will fit. The size of vessel is determined by the type of fishery in the Alaska waters. Crab boats, seiners, processors are all different lengths and have different seasons in the Alaska waters. These vessels come to Seattle, where they can be refurbished, repaired, re-powered, etc. Once they come through the Locks, the fresh water provides a better environment where this work can be done.</p>	<p>This requirement is for non-conforming marinas. The existing and proposed regulations allow for additional boat moorage at marinas.</p>
130		<p>IMPACT ON BUSINESSES OF ALLOWING PUBLIC ACCESS - We cannot allow public access on our property as it is completely submerged. It would simply be dangerous to have the public allowed to walk the docks. The boat tenants would certainly not like it. Our liability insurance would not cover the extra liability from the proposed public access. Lake Union can be viewed from the Westlake walking and bike trail.</p>	<p>See Comment #126</p>
131		<p>IMPACT ON BUSINESS OF PROHIBITING OVER WATER WORK SHEDS - Over water work sheds are currently located in Lake Union and have been repairing boats from nearby marinas for many years. These were permitted structures, many costing the owners many thousands of dollars for construction. These small businesses now find themselves out of compliance with the proposed regulations by only allowing over water work shed in UI or UM designations. This is arbitrary, burdensome and unnecessary.</p> <p>Our second property is in the Urban Industrial Zone. We have 5 businesses located on the uplands ranging from a manufacturer of marine generators (been there 50 years) to support offices for commercial fishing vessels that come down to Seattle every year from Alaska. At least 200 people are employed in these businesses.</p>	<p>Work sheds are allowed for water dependent uses that require them for their operation. See Comment #92</p>

132		INABILITY TO USE TREATED WOOD FOR DOCK REPAIR - Docks are in constant need of repair. They need to be in good repair at all times to withstand the beating from the large vessels that are moored there. Docks are accessed by forklifts, trucks with cranes for engine removal, etc. By not allowing treated wood, repairs would need to occur much more frequently which would disrupt ongoing business and become prohibitively expensive. When a dock is being repaired, parts of it become unusable. If we were required to replace treated wood with metal pilings or non-treated material, we would consider removing the docks and ending our lease with the DNR.	See Comment #19 and #20
133		ALLOWING PUBLIC ACCESS - The City of Seattle has many opportunities to provide public access on their many properties. Businesses and property owners need to be protected from this burdensome liability.	See Comment #126
134		20% WATER DEPENDENT USE - In order to remain economically productive, we have docks on submerged lands leased from the DNR. There may be a time in the future when we decide not to lease these submerged lands and remove our docks. since almost 100% of our fee-simple land is uplands, we would not be able to provide water dependent uses if we are unable to use the adjacent waterway. This proposal in the Draft unduly restricts use of our property.	Section revised as suggested.
Nickerson Marina and Seattle Marina two letters the same			
135		Grandfather in existing liveaboard slips and delete registration and fee requirements	See Comment #49
136	23.60.162.E	Requires additional parking or reconfigures parking "remove to the maximum extent feasible contaminants from the surface water" Request replacing the word "feasible" with "reasonable"	See Comment #27
137	23.60.152.L	Requires light transmitting features to be used for all replaced piers, floats and similar structures to the maximum extent feasible Request replacing the word "feasible" with "reasonable"	See Comment #21 Additionally code revised to include standards for when light transmitting features are not required.  Feasible is the standard that is used for mitigation requirements; therefore, feasible is the correct term to be used.
138	23.60.200	Requires marina piers and floats to be grated to the maximum extent feasible. Request replacing the word "feasible" with "reasonable"	See Comment #137

	Lake Union Dry Dock		
139	23.60.036.B.3	<i>Variances on uses or shoreline modifications may only be granted by the Director if the applicant demonstrates there is no reasonable use of the property without the variance. This standard is too strict. If the Director determines that the use is in the public interest (as well as meeting other standards for variances), the variance should be granted, even though someone could argue that there may be some other possible, reasonable use of the property. In the next few years before another revision of these regulations, many unforeseen good reasons for variance are likely to develop, and there is no good reason to eliminate choices now. Variances on use should be granted if the Director determines that the use is not conflicting with other allowed uses and is in the public interest.</i>	Required by WAC 173-27-170
140	23.60.038	<i>The City Council may only grant conditional use approval if the use meets the Comprehensive Plan and the broad Shoreline Goals and Policies. The Council should be able to make exceptions to the Comprehensive Plan and the Shoreline Goals and Policies. These very broad planning documents cannot anticipate every possible situation that may be a desirable exception to the rules. They were rules originally passed by the City Council, so the City Council should have authority to change them or grant exceptions.</i>	The full code citation is as follows: “Uses that are identified in this chapter as requiring Council conditional use approval may be approved if the use as conditioned meets the Comprehensive Plan Shoreline Goals and Policies, the Shoreline Management Act, the criteria provided for each Council conditional use in the applicable environment and any additional criteria given in this chapter”  Council and DPD have the responsibility to identify more particular regulations that implement goals and policies of Seattle’s Comprehensive Plan. This is the essential part of the process b/c the public has the right to understand the constraints of the requirements for development of their property. Therefore, Council cannot make exceptions without changing the related goals, policies and regulations for which they have adopted.
141	23.60.039	<i>The determination of “feasible” only considers what is technologically possible, likely to achieve the intended purpose, and does not preclude the project’s primary intended legal use. There currently is no economic consideration. This could lead to impossibly high costs of meeting requirements that are deemed feasible, but which are not really feasible in the ordinary sense of the word. Feasible must take economics into consideration.</i>	Feasible is a definition in WAC 173-26-020 and the City is required to use this definition where the WAC requires a standard to be “feasible” and when implementing the mitigation sequencing requirements.

142	23.60.090.C	<p><i>Uses prohibited as principal uses but customarily incidental to a use allowed, allowed as a special use, a shoreline conditional use or a Council Conditional use..... may be authorized <u>on dry land</u> as accessory uses using the same process as the principal use if clearly incidental to <u>and necessary for the operation of that principal use, unless expressly allowed or prohibited as accessory uses.</u></i> The same rule should apply over water. There is no good reason for the city shoreline rules to prohibit a customary incidental accessory use (like an office for example) just because it is located over water. Total water coverage should be the only regulation applicable to that decision. Also, the standard should not require this customary accessory use to be necessary for operation of the principal use, only that it enhances the principal use or is desirable. There is no legitimate reason for this restriction, and it could easily kill a business plan. The bold underlined words need to be deleted.</p>	<p>The WAC established preferred uses and uses that are allowed overwater in order to provide for the balance of the three main goals of the SMP. This is the reason why some uses over water are prohibited, whether they are a principal or an accessory use.</p>
143	Q: 23.60.090.D	<p><i>Accessory use must be located on the same lot as the principal use.</i> There is no definition of "lot" to clarify the meaning of this provision, whether it applies to lots on a plat or tax lots, but it makes no sense either way. There is no good reason for this requirement, no matter how it is interpreted. Business should be granted maximum flexibility consistent with legitimate regulation for the public good. This is another provision that doesn't meet that standard, and should therefore be deleted.</p>	<p>See Comment #73</p>

144

23.60.122.E

*A non-conforming moorage (such as a pleasure craft moorage in a UM zone) that is lost to fire may only be reconfigured if (among other requirements) :*

- E.1 a. "The Director determines that the goals of this chapter (SMP), including limiting location of structures over water would be better served." and*
- E.2 Unless a conditional use permit is obtained, the total area of overwater coverage is reduced by 20 percent, not including any credit for translucent or grated decking.*

A nonconforming moorage that has suffered a fire should be able to rebuild without reducing its size. It is unlikely that the Director would determine that rebuilding the nonconforming moorage would better serve the goals of the chapter, particularly since the chapter prohibits it. That effectively prevents rebuilding. The principles of grandfathering should be preserved, and fire or other disasters should not force a change in use or configuration of property. Such provisions encourage arson, giving an arsonist the power to permanently change the use of property.

A moorage does not necessarily cover an entire property. It may be only an incidental use that fills in otherwise unused property, like a place to park the business owner's boat and maybe another boat or two. With this provision, a fire could wipe out the owner's right to moor boats on his own property. That is unreasonable.

There are no conditions prescribed for the conditional use permit to allow rebuilding without a 20% reduction. No reduction in the moorage should be required under any conditions.

The city's economic study shows clearly a major demand for recreational marinas. The city should provide for this need to be concentrated in urban areas, not limit and reduce it in the city where the demand exists. This runs counter to the goals of the state shorelines program which encourages growth to occur in urban shorelines instead of pristine shorelines outside the city. The Urban Maritime zone includes a lot of pleasure craft moorage, and that is a very legitimate and strictly water dependent use that should not be made nonconforming.

Boating is one of the best features of Seattle, and it is part of our history and heritage. The city should encourage and foster its growth, not restrict and gradually eliminate it.

The argument that we need to protect and save UM zoned property for future UM uses is ignoring the fact that the few uses allowed on UM property are likely to avoid locating in Seattle because of the highly restrictive, inflexible regulations.

145	23.60.124.C	<p><i>Nonconforming structures over water are prohibited from being substantially improved, replaced or expanded in ways that increase nonconformity “except as provided in 23.60.124.D.2 and 23.60.122.E”, but 23.60.124.D.2 and 23.60.122.E don’t provide for any increase in nonconformity at all. Those provisions are simply further restrictions on any rebuilding, maintenance or reconfiguration. Improvement or replacement should be allowed unless it “substantially” increases nonconformity.</i></p>	See Comments #77 and #78
146	23.60.124.D.2	<p><i>Rebuilding or substantial improvement of a nonconforming structure is allowed if it mitigates impacts to ecological function AND may have to be moved to dry land, if available.</i></p> <p>It should be clarified that existing structures that are nonconforming to the mitigation development standard are not nonconforming structures for the purpose of 23.60.124.</p> <p>Rebuilding, substantial improvement or reconfiguration of nonconforming structures should base mitigation requirements on the <u>net</u> effects of the current development (change). i.e. credit should be given for the loss of ecological function due to the structure being replaced. Mitigation of the new structure should not be required as if the old structure was not there. Most people familiar with this legislation believe that the intent is to evaluate developments on a standard of “no <u>net</u> loss of ecological function.” If the intent is to require mitigation as if the old development was not there, this intent should be made plain and clear in the proposed ordinance so people reviewing it will understand, and city staff should not use the terms “no net loss of ecological function” in describing the <u>mitigation goals</u>.</p>	Evaluation for non-conforming structures is different than for conforming structures. See Comment #77.
147	23.60.152.A	<p><i>A general development standard says that, “All shoreline developments and uses shall be located and constructed to achieve no net loss of ecological function.”</i> Since virtually every structure, certainly every over water structure impacts ecological function, then this provision makes them all nonconforming just on that basis. It should be clarified that existing structures that are nonconforming to the mitigation development standard are not nonconforming structures.</p>	See subsection 23.60.016.C.1 “A development, shoreline modification, or use in the Shoreline District shall meet the development standards of Chapter 23.60,…”

148	23.60.122.67.L	<p><i>Light transmitting features are to be installed for ALL replaced piers, floats, over water boat repair facilities and similar structures to the maximum extent feasible.</i> This would be very expensive and impractical in most structures, particularly heavy built structures, and it would result in more spillage and debris falling through gratings. With regard to shading the water, the impact of a narrow pier in deep water is minimal compared to a wide pier in shallow water, yet this provision makes no distinction. There has been no cost/benefit analysis conducted, only careless disregard for the firms and people who want to improve the shoreline and do business here. In most cases the requirement for light transmitting surfaces will be very impractical. The requirements for light transmitting piers and floats should be confined to new construction where the configuration and use makes it practical.</p> <p>Replacement of structures should not require changing of the structures. Such requirements will tend to encourage, and in some cases dictate, that structures remain unimproved for many years, leading to run down structures in disrepair.</p> <p>In general, where changes are made that do not affect ecological function, such as replacement of piers or change of use, there should be no requirement to increase ecological function. If, and to the extent that a new action increases ecological function, the property should receive a credit for increased ecological function. Maybe in the future, a different action will reduce ecological function, and the credit could be applied or sold to a different developer as habitat units.</p>	See Comments #21 and #100
149	23.60.158	<p>Mitigation sequencing is ill-defined and not understandable. It is subject to abuse by DPD interpreting requirements and costs, so that the developer is at DPD's mercy. There is no process for oversight of alternative mitigation projects. There is no limit to the demands DPD can place on developers based on subjective determinations of impact. The alternative mitigation program details should be made public and be subject to public review and comment. The process here is hidden from public view, is based on subjective views with little to no science, and is unfair and unjust. The alternative mitigation plan needs to be fully disclosed. Nobody could understand the impact of the mitigation provisions by reading this code. Certainly this code does not explain the differences in habitat units in different geographical areas or how they will be determined, equated with dollars or equated with specific project features such as water coverage, placement of impervious surface, etc. The entire alternative mitigation plan needs to be stricken or must be fully developed and subject to public review and comment prior to inclusion.</p>	<p>Mitigation sequencing is a WAC requirement and there are legal constraints around mitigation. Mitigation can only be required for impacts from a project.</p> <p>See Comment #24.</p> <p>Additionally, the alternative mitigation program is public and there was a citizen advisory committee (CAC) involved during the development of the program. Information is available at: <a href="http://www.seattle.gov/DPD/Planning/Shoreline_Alternative_Mitigation_Plan/Overview/">http://www.seattle.gov/DPD/Planning/Shoreline_Alternative_Mitigation_Plan/Overview/</a></p> <p>And two NSIA members were a part of the CAC for the alternative mitigation program.</p>

150	23.60.162.C	<p><i>New over-water parking is prohibited. Existing over-water parking shall not be expanded, and if relocated, must be reduced by 20 percent.</i> More flexibility is desperately needed for businesses that operate entirely over water. The requirement for reduction of parking because of moving it must be deleted. Business cannot function without parking, and on-street parking is diminishing to the point of jeopardizing business operations. Our lot is entirely submerged, yet to stay in business we need parking. In the long run, we estimate that lack of parking will eventually drive us out of the city or put us out of business. This provision is insensitive to our needs. For example, sometimes the Coast Guard includes in their specification that the shipyard must provide a certain number of parking spaces in a lighted, fenced area with roving security within ¼ mile of the ship. If we qualify our bid and say we can only provide a lesser number or at a greater distance, our bid will be disqualified automatically. We could move some lumber storage or change or move something else to make room for temporary increased parking. We can't afford to miss an opportunity for a multimillion dollar job because of inflexible shorelines rules that prevent reasonable use of our property. This has nothing to do with building more structure over water. This has nothing to do with habitat. This is merely a change of accessory use to accommodate specific business needs.</p>	See Comment #26
151	Q: 23.60.187.C.2	<p><i>Over water work sheds are not allowed in Lake Union.</i> There is no definition of over-water work sheds. There are two shipyards in UM, and they have work sheds, some floating, some portable and some fixed, some with floors and some you could drive a boat into. It would be very damaging to our business to require that all work accomplished on submerged land be done out in the weather without benefit of any work sheds, notwithstanding that a significant amount of work requires protection from the elements while in progress. This prohibition should be deleted.</p>	See Comment #131
152	23.60.187.D.2	<p><i>Slip-side vessel exterior scraping, sanding or cutting is limited to ten linear feet of a vessel per person working on the project.</i> Presumably this provision has been inserted because city planners think they know better than Dept of Ecology how to design Best Management Practices for boat and ship repair. The fact is that they know nothing about shipyards. (For example their definition of dry dock in this legislation does not describe a dry dock at all. They describe a graving dock. There are no dry docks in Seattle that operate as described in this code.) One person per ten lineal feet of a boat has no correlation to the level of effort needed to prevent dust or contaminants from entering the water. The city should leave best management practices for ship and boat repair to people already charged with regulating that activity. For example they do not distinguish from scraping on the hull over water and scraping on the house over a 20 foot wide deck, nor between a 20 foot boat and a 300 foot boat. Clearly the DPD does not have the expertise to regulate such issues. DPD should leave such Best Management Practices issues to other regulatory authorities that already have more comprehensive regulations in place.</p>	See Comment #94

153	23.60.310	<p><i>Uses in CW Environment</i> The waterways around Lake Union, according to state law are reserved for the convenience of commerce and navigation. Our shipyard abuts waterways, and we conduct commerce there adjacent to our pier. The draft ordinance prohibits sales and service uses, vessel repair, marine service station and other uses that are routinely conducted for the convenience of commerce and navigation. This draft appears to be contrary to state law.</p>	See Comment #107
154	23.60.502.A	<p>UM Use table.  <u>Incredibly</u> the ONLY uses allowed outright on waterfront lots are as follows:</p> <ul style="list-style-type: none"> <li>• <i>Commercial uses:</i> <ol style="list-style-type: none"> <li>1. <i>Sales &amp; services, marine</i> (But note: Heavy commercial services are prohibited)</li> </ol> </li> <li>• <i>Parks &amp; open space uses:</i> <ol style="list-style-type: none"> <li>1. <i>Shoreline</i></li> </ol> </li> <li>• <i>Transportation Facility Uses:</i> <ol style="list-style-type: none"> <li>1. <i>Bridges &amp; tunnels</i></li> <li>2. <i>Dry Boat storage</i></li> <li>3. <i>Rail transit facilities</i></li> <li>4. <i>services</i></li> <li>5. <i>Tugboat Railroads</i></li> <li>6. <i>Streets</i></li> </ol> </li> <li>• <i>Utility Lines</i></li> </ul> <p><i>These are the ONLY uses allowed outright on Urban Maritime waterfront lots.</i>  This is not reasonable. This is our prime maritime business property that we should be putting to its highest and best use. We should expand the allowable uses. At the very least, uses allowed outright in UM should include:</p> <ul style="list-style-type: none"> <li>• Heavy Commercial Uses (There are two major shipyards in the UM zone) These should not be nonconforming uses. There should be no worry that someone will locate a new shipyard here in UM zoned property. Seattle's restrictive shorelines regulations as well as general bad business climate will prevent that. Heavy Commercial Uses should be allowed outright or shipyards should not be considered Heavy Commercial Uses.</li> <li>• Recreational Marina (There is a lot of UM property that has at least some recreational marina use.) Recreational marina use is flexible in the sense that it can be expanded and contracted easily by simply moving floating docks around. Therefore, it can be used as an interim use and provide much needed revenue while allowing room for expansion of another principal use. Or properties could switch between recreational and commercial moorage based on seasonal factors.</li> </ul> <p>Besides what is allowed outright, there are some very narrow exceptions:</p> <ul style="list-style-type: none"> <li>• <i>General sales &amp; services, warehouse storage, light and general manufacturing are allowed if they are water related.</i> They should be allowed as incidental accessory uses even if not water related. A percentage limitation may be appropriate for non water related uses as accessory uses, but non water related accessory uses should not be outright banned.</li> <li>• <i>General sales &amp; services, craft work, light &amp; general manufacturing uses that are not water related are allowed as conditional uses if they occupy no more than 20% of the dry land area of the lot.</i> We don't have any dry land, but we have been doing business here for over 90 years, and we steadfastly defend our right to perform craft work that is not water related. That work does not displace water dependent work; it enhances it and makes it possible, and uses essentially the same facilities as our water dependent use.</li> </ul> <p>The 20% rule should not relate only to dry land. The best solution would be to remove the words "dry land" from this provision. Alternatively, a separate rule could apply to property that has no significant dry land available. The dry land may not be the most logical place to locate the non water related use, particularly if the entire property is not being rebuilt. Instead of conditional uses, this provision should allow these non water related uses outright as accessory uses.</p>	Code section revised. See Section 23.60.502 and 504.

155	23.60.502.H	<p><i>In UM zones, existing recreational marinas are not allowed to expand by adding piers or floats or adding vessels or mooring larger vessels. New recreational marinas are prohibited.</i> This section should be deleted. The economic study commissioned by the city shows little demand for water dependent use on submerged land except recreational marinas. Recreational marinas are desirable and should be permitted in UM zones. For the reasons mentioned above, UM properties need the flexibility to expand and contract, and recreational marinas are an ideal way to do that. If the regulations prohibit expansion, then what is the baseline if they contract? If boats leave, can they come back? The city should not be trying to micro-manage our marine businesses, and limit their reasonable use of property.</p>	See Comment #116
156	23.60.512	<p><i>View corridor requirements are reduced to 15% if water dependent uses occupy more than 40% of the dry land.</i> This is unfair to a company that has no dry land and could have up to 100% of water dependent use. A clause should be added to this provision so it reads, "View corridor requirements are reduced to 15% if water dependent uses occupy more than 40% of the dry land <u>or if there is no dry land being used for non water related use.</u>"</p>	DPD continues to evaluate this request. .
Fremont Boat Company			
157	Treated wood. 23.60.152	<p>1. Our marina facility is built on non-treated logs with non-treated piling (except for the City bulkhead holding up Northlake Way) however some of the piling the building rest on are creosoted. We don't like cutting trees down unnecessarily to replace untreated wood and use treated ACZA treated planks. We do check to see that the vendor uses BMP's so the leaching amount is negligible when it rains. We'd like to continue doing that and not get into trouble with State or local regulators – please get everyone on the same page.</p> <p>Now as to the building piling – there is just no physical way to pull those piling out without taking down the building. It would be of enormous help to include capping as an alternative to the language in the draft code.</p>	See Comments #19 and #20

158	Use of the property	<p>1. If we didn't have the ability to put in those very different 26 businesses starting in 2009, we would have depleted our reserves and not been able to pay our real estate taxes. That's not a good situation for the owner or the City. We see no difference in our marina office using a copier or computer than the Green house builder does upstairs. It's an office. Trying to pin folks down to a narrow use is fairly backward thinking and does nothing for the innovation the City is known for.</p> <p>Inside the Locks is the most unique waterfront in the Pacific Northwest. Visitors marvel – especially when the fishing fleet is in town. This was accomplished because we had a tie to the water, loved it and knew how to do business. We've got floating homes near dry-docks and marinas, house barges near sand and gravel barges and the most vibrant fishing fleet all mixed in with office use and universities over flown by seaplanes and looked on by restaurant patrons. We agree with the goals – do no harm, fix it if you do. But, within reason, leave us to our own business decisions.</p> <p>By the way, have you tried to work yourself through the code wearing a UC user hat and wanting to put in office use? How about any use at all? Daunting; we can do better by the cutting back the complexity in the draft code.</p>	Use sections revised; however, preferred uses on waterfront lots per the SMA/WAC are for water dependent and water related uses. Therefore the City does not have a lot of discretion regarding the uses that can be allowed on waterfront lots.
159	Public Access.	<p>1. This is a bit of a sore point. We 'had' to put in public access because we changed the use inside a building! Still doesn't make sense to us. We received no acknowledgment that we bring hundreds onto the water (dozens &amp; dozens on each Tuesday duck dodge alone) with our water dependent marina.</p> <p>The whole property wasn't looked at – just the fact that we had non-water dependent on the upper floors. Okay, fine water under the bridge. However, if we need a permit in the future, what will our public access requirements be? There's no room (literally) because we've done what we could. So do we have to 'pay' (via Habitat Units) again because we built way back when? Where will anyone in UC be able to physically put the required access?</p> <p>Now we have MARSEC (U.S. Coast Guard Marine Safety Levels) rules - because of our tugboat company - to abide by and it's a fine line we walk every time someone goes past our "end of access sign".</p> <p>Now it seems we're trying to connect the dots on a map between marinas creating a path that impossible to put in. How does that protect our water dependent uses or our private property rights?</p>	See Comments #101, #114 and #126.

160	Setbacks, corridors and lot coverage.	<p>1. Wow, that's a lot of land not being used. And it's a sure thing no one would have paid the price for the land with those restrictions in place back in the day. So, what's the intent? That is unclear.</p> <p>We think the code needs to be pretty clear that those that built can replicate – if destroyed by elements or if torn down for rebuilding. Because if that's not in the code, everyone will want to hang on to what they've got and Seattle doesn't need slum buildings or falling in marinas. Fremont Boat Co., Inc. Page 4 5-30-11</p> <p>Give credits or incentives of some nature for those that want to give extra views or access and stop the restrictive way of thinking.</p>	See Comment #112
161	Marina standards. 23.60.200	<p>2. What's needed here is a minimalist approach and a need to step away from running someone else's business.</p> <p>a. Reference the Marina Best Management Practices well known to the industry (DOE, Puget Soundkeepers, DNR, etc.) that have been in existence since the late 1980's and built upon. Require that they be part of the moorage agreement. These deal with most of the problems.</p> <p>b. Use the existing language for lavatory facilities.</p> <p>c. Use sewage pump-outs or third party providers.</p> <p>d. Recognize that marinas already do provide public access and a valuable water dependent use.</p> <p>Allow businesses to make the financial and operational decisions surrounding live-aboards and the type of vessel allowed.</p>	See Comment #97
Fergusson Marine Terminal			
162	Vessel maintenance	Suggest no new shore side over water regulations for maintenance	See Comment #94
163	Uses on vessels	We must allow crew to stay on board large seafood processing and other vessels in the harbor	In the first draft of the regulations this was allowed and it remains allowed in the second draft of the regulations.
164	Office in UI and UM	We should have additional options	The use standards in the UI and UM shoreline environment have been revised. See Section 23.60.482, 502 and 504.
165	UI	Ship Canal UI needs different rules than Duwamish River UI Through the use of additional caveats?	Please provide information regarding the additional caveats needed and the reason for the caveats.
166	UI	Caretaker on property in UI This is most important for security	23.60.092 accessory use – caretaker quarters are allowed as an accessory use.
167	20% nonWD/WR	Provide more non WD/WR uses	The use standards in the UI and UM shoreline environment have been revised. See Section 23.60.482, 502 and 504.
168	Height	Height restrictions should be 60 ft Allows for future dry stack marinas and warehouse options (Ferguson Terminal warehouse is 60 ft in height) (How else are we going to come up with the 315,866 sq ft of moorage?)	Additional height exceptions have been provided in the UI and UM shoreline environments. See Sections 23.60.486 and 23.60.506.

169	Recreational Moorage in the UI	According to your "Comparison of Land Supply and Demand for Water Dependent and Water Related Uses" (12/09), recreational moorage in the Ship Canal will have a future growth of 315,866 sq ft or 66% of total Ship Canal growth by 2030. Why make this use a conditional use and force future operators to go through the City Council? The conditional use process is very expensive, and may require 1 to 2 years for approval. There are 10 recreational moorages in the Ship Canal UI at this time, including one of the largest covered moorages in Puget Sound. A new recreational moorage would not be a new industry. Boating clubs are a major factor in making industry grow. If we are going to have the amount of moorage in the Ship Canal and Lake Union as proposed in your study, we should allow yacht and boat clubs. The industry often says to sell boats, sell boating.	Regulations revised as suggested with standards included that limit the location of recreational marinas to areas where they will not interfere with industrial uses.
170	Public Access in UI or force to payment for an alternative location	This will only reduce future growth and present serious security problems. I have been advised by an attorney that public access is not required by DOE.	Water-dependent uses are not required to provide public access except for recreational marinas. Recreational marinas because they are boating facilities are required by WAC 173-26-241(3)(c) to provide public access. New exception added to exempt marinas with less than 35-ft of dry land. Additionally, there are exemptions for uses that are not water-dependent see Section 23.60.164.I Other uses that do not meet the exception criteria and that are not water-dependent are required to provide public access to meet the public access standards in 23.60.164 and in the shoreline environment in which the use is proposed.
171	View Corridor Restriction	Why no wet moorage, storage of boats under repair, open storage or parking? Most of the Ship Canal is at the bottom of a hill and very little, if any, of the view would change by allowing the above. These restrictions would not be acceptable for a cargo operation.	These uses are allowed in the view corridor see Section 23.60.178. In an effort to consolidate the code instead of repeating these standards in each shoreline environment it is now stated only once in the View Corridor section.
172	No wood piling repair	This requirement is not acceptable. Do you have any studies that show how much of a problem a 25-year old wood piling is compared to removing the piling and roof as well as a floor of a building to drive a new steel piling? I understand no new wood piling, but a 25-year old piling may not leach an amount that could be considered a threat to the environment.	See comment #19 and #20
CalPortland			
174	23.60.002 <ul style="list-style-type: none"> <li>regulates shoreline developments and "shoreline modifications"</li> </ul>	<p>Analysis: Shoreline modification is defined broadly to include construction, grading, etc, and also altering vegetation, applying chemicals.</p> <p>This concept comes from the WDOE guidelines but appears to be an expansion of the regulatory scope of the SMA which governs "development".</p> <p>If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1).</p>	<p>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.</p> <p>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</p>

			and obtain appropriate City permits, even though an SSDP is not required.
175	<ul style="list-style-type: none"> <li>“protect and <i>restore</i>”</li> </ul>	<p>Analysis: The goal of restoration becomes more paramount under the proposal. The concept is derived from the WDOE guidelines, which rely on one passage from the statutory goals in RCW 90.58.020. The passage itself is only one finding among many, and merely states that there is “concern” relating to shoreline utilization, protection, restoration and preservation. See, WAC 173-26-176. The regulations and proposed SSMP take the restoration concept further than it has ever been applied before, and appears to be a statutory expansion. If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1).</p> <p>With regard to the SSMP, the burden for restoration appears to be shifting burden to private property owners. More importantly, with regard to the Duwamish MIC, there is no recognition that industrial developed shorelines are permanently altered (ECA, for example, recognizes WD/WR as being eligible for development in a buffer area per 25.09.200B.4.c); here, in contrast, there is no water dependent or water related use preference.</p> <p>See DOE shoreline guidelines policy goal supporting utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use WAC 173-26-176(3). See also, RCW 90.58.020 recognizing that alterations of the natural conditions of shorelines of the state, in those limited circumstances when authorized, shall be given “priority for industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state.”</p> <p>Request: The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to prefer water dependent and water related industry over protection and restoration. We support the Port’s proposed language to reserve “appropriate areas” for restoration. The UI is not an appropriate area.</p>	See Comment #1
176	<p>23.60.004</p> <ul style="list-style-type: none"> <li>adds lands “adjacent to” the shoreline</li> </ul>	<p>Analysis: Some industrial users are concerned that there may be an expansion of the regulatory scope of SMA to “adjacent” lands in a manner inconsistent with GMA. The correct approach is to ensure that the GMA Comprehensive Plan and mandates of consistency are met. The City has enacted Comp Plan policies to preserve industrial lands for industrial uses, and the SSMP should implement and be consistent with this policy. As drafted, the proposed SSMP is inconsistent with the Comp Plan policies, because it makes it more difficult for industrial uses to survive, rather than fostering retention and expansion of industrial uses as required by the Comp Plan.</p> <p>Request: The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to foster retention and</p>	<p>See Comment #3</p> <p>RCW requirement 90.58.340</p> <p>The Urban Industrial use table has been updated as requested. See Section 23.60.482.</p>

		expansion of water dependent and water related industry on shorelines and adjacent lands. Examples are noted herein; among the more concerning is the failure to allow water dependent and water related uses outright in the UI Duwamish area; instead they are allowed as special or conditional uses with criteria that cannot be met.	
SUBCHAPTER II ADMINISTRATION PART 1 APPLICABILITY			
	Code Section	Analysis and Requested Changes	
177	23.60.016 C.1 shoreline developments “and modifications” must meet development standards	See comment above; Act does not appear to allow “modifications” to be regulated if they are not development.	See Comment #174
178	C.5 submerged lands not counted toward lot area for purposes of minimum lot area	Could make some lots nonconforming, and others non-developable	No change from how submerged lands are used to calculate minimum lot area.
	23.60.020 exempt actions and shoreline modifications must still comply with Act even if not a substantial development see also 23.60.062	Analysis: The treatment of statutory exemptions has been eroded over time, and now the exemption process has itself become a permit process. This concept may come from the WDOE guidelines but appears to be an expansion of the regulatory scope of the SMA which governs “development”. If there is a conflict between the guidelines and the Act, the Act controls. WAC 173-26-186(1)  Request: The exemption process should be more predictable, streamlined and not be treated as a permit process in itself. For example, is a permit exemption expected for normal WD 40 applications, now that a shoreline modification includes any spray activity? This section could be untenable; industry does not want to have to go to the permit counter to maintain its facilities in a normal and routine way. Please develop a more workable threshold in the second draft.	The RCW regulates uses see RCW 90.58.100  And WAC 173-27-040(1)(b) and (e). requires that exempt activities meet the substantive requirements of the SMA/SMP but they are not required to meet the procedural requirements.  Exemptions are regulated by Section 23.60.020 if a proposal is not development it is required to follow the substantive requirements of the regulations  Exempt activities typically take 2 – 3 weeks for review, which is not an unreasonable amount of time
179	23.60.020 C. The exemptions include normal maintenance or repair of existing structures or developments, including damage by accident, fire or acts of nature; the word “elements” has been deleted and replaced with the new phrase “act of nature”	Clarify: Is the new term “act of nature” intended to include normal weathering? If not, it should be. It should not just be for extraordinary acts of nature, like earthquakes.	Change proposed is being withdrawn. RCW uses the word elements; therefore no change proposed from existing language.

180	<p>23.60.027</p> <p>A. Allows Director to create Ecological restoration and mitigation program;</p> <p>B. payment in lieu option allowed</p>	<p>Analysis: This implementation of this section appears to be a one size fits all. The so-called “SAMP” approach could be a successful option where mitigation is warranted, but not all shoreline districts are created equal. Specifically, the Duwamish is an industrialized and developed shoreline where the Comp Plan policies of the city support retention and expansion of industrial uses. Mitigation should not be required in many cases, but if it is, the cost should not be the same as development in other areas.</p> <p>Request: Clarify the purpose of this section and revise it to note that the program may vary by zone and shoreline environment, so that less is required for urban industrial shorelines in the Duwamish area.</p>	<p>Mitigation is required for impacts to ecological functions.</p> <p>Clarified this section See revised section and response to Comment #6.</p>
PART 2: CRITERIA FOR APPLICATION REVIEW			
	Code Section	Analysis and Requested Changes	
181	<p>Overview of Impact to Industrial Uses</p>	<p>Analysis: The section on criteria for various permits takes on significant new meaning, because under the new SSMP many WD/WR industrial and commercial uses are no longer permitted outright in the UI environment. Thus, the uses may technically become nonconforming uses and any expansions will trigger the new permit requirements and criteria. The ability to permit such uses would become substantially harder and perhaps even impossible under the proposed SSMP. This approach is inconsistent with the SMA preference for such uses and also with the Comprehensive Plan policies of the City. The City Council has repeatedly adopted policies to support the retention and expansion of industrial uses in the Duwamish area. The SSMP must be consistent with and implement the GMA Comp Plan.</p> <p>Request: The use table needs to be substantially re-written to prefer WD and WR industrial, commercial and manufacturing uses, and allow such uses outright. The use that requires a special use or conditional use should be rare; where required, the criteria need to be revised to make them achievable, otherwise it amounts to preclusion of the use.</p>	<p>The change proposed was to require Heavy Manufacturing use on waterfront lots to be water-dependent.</p> <p>See revised use Table in Section 23.60.482.</p>
182	<p>23.60.032 Special Use criteria</p> <p>Uses identified as requiring special use approval may be approved, conditioned, denied if an applicant has demonstrated all of the criteria:</p> <p>...</p> <p>D. use can mitigate <i>all</i> adverse effects to ecological functions...”</p> <p>E. the public interest suffers no substantial detrimental effect</p>	<p>Analysis:</p> <ul style="list-style-type: none"> <li>• Use Table. This section needs to be considered in conjunction with the use table of 23.60.482. Industrial uses are not mentioned as a permitted use. Most uses would appear to fit under Manufacturing/Heavy or Transportation. WD Heavy manufacturing uses are allowed in UI only as a special use (23.60.482.F). If not WD, then see shoreline conditional use requirements.</li> <li>• Criteria: The previous standard of no unreasonably adverse effects is replaced by criteria that include the “no effects” language. This would be an impossible standard to meet, and open the WD industry up to challenges on every permit. Also, it appears to be inconsistent with the WDOE guidelines. See WAC 173-27-160 governing conditional uses (WDOE does not seem to have a special use category,</li> </ul>	<p>Subsection 23.60.032.D was revised to clarify intent.</p> <p>Additionally, use regulations for WD/WR uses have been revised and they do not require a special use.</p>

		<p>but the conditional use category has the “no <u>significant</u> adverse effects” language).</p> <p>Request:</p> <ul style="list-style-type: none"> <li>• The use table should be substantially rewritten to allow WD and WR industrial uses outright in the Duwamish.</li> <li>• The criteria for special use permits and conditional use permits should be rewritten to restore the prior language that referred to “no unreasonably significant adverse” effects.</li> </ul>	
183	<p>23.60.034 Shoreline conditional uses may be approved, conditioned, denied if an applicant has demonstrated all of the criteria ...</p> <p>B.4. can mitigate <i>all</i> adverse effects to ecological functions</p>	<p>Analysis: W/R heavy manufacturing is allowed as a shoreline conditional use (Note cement terminals are considered WR under the definitions.)</p> <p>Request: See above comment for special uses.</p>	<p>Section revised to clarify intent.</p> <p>And WD/WR industrial uses are not conditional uses. See revised use Table in Section 23.60.482.</p>
184	<p>23.60.036 Variances may be approved, conditioned, denied if an applicant has demonstrated all of the criteria ...</p> <p>4. the development can mitigate <i>all</i> adverse effects to ecological functions unless a variance from this requirement is granted</p>	<p>Analysis: The criteria grant no preference for WD/WR uses (see in contrast, view corridor waiver or modification 23.60.170C.f).</p> <p>The proposal also sets up a standard that likely cannot be met; it is not very workable to have a “variance” from a variance criteria. The regulation already requires compliance with the WAC, which has strict criteria related to mitigation, so there is no reason to layer on additional requirements. It will likely result in litigation over legislative intent, on whether stricter criteria were intended and would be allowed, since a purpose of the variance under the Act is to allow for flexibility in unforeseen situations.</p> <p>Request: The criteria should be deleted; the section already requires conformance with the WDOE WAC on variances. Additional criteria are not warranted and will only create confusion. If any new criteria are added, they should provide more flexibility for WD and WR uses in the UI environment.</p>	<p>Section revised to clarify the intent.</p>
185	<p>23.60.039</p> <p>If the regulations require that an action be feasible, such as a project, mitigation or preservation requirement, then the applicant shall demonstrate the following standards are met:</p> <ol style="list-style-type: none"> <li>1. the action can be accomplished with technologies and methods that have been use in the past or studies or test demonstrate are available</li> <li>2. the action provides a reasonable likelihood of achieving its intended purpose</li> </ol>	<p>Analysis: No preference is given to water-dependent uses; the test criteria viewed per least impact to ecological function and impacts to the public.</p> <p>Request: The criteria should be revised to reflect the statutory preference for WD/WR uses, and the Comp Plan policies supporting industrial uses in the industrial area</p>	<p>WAC requirement: DPD used feasible when required by SMP guidelines and the definition is Ecology’s definition.</p> <p>The full definition of “reasonable” is:</p> <p><u>A. If the regulations of this chapter require that an action be reasonable in connection with determining mitigation measures, environmental impacts, or alternative development, the applicant shall demonstrate that the action will allow a proposal to attain or approximate a its objectives with the least impact to ecological function in consideration of the costs and alternatives.</u></p> <p><u>B. If the regulations of this chapter require that an action be reasonable in determining location, the applicant shall demonstrate that a location can accommodate the proposal’s</u></p>

	<p>3. the action does not physically preclude achieving the project's primary intended legal use Criteria for feasible/infeasible actions</p> <p>23.60.040 Criteria for determination of reasonableness A....least impact to ecological function B. ...lowest level of impacts to the ecological function</p>		<p><u>objectives at the lowest level of impact to ecological function in consideration of the environmental, social and economic impacts on the public and the cost to the applicant.</u></p>
PART 3 PROCEDURES			
	Code Section	Analysis and Requested Changes	
186	<p>23.60.066 requires WD component or phase and public access must be done by final inspection</p>		<p>Additional information needed to address comment.</p>
187	<p>23.60.066 Plan shoreline permits allowed, but just for utilities</p>	<p>Analysis: The SSMP proposal contains very limited opportunities for early shoreline permitting.</p> <p>Request: Consider whether more phased developments or general "programmatic" permits should be allowed. If for example programmatic permits for pile replacement or dredging could be accomplished that would streamline permitting and help to implement the Comp Plan policies to retain and expand industrial uses on industrial lands.</p>	<p>DPD will consider this for work program after SMP update is complete.</p>
SUBCHAPTER III GENERAL PROVISIONS			
PART 1 USE STANDARDS			
	Code Section	Analysis and Requested Changes	
188	<p>23.60.090 A. In all shoreline environments, ....overwater uses prohibited unless the use is allowed or allowed as a special use, cond. use, or CCU and is 1. "boat moorage, off loading goods from boats , dry docks, swimming platforms, uses on vessels and other use components that by their nature require over water</p>	<p>Analysis: This section is too narrow for the UI environment. It is unclear why this outright prohibition with few exceptions should apply equally in all zones. Criteria #3 may save the section, but note that it says the overwater use must be allowed in specific use regulations, and does not mention a shoreline environment, such as UI. The text is also repetitive (e.g., the requirement for special use, shoreline cond. use or CCU appears twice)</p> <p>Request: Criteria #3 should at least add the words "or shoreline environment."</p>	<p>Overwater structures are allowed for water-dependent uses, public access or ecological restoration. New structures that can be located on dry land should be located on dry land except for lots that have little or no dry land. See WAC 173-26-211(5)(c).</p>

	2. rail, rail transit, street and bridges, tunnels... 3. allowed, allowed as a special use, conditional use or CCU overwater in specific use regulations....		
189	23.60.092 allows temporary uses of 4 weeks, up to six months with Director approval		Additional information needed to address comment.
<b>PART 2 NONCONFORMING USES AND STRUCTURES</b>			
	Code Section	Analysis and Requested Changes	
190	23.60.122 Nonconforming uses b. deletes renovations from what is allowed	<p>Analysis. Because the draft SSMP is so draconian toward industrial uses, many uses that are allowed now will become nonconforming. They may become nonconforming by virtue of the fact they do not have a conditional use or special use permit, because they were built at a time when they were allowed outright. They may also become nonconforming structures, if they no longer conform to current development standards, setbacks, buffers, view corridors.</p> <p>The best approach is to revise the SSMP to ensure industrial uses are fostered and preferred, and to that end, they should be allowed outright and not made into a nonconforming use. Similarly, existing structures should not be made nonconforming.</p> <p>If manufacturing and industrial uses are suddenly made into nonconforming uses, then this Part 2 section becomes critical. It is not clear why “renovation” is deleted. Note that a conforming structure containing a nonconforming use that is destroyed cannot be substantially improved or rebuilt except as provided. If the industrial areas are to be saved for industrial uses and protected from competing uses such as recreation or commercial or residential uses, then the SSMP should assist industry in renovating, expanding or rebuilding.</p> <p>Request: Revise the use tables to allow industrial uses outright. Add renovation back into the section. Make sure the new development standards do not create nonconformities for existing industrial uses. New standards should only apply to “new” development.</p>	<p>Section 23.60.482 has been revised to address the concerns raised over uses.</p> <p>Description is not accurate no use becomes non-conforming if it has not received a conditional use or a special use approval.</p> <p>Renovate means repair. Renovation has been deleted to remove any confusion over any perceived difference between renovation and repair.</p> <p>Structures may become non-conforming depending on the use, location of the structure and shoreline environment. However, shoreline setbacks in the UI environment are the minimum to protect bank stability.</p> <p>Standards apply to new development and for substantial redevelopment. Repair and maintenance</p>
191	23.60.124 Nonconforming structures D. Maintenance and Repair— 1. total footprint may not increase 3. portions of existing principal structures on dry land may be reconfigured as part of a repair if b. views from neighboring	<p>Analysis: This section is very strict. Also, in some cases, a larger footprint might be better for the environment if other measures, such as open decking, were used. Private view protection not afforded by SMA, so why does it appear in the criteria? Water dependent uses should have preference rights.</p> <p>Request: Delete the reference to residential views, at a minimum, for uses in the UI Duwamish area. Revise the criteria to provide more flexibility as</p>	<p>This section is not strict because these are standards for non-conforming structures and the City is allowing flexibility for reconfiguration of such structures if there is less of an ecological impact.</p> <p>DPD continues to evaluate this request.</p>

	residences are not affected	needed for industry in the UI area.	
192	H. The Director shall require compliance with 23.60.152 (general standards, minimize impacts, etc) if a nonconforming structure is substantially improved, replaced or rebuilt under this section, if the Director finds that continued nonconformity will cause adverse impacts; if an impact cannot be mitigated, the application shall be denied with some exceptions	<p>Analysis: This section could be a significant obstacle to maintaining nonconforming uses. It does not appear to provide any flexibility for WD/WR industries.</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	<p>WD/WR uses in the Urban Industrial will not become nonconforming uses.</p> <p>Existing code no changes proposed. Please provide reasons why and how the additional flexibility meets the SMA.</p>
193	I. Nonconforming structures destroyed by fire, act of nature may be rebuilt only if conditions are met 1.a same or smaller configuration 1.b. reconfigured to result in reduced impacts on ecological functions	<p>Analysis: Some industries are concerned that reconfiguration requires a showing of reduced impacts, but this section could help provide flexibility from the general rule that nonconforming structures be rebuilt at same or smaller configurations.</p> <p>Request: Clarify and rewrite this section to allow more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	This is an addition to the existing requirements and provides greater flexibility for replacement of non-conforming structures.
<b>PART 3 DEVELOPMENT STANDARDS</b>			
	Code Section	Analysis and Requested Changes	
194	23.60.152 General Development standards B. all shoreline development shall be located designed, constructed and managed to first avoid and second to minimize adverse impacts... C. prevent shoreline stabilization D. minimize adverse impacts E. manage shoreline uses to protect the public health and safety F. minimize land clearance I. all in and over water structures shall be designed, located and managed to keep adverse impacts on habitat to a minimum J. requires nontoxic treatments consistent with AWPA K. requires creosote pilings replaced L. light transmitting to be	<p>Analysis: This section requires minimization of impacts; no preference is given for WD/WR uses. Non-shoreline issues become regulated, like references to protecting public health and safety; this section should be revised to delete reference to areas regulated by other laws, such as safety laws, air quality laws, or clean water laws.</p> <ul style="list-style-type: none"> <li>Section B is inconsistent with mitigation sequencing and should be deleted; not all uses should be treated to require avoidance and minimization; the UI area should be preserved for industrial uses; WD and WR uses should not have to avoid the area as they are preferred uses for the shoreline and industry is preferred along the Duwamish</li> <li>Some of the standards (section K) are internally inconsistent, like the AWPA which actually advocates for some of the chemicals the reg. would ban (see Port comments).</li> <li>Some sections should be deleted or at least revised (e.g., section I, L) to provide for a balancing and mitigation sequencing; sometimes safety requirements may require a walkway width that needs to be balanced against light transmission.</li> <li>Many water related and water dependent uses are so intertwined,</li> </ul>	<p>WAC requirement to first avoid and then minimize impacts even for WD/WR. See WAC 173-26-201(2)(e).</p> <p>SMA and SMP guidelines state that WD/WR uses are allowed to negatively impact ecological functions but they are required to mitigate the impacts.</p> <p>Proposal is to move specific development standards to relevant sections.</p> <p>Regarding comment on Section B: Mitigation sequencing required by the WAC include avoidance and minimization and should be used during the project planning stage.</p>

	<p>controlled to maximum extent feasible S. regulates water related uses on waterfront lots</p>	<p>it is impossible to separate as would be required for section S; this should be revised so that it does not apply to industrial uses in the MIC</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish. WR and WD uses both should have priority; convene a technical working group to make sure these standards fit the real world Duwamish MIC.</p>	
195	<p>23.60.156 ECA incorporated by reference; if there are any conflicts, the more protective applies</p>	<p>Analysis: the Port had asked for and obtained ECA amendments for developed areas; these should be incorporated into the SSMP.</p> <p>Request: The two sets of regulations should be made internally and externally consistent.</p>	See Comment #23
196	<p>23.60.158 Mitigation sequencing; means the steps required to achieve no net loss of ecological functions</p>	<p>Analysis: No preference given for Water-dependent uses in Table A; compare Essential Public Facilities.</p> <p>Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	<p>Uses in the Urban Industrial and Urban Maritime shoreline environments were re-evaluated and no major changes from existing code are proposed regarding uses.</p> <p>WAC requirement - WD/WR are required to meet NNL standard.</p>
197	<p>23.60.160 Establishes priority habitat prohibits structures from intruding into or over priority saltwater habitats unless conditions are demonstrated by the applicant and those include: a. public need; b. not possible to avoid; c. state interest in resource protection and species recovery</p>	<p>Analysis. The exact area of the priority habitat is not clearly defined; note there is no map of the areas? The section seems like it would create a new critical area. The City should make clear that the UI area of the Duwamish is preserved for industrial uses. Species and resources again are the focus here; no focus on need for WD/WR uses.</p> <p>Request: Drop the notion of a new critical area. At a minimum, drop it for the Duwamish MIC or significantly revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish. The preference for WD/WR uses should be added as a consideration in the criteria.</p>	<p>See WAC 173-26-221(2)(c)(iii) and (iv).</p> <p>Revised section to allow structures and other shoreline modifications in migration corridors for WD uses.</p> <p>See Section 23.60.160</p>
198	<p>23.60.164(I)(3) Public Access requires public access; may seek exception from Director; must show some hazard or inherent security issue</p> <p>23.60.170 View Corridors</p>	<p>Analysis: It would be difficult for industrial users to provide public access or view corridors. It would also be difficult to show why they meet the criteria for an exception or modification; these sections appear to be inconsistent with shoreline policies supporting water dependent industry.</p> <p>Request: Make it clear that UI areas in the Duwamish are not subject to the public access or view corridor requirements; do not make the applicant have to make a case in these areas where lands are to be preserved for industrial uses and protected from incompatible uses.</p> <ul style="list-style-type: none"> <li>The Comp Plan has policies that seek to keep view corridors out of the Duwamish. LU237.6, LU 152.</li> <li>At a minimum, the public access and view corridor requirements must be N/A (not applicable) in the Duwamish MIC.</li> </ul>	<p>WD industrial users are not required to provide public access.</p> <p>WAC requirement for WR and non-water dependent uses to provide public access.</p> <p>Additionally, provided an exception from public access for WR uses that require a waterfront location to function.</p> <p>Non-water dependent industrial uses on waterfront lots will be required to provide public access or ecological improvement.</p> <p>View corridors are not required if a WD/WR use occupies the majority of the site.</p>

PART 4 STANDARDS APPLICABLE TO SHORELINE MODIFICATIONS			
	Code Section	Analysis and Requested Changes	
199	23.60.182 Standards for Dredging	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications.
200	23.60.184 Standards for fill	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications.
201	23.60.186 Standards for grading, landfill and slope stabilization	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications.
202	23.60.187 Standards for Piers and overwater structures C. Nonresidential development 1. piers and floats allowed if applicant demonstrates they are necessary to accommodate boat repair or off-loading of goods 2. covered moorage prohibited; over water work sheds allowed in UI if accessory to legitimate vessel repair and light permeability retained to extent feasible	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications. Additionally, the WAC requires that new overwater coverage is allowed if demonstrated for a water-dependent use. DPD defined what uses are required to be overwater. And DPD has included provisions for when solid decking is allowed without providing additional information based on the use at the site and site conditions.
203	D. Slip-side vessel maintenance-limited to interior vessel repair and cleaning, replacement of running gear and other cleaning and repair activities excluding hull scraping which is prohibited  exterior scraping, sanding or cutting is limited to one person per 10 linear feet of one side of a vessel during any period where material may escape into air or water	Industry should review in detail with City staff or a working group.	See Comment #94
204	23.60.188 Shoreline Stabilization  D. new hard engineering is prohibited unless geotech report shows all of criteria are conclusively met E. Replacement of existing hard	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications. Additionally, DPD has included standards for replacement of hard shoreline stabilization with same based on information provided by industrial users.

	engineering is prohibited unless strict criteria are met		
205	23.60.190 Vegetation and impervious surface management  F. vegetation alteration and increase in imperious surface requires all adverse impacts to ecological functions shall be mitigated  G. Application of pesticides and fertilizers regulated	Analysis: This is a new requirement for an application and a plan for all actions allowed. Again--Ecological protection elevated above other goals of the SMA.  Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Required by WAC 173-26-221(5). Removal of vegetation and increase of impervious surface is allowed if NNL of ecological function is met.
PART 5 STANDARDS APPLICABLE TO SPECIFIC USES			
	Code Section	Analysis and Requested Changes	
206	23.60.199 Intakes and outfalls		Additional information needed to address comment.
207	23.60.210 Signs	Analysis: Business signs are stricken from allowed signs; would such signs be allowed under one of the other categories?  Note also, safety signs are required for most industrial uses. The text should make clear these are allowed.	Business signs are a subset of "on-premise signs" and was struck because it is redundant. On-premises signs seem to include business signs. However, signs, business are defined in 23.84A. (On-premise signs seem to include business and safety signs and are allowed in UC, UG, UH, UI and UM shoreline environments.)
SUBCHAPTER IV SHORELINE ENVIRONMENTS			
SUBCHAPTER XIII THE URBAN INDUSTRIAL (UI) ENVIRONMENT			
	Code Section	Analysis and Requested Changes	
208	23.60.482 Use chart	Analysis: Industry should review the use chart in detail. The new regulations appear to be going in a direction inconsistent with the Comprehensive Plan. The proposed SSMP appear to make it more difficult, burdensome and impossible to retain and expand industrial uses. Uses are no longer allowed outright in many cases; they become special uses, conditional uses, or uses with many strings attached.	See revised Section 23.60.482. Code has been revised to address comment.
209	B. General sales and services, Outdoor and warehouse storage uses, Light Manufacturing and General Manufacturing on waterfront lots allowed if they are WD or WR and comply with 23.60.482.B.2. D. Certain listed uses are prohibited on submerged land, except allowed on existing pier	Industry should review in detail. These uses should be permitted outright in the UI, especially in the Duwamish area.	B. These uses are allowed if WD/WR And additional flexibility for uses on existing piers. D. This section allows additional flexibility.  E Revised to address comment WD/WR heavy commercial services are allowed.  F. Proposal withdrawn: no change from existing code now proposed; therefore WD/WR heavy manufacturing are allowed without a conditional or special use approval. See revised

	<p>structure at existing terminals if WD or WR or an accessory office as provided ; listed uses include cargo terminal and light manufacturing and accessory office less than 1000 sf for WD use or as allowed as a special use or as a shoreline conditional use</p> <p>E. Heavy commercial services are prohibited on waterfront lots except as provided in E</p> <p>F. Heavy Manufacturing uses on waterfront lots are allowed as a special use if they are water dependent; if not WD they are allowed on upland lots as a special use and on waterfront lots as a shoreline conditional use if the meet conditions of subsection F</p>		Section 23.60.482.
210	L.2 Storage, outdoor 23.60.482B	<p>Analysis: Many industrial uses have outdoor storage areas; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses.</p> <p>Request: The use should be allowed when related to WD/WR uses.</p>	Water related outdoor storage is allowed and can be located on separate lots.
211	L.3 Warehouses 23.60.482 B, D and H	<p>Analysis: Many industrial uses have warehouses; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses.</p> <p>Request: The use should be allowed when related to WD/WR uses.</p>	<p>Water related warehouse uses are allowed and can be located on separate lots.</p> <p>Existing non-water dependent or water-related warehouse uses are allowed and 20% of lot can be used for warehouse uses.</p>
212	M.2. Cargo Terminal WD/WR-see 23.60.482.D	<p>Analysis: 23.60.482.D prohibits cargo terminal uses on submerged land, except as allowed on existing pier structures at existing terminals if water dependent water related or an accessory use and other requirements are met; this appears to be unduly restrictive and at odds with recent comp plan amendments to support marine trade terminals.</p> <p>Request: The section should be rewritten to support cargo terminals.</p>	WD/WR cargo terminals are allowed in the UI environment
213	M.8 Vehicle storage and Maintenance-X/ prohibited	<p>Analysis: Many industrial uses have vehicle storage and maintenance; sometimes these are on separate lots, but are still necessary and incidental to support the principal WD/WR uses.</p> <p>Request: The use should be allowed when related to WD/WR uses.</p>	Vehicle storage and maintenance can be allowed as an accessory use but is not an appropriate principal use on waterfront lots. It is allowed on upland lots if allowed by the underlying zone.
214	23.60.484 Shoreline Modifications in the UI	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications.

215	D. Dredging Dredging is allowed as a special use if a. necessary for a WD use, or b. to provide navigational access for existing navigational use.	Industry should review in detail with City staff or a working group.  Request: Develop a programmatic permit or other process for maintenance dredging that is routine and necessary for WD/WR uses.	See WAC 173-26-231, which contains strict standards for all shoreline modifications.  Will consider adding developing programmatic permits to work plan after SMP update is complete.
216	F. Fill 1. allowed as a special use if part of an ecological mitigation 2. allowed as conditional use if necessary for bridges, utilities, cleanup of contamination, or transportation facility. 3. prohibited otherwise	Analysis: Industry should review in detail. The definition is too strict; stockpiling seems to be considered fill, and such uses are often integral to WD/WR uses that import materials and off load them from barges, stock pile the materials, and then transfer to vehicles to transport the material to market. If such use is "fill", then the regulations need to be more flexible.  Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Fill is on submerged land therefore what is described is not "fill" and would be considered storage of material taken from or delivered to a barge or vessel is a WD/WR use and is allowed.  See WAC 173-26-231, which contains strict standards for all shoreline modifications.
217	G. Grading	Analysis: Industry should review in detail. Same concerns as noted under Fill, above.  Request: An example of a section that needs refining is the definition of fill; cleaning out of drainage swales or stormwater channels could technically be considered grading; these types of routine maintenance services should be exempt.	The described activities are exempt because they are normal maintenance and repair. However, exempt activities require review by DPD for compliance with the SMP.
218	H. Piers and Floats	Industry should review in detail with City staff or a working group.	See WAC 173-26-231, which contains strict standards for all shoreline modifications. DPD incorporated standards for when solid decking can be uses base on input from industrial users.

**PART 2 DEVELOPMENT STANDARDS**

	Code Section	Analysis and Requested Changes	
219	23.60.486 Height: Maximum height is 35 feet but water dependent uses may have cranes, lights, conveyers above max	Analysis: Industry should review in detail with City staff or a working group. It would seem additional height for other structures should be allowed in the UI, Duwamish industrial area where off-loading of goods, storage towers, silos, cranes and such are needed.  Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Exceptions are provided for similar equipment; therefore if a WD needs additional height for equipment the additional height is allowed.  Additionally, code revise to allow additional height exceptions.
220	23.60.488 Lot Coverage may not exceed underlying zone		Additional information needed to address comment.
221	23.60.490 Shoreline Setbacks  Require a 15 foot setback in UI	Analysis: Industry should review in detail. No setback should be required in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed.  Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Regulations clarified that setback is for structure.  Uses in the setback area is allowed as described and include locating and using equipment in this area.
222	23.60.492 View Corridors 35% of the width of the lot shall	Analysis: Industry should review in detail. It would seem no view corridor should be required in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed.	See Comment #134

	be provided and maintained as a view corridor on all waterfront lots, except I water dependent or water related uses occupy more than 50% of the dry land area of the lot	Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	
223	23.60.494 Regulated Public Access public access must be provided on private lots for developments that are not water dependent except on certain lots in the Lake Union area.	Analysis: Industry should review in detail. It would seem no public access should be required on individual sites in the UI, Duwamish industrial area where off-loading of goods, storage towers, conveyors, cranes and such are needed.  Request: Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	See Comment #134
SUBCHAPTER XVI DEFINITIONS			
	Code Section	Analysis and Requested Changes	
		Analysis: Industry should review the definitions in detail with City staff or a working group.  Request: Revise the definitions if needed to provide more clarity or consistency	Please provide specific comments on suggested changes to the definitions.
224	Fill means the addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM ....		Additional input needed to address comment.
225	Grading means excavation , filling, in place ground modification, removal of roots or stumps, stockpiling of earth materials, establishment of a grade following demolition of a structure		Additional input needed to address comment.
226	Cargo terminal means a transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or accessory warehouses, rail yards, storage yards, and offices		Additional input needed to address comment.
227	Manufacturing-- defined in the zoning code 23.84A.025 Manufacturing, general means mnf. use having		Additional input needed to address comment.

	<p>the potential of creating moderate noise, smoke, dust, vibration or other env. impacts including: ...a) production of items made from stone or concrete Manufacturing, heavy means a mnf. use typically having the potential of creating substantial noise, smoke, dust, vibration and other impacts or pollution including but not limited to ...b. processing or refining of raw materials</p>		
228	<p>Shoreline Modification means those actions that modify the physical configuration or qualities of the shoreline area usually through construction... Shoreline modifications can be other actions such as clearing, grading adding impervious surface, altering vegetation or applying chemicals</p>	<p>Has the City Law Department reviewed this section? It would seem that it would be expanding the jurisdiction of the SMA. Would the spraying of chemicals such as WD 40 on machinery be covered? the expansive definition appears to go beyond what would reasonably be considered shoreline development.</p>	<p>Law Department has reviewed the draft regulations and the City can regulate such actions as applying chemicals. The application of toxic substances are required to be kept from water bodies pursuant to 23.60.152.M</p>
229	<p>Water Dependent use means a use which cannot exist in other than a waterfront location and is dependent on the water by reason of intrinsic nature of its operations; includes marine construction and repair, cargo terminal for marine commerce or industry, tug and barge operations; water dependent use includes businesses that receive or transport 50% or more product used in the business via the water adjacent to such business.</p>		<p>See next comment.</p>
230	<p>Water Related means a use or portion of a use not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a location in the shoreline because; 1. the use has a functional requirement such as the arrival or</p>	<p>Note: A business that is otherwise water-related would be water dependent if it meets the definition above; the water dependent definition should control if there is a conflict.</p>	<p>Code revised as requested.</p>

	<p>shipment of materials by water or the need for large quantities of water</p> <p>2. the use provides a necessary service supportive of WD uses and the proximity of the use to its customers makes its services less expensive and more convenient ...</p> <p>The following uses are often considered water related: ...sand and gravel companies and concrete mix and cement plants if operating materials for any of the foregoing uses arrive by boat ...</p>	<p>Our company depends on material arriving by barge for over 50% of its product; we request that the example either be deleted or clarified by adding "unless it meets the definition of water dependency above."</p>	
231	23.60.016 Significant Development.	<p>How was \$5,718 derived? Anyone familiar with marine construction understands that the cost is generally higher than typical "commercial" construction due to additional bonding requirements because of the overwater nature of the work. This overcomplicates the permitting process and discourages owners from seeking permits because of the complexity and duration of the permitting process. Adding 4 new electrical dockheads would constitute "significant development". Additionally, if you refer to the SMP study <i>Comparison of Land Supply and Demand for Water-Dependent and Water-Related Uses</i>, one of the key conclusions is that the permitting process should be streamlined, not made more burdensome. What this ultimately will result in is more exemption requests and more delays in projects, which not in anyone's best interest. I think it would be appropriate for the City to statistically evaluate permit applications annually to come up with a reasonable threshold for "significant development" projects. Looking at the distribution of data (and standard deviations) should be a sound method for deriving this threshold.</p>	<p>This requirement comes directly from the Department of Ecology. See WAC under RCW 90.58.030(3)(e)</p>
232	23.60.027 Ecological restoration and mitigation program.	<p>While well-intentioned, I think there needs to be more clarity around this. Where will the credits specifically be applied? I think there needs to be better boundaries about how the credits are "spent" and should benefit that immediate area, where possible. For example, payment-in-lieu of physical mitigation earned on the north end of Lake Union (where I own property) should be used for parks or other restoration in that area and not on other areas of the shoreline (i.e. south end of Lake Washington). Simply putting money into a discretionary "fund" I do not believe is in the best interest of anyone involved and undermines the credibility of what-could-be a very effective program.</p>	<p>The program is set up based on geographic areas. One geographic area is the Lake Union and the ship Canal. Other geographic areas are described in Section 23.60.914. The current proposal is to keep mitigation impacts and mitigation within these defined geographic areas.</p>
233	23.60.122 Nonconforming uses.	<p>When calculating the reduction in over water coverage, grated decking and translucent roofing shall not be included? Why? Covered moorage serves a valuable purpose and is very highly regulated already and supports the vibrancy of the maritime community. "Classic" boats, that generally require covered moorage, are a very significant part of the maritime culture and</p>	<p>Covered moorage is allowed in many locations. However, it has been City policy to prohibit covered moorage in Lake Union. This is to preserve views of the water. This provision addresses covered moorage in Lake Union and is not a requirement but is intended to work as an incentive to reduce the amount of</p>

		regularly partake in the numerous celebrations that bring people down to enjoy the waterways. By ultimately requiring the reduction of covered moorage, we discourage this type of vessel from locating in this area and vessels that do stay require more maintenance due to the exposure to the elements—which is ultimately what we want to minimize. I think the City needs to re-evaluate what their true objective is here because adding grated decking to a dock will have a significant impact to the marine environment (by always letting light through) whereas the benefits of removing covered moorage is negligible (the light cannot pass through the boats).	covered moorage in Lake Union. There are others
234	23.60.152 General development.	There is surely a lot of focus on the use of building materials, especially in terms of maintenance and repairs. While “durable, non-toxic components” are the preferred materials, they simply don’t hold up in many marine environments and ultimately will have a far more adverse impact on the environment than using ACZA treated lumber that follows AWPA standards. These products are not engineered to last and usually are far more costly to use. Additionally, the environment is not best served by continually having to repair repairs because the materials do not last. ACZA has been studied by the EPA and has been generally accepted as safe to use in marine environments. As the safety in and around marine environment has been proven, there is no reason why ACZA should not be permissible.	ACZA will be allowed when necessary and with consultation with other resource regulatory agencies. ACZA leaches copper and increased levels of copper are toxic to fish and aquatic organisms that live on and in the sediment.
235	23.60.170. View corridors.	My lot is approximately 120’ wide and currently does not have any buildings at the street level or above. Under the proposed requirements, what options do I have around development? Similar to a lot of Lake Union property owners, the upland portion of the property is very minimal. The vast majority of my property is submerged. I would love to be able to develop the property in a tasteful manner to contribute to quality of the shoreline while also contributing to the viability of my business. For small property owners, this requirement just seems overly burdensome. There should be some alterative standards around size or proximity of other view corridors. There is a waterway about 50 yards down from me that offers unobstructed views of the water and Seattle skyline. Imposing view corridor requirements could significantly impair the value of my property.	DPD continues to evaluate the view corridor standards.  Also see section exceptions to view corridors located in Section 23.60.170.
236	23.60.187 Walkways/piers.	No walkway is allowed to exceed 4’ for piers that are not shared. This is simply not safe. I have a 5’ walkway today that extends about 300’ into Lake Union. Between dock carts, tenants passing each other, power pedestals with cords protruding, anything less than 5’ is creating an unsafe situation. In the winter when winds pick up, that could be particularly unsafe if only 4’. I encourage City representatives to walk down my dock and evaluate how truly safe 4’ might be in these types of conditions. We cannot compromise the safety of marina tenants in this case.	This provision is for residential piers. Non-residential piers do not have a limit on the width of the walkways.
237	23.60.187.D Slip-side maintenance.	The formula for “scraping, sanding, or cutting” does not make practical sense. “One person per 10 lineal feet of one side...”? The language needs to be worked on to something that is more practical and or feasible. I don’t disagree with the intent here, but how is anyone supposed to regulate if	Section revised and the standard is that BMPs need to meet the Department of Ecology’s Resource Manual For Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811 in a Director’s rule.

		this is not easily quantifiable?	
238	23.60.200.B.3 Restrooms.	Again, I have a small marina (<40 slips) with very few liveaboards. I have a very nice unisex restroom that I just built this year and have had no complaints about accessibility or availability by either sex. Putting in a second bathroom facility is a needless expense and a waste of space—space I don't have. I don't understand what the true intent is here and how this aligns with the goals of the SMP? This should be removed from the SMP.	Requirement deleted.
239	23.60.200.B.4 Waste.	Again, as a small marina with boats larger than 20 feet, I would be required to provide "1) sewage pump-out facilities or the best available method of disposing of sewage wastes, AND 2) disposal facilities for removal of bilge waste..." This is not at all practical or feasible for small marinas. Have such facilities is extremely cost-prohibitive as small property owners likely do not have the capital to install and maintain such a device. Not only that, the mobile pump out services are a viable niche business that has worked well for decades... and we should help these businesses grow, not compete with them. My understanding is that the goal of the SMP is to encourage water-dependent uses? As such, this requirement should be removed or altered such that owners/operators are required to provide tenants information on the nearest available services.	<p>The provision regarding sewage pump-out is in the current regulations and it is good shoreline management policy to keep this provision in the regulations. Sewage should not be dumped into the water.</p> <p>Regarding bilge water, this water can be a pollutant and it also should not be dumped into the water. This requirement has been deleted and are now addressed through the requirement to follow the BMPs outlined in the Department of Ecology's Resource Manual For Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811 in a Director's rule.</p>
240	23.60.200.E.1	Liveaboards. Liveaboards without a doubt contribute to the overall vibrancy of the waterfront. They provide security and peace during the off hours. Liveaboards follow the same marina rules as other tenants and follow the marina best practices. They are required to dispose of waste using a pump out facility or boat-side service. There is no reason to restrict the liveaboard occupancy or instituting a registration program that is ridiculously burdensome, hard to manage and provide oversight, and serves no apparent purpose. Again, one of the core objectives is "provide the maximum public access and enjoyment of the City." Liveaboards provide life and culture to the shorelines and provide owners with self-policing after hours and this should be encouraged, not discouraged.	The original proposal was not to eliminate live-aboards. However live-aboard is a residential use overwater and this use can have negative impacts on the aquatic environment. The regulations regarding live-aboards have been revised and live-aboards continue to be an allowed use overwater. See revised sections 23.60.200 and 214.
241	23.60.502.A Commercial use restrictions.	The City sanctioned a study Comparison of Land Supply and Demand for Water-Dependent and Water-Related Uses that appeared to indicate that the demand around the Lake Union area would be in the area of recreational moorage—which, incidentally, is completely discouraged in this draft. That aside, the study seemed to indicate the demand for commercial space actually was declining. By establishing quotas/restrictions based on water-dependent uses, the City is undermining the financial viability of the property owner. Vacancy is at a high point. Owners can't afford to sit with office suites vacant chasing a diminishing sector. This would result in one of two things: 1) the property owner going bankrupt due to lack of revenue because of the vacant property, or 2) the property owner having to make significant concessions to attract the few businesses looking for space to meet the City's requirement—which could ultimately lead to insolvency or meager profit potential.	<p>Recreational marinas are an allowed use in the Urban Commercial environment, which the majority of Lake Union is designated as Urban Commercial. The restriction on recreational marinas was for the Urban Maritime and Urban Industrial shoreline environments to minimize conflicts between industrial and recreational users of the water. The code has been revised to allow recreational marinas in the UM and UI shoreline environments in the Lake Union and Ship Canal areas when they do not conflict with industrial uses of the water.</p> <p>Regarding the types of uses allowed. The City is providing more flexibility based on existing conditions.</p>

242	23.60.510 Shoreline setbacks.	Again, similar to many of the property owners around Lake Union, the upland side the property is very minimal. The vast majority of the land is submerged. The setback guidelines basically would prohibit any development on my site.	See Section 23.60.504 this is a new section that provides for additional use on small lots, defined as lots with less than 35-ft of dry land.
243	23.60.514 Public access.	<p>The majority of my property is submerged and the property that isn't submerged is private parking—which I am required by City Municipal Code to provide. I cannot give up any space to “public access” without giving up parking and not meeting my minimum requirement for spots dedicated to tenant use. Additionally, it is completely unreasonable for the City to force the liability on to the property owner to provide public access on private property or to give up land just for the right to improve my property to improve safety for economic viability. In the case that this were to happen, the City should be required to manage the liability (i.e. someone trips and falls, drowns, etc). This is not a reasonable request and would be akin to the City requiring that I allow the public to camp out in my backyard. Additionally, the tenants of the marina have a right to have secure moorage 24/7 without the general public walking up and down the docks for the same reason apartment tenants have the right to have secure entry in and out of their buildings. Additionally, our tenants adhere to strict marina rules to protect themselves, their neighbors, and the environment. It would be impossible to enforce that upon the public making use of the property, creating potentially unsafe conditions (i.e. simply smoking on the docks where it is strictly prohibited). There are several great City-owned parks around Lake Union and Lake Washington that are safe and designed for public use. Private property should remain just that, private, whereas the City can promote the wonderful parks we already have for public use. Residential waterfront homes are not required to provide public access in their yards, why would it be reasonable for private marina owners to have to?</p>	<p>Public access is not and would not be required on private docks. Public access for boating facilities is required by the Department of Ecology see WAC 173-26-241(3)(c). See revised Section 23.60.164 where exceptions for marinas with little or no dry land is provided.</p>
244		<p>Marina Land use and re-configuration: The survival of Moorages and Marinas depends on how economic use of moorage uplands and submerged lands are utilized and configured. Some moorages are able to utilize their uplands for uses that are not necessarily “water related or water dependant”. Those uses, especially during economic down turns may be the only way that the marinas are able to exist. During economic down turns, many of the “normal boating tenants” eliminate the discretionary income uses. Unfortunately, pleasure craft fits into the discretionary definition. Greater flexibility on uplands will be necessary in the future in order for marinas and moorages to survive. Additionally as times change, the marinas must change. The City of Seattle’s own research indicates a future need for boat moorage and marinas that will need to cater to their clients by re-configuring their existing facilities. No penalties as a loss of moorage or operational function or additional habitat costs should exist for trying to reconfigure their facilities in order to fulfill the need indicated by the City of Seattle research.</p>	<p>Seattle is allowing greater flexibility for the non-water-dependent and non-water-related uses on sites.</p> <p>The code has been revised to allow for recreational marinas in the Lake Union and Ship Canal area when they do not conflict with WD/WR industrial users</p>

245		<p>Loss of Income to Washington State Agencies:          If exceptional limitations are placed on uplands, then adverse effects for funding State of Washington agencies result. Monetary value of uplands is dependent on what the uplands can be used for. Washington State Department of Natural Resources (DNR) submerged lands are valued by direction from WAC's and RCW statute. Those statutes use upland values as a basis for submerged land leases and permits. As the decrease in upland land value occurs (submerged or otherwise), a decrease in rents and permit fees to the State of Washington results. This is also true in the County tax assessor's office. An increase in restrictions and/or maintenance costs of the upland land and improvements will adversely affect how the State of Washington receives funding as a result of driving down the property values and real estate tax basis.</p>	<p>The proposed code does not increase use restrictions on the dry land portion of sites.</p>
246		<p>Over regulation for repairs:          In addition to the usability of the land is the ability to make repairs to structures. The SMP is creating an onerous situation that could possibly destroy the marina and moorage business due to over regulation of repair methods and materials. All language within the SMP, revised or otherwise, should have a reasonableness test for economic benefit and environmental benefit. If "feasible" becomes the standard then Marinas and Moorages will not survive due to economic strife</p>	<p>These standards are considered Best Management Practices and are good policy for shoreline regulations to protect the ecological functions while providing for use of the water.</p>
247		<p>Commerce and Navigation of the Ship Canal:          The Ship Canal was created by an act of the United States Congress in 1894 for the benefit of the people on behalf of Navigation and Commerce. The benefits of the Ship Canal include the elimination of total flooding of the Duwamish River Basin as well as enhancing navigation via commercial and recreational vessels. (Commercial and recreational vessels transport under Federal Navigation guidelines of Admiralty law.) Commerce is how trade is executed on dry land. The City does not have jurisdiction over Admiralty law.</p>	<p>The City is required to meet the requirements set forth by the Department of Ecology as described in WAC 173-26.</p>
248		<p>Issues of Different Geographical Areas:          Different issues arise within the City of Seattle due to their geographical characteristics. The Duwamish River Basin and its industrial climate are different than that of the Lake Washington Ship Canal / Lake Union. Green Lake and other areas of Lake Washington are different than Elliott Bay. Each area has similarities as well as dramatic differences. The SMP unfortunately tries to put all of the issues into one wrapper with pointers and exceptions with various code changes depending upon overlying or underlying zones. The SMP becomes counter productive using over regulation and micro management. A simpler method must be developed. This method may be a more common sense method of less regulation.</p>	<p>The shoreline environments are established to regulate areas based on their unique characteristics See Section 23.60.222</p>
249		<p>Update the SMP – More or Less Stringent?          The directive by the State of Washington is to update the existing SMP. Updating does not mean to create greater regulation or more stringent guidelines. Updating should also mean deregulation and minimizing preconceived notions that the original SMP was accurate. It appears that</p>	<p>Please see WAC 173-26 Shoreline Master Program Guidelines. Seattle is required to update their code based on these new standards. The 200' limit is established in the Shoreline Management Act RCW 98.58.</p>

		<p>the “old SMP” had significant regulations and restrictions and that the drafters of the “New SMP” are using the “old SMP” as a minimal position when, in fact, some of the restrictions should be eliminated. Several of the current limitations have already proven detrimental to the City of Seattle economy such as the 200’ limit and the over protectionist view as to what can or cannot be permitted outright within that zone. Trying to establish a conditional use for submerged land that really should not need conditional use requirements due to its intrinsic nature should not be questioned. (A marina is a conditional use for a water oriented / water dependant activity? As an association for Boat Marinas and Moorages, we can truthfully state that most boats float. If your boat is floating in a marina, a marina should be considered an allowed use and not a conditional use).</p>	<p>One use that is water-dependent (recreational marinas) are a conditional use in the Urban Industrial shoreline environment in the Duwamish area to ensure that they do not interfere with water-dependent industrial uses.</p>
250		<p>Promised Changes in the New SMP: We realize that much of the original draft SMP proposal has had significant input with promised changes to various stakeholders. Several of our members have submitted input and we therefore will wait for the second round of draft to expand the critique of the SMP.</p>	<p>See revised regulations</p>
251		<p>Request a Drafting Committee: We respectfully request that those of us who have a first hand interest in the lands and adjacent waters be part of a drafting committee with the intent to add greater relevance to the SMP due to the relationship of economic importance in concert with environmental desires. A drafting committee of actual stakeholders may avert significant misconceptions assumed by city planners who are unfamiliar with the operations of marinas and moorages.</p>	<p>DPD worked with a Citizen Advisory Committee, which consisted of many stakeholders, including two members of the North Seattle Industrial Association and a representative from Todd Shipyard, the Port and a commercial marina business owner from Lake Union. Please see Citizen Advisory Committee Report September 2009.</p>
252	<p>1. Problem: The inability in the future to use treated wood for our float and pier decking AND the requirement to completely replace any treated pilings.</p> <p>a. Plastic (Trex™) decking has no structural strength; non-treated wood deteriorates rapidly in marine environments; aluminum or steel grating is cost prohibitive.</p> <p>b. Piling with creosote treatment are still 98% solid below the waterline. To remove the pile and replace it with a non-creosote pile will be cost prohibitive. We have over 1000 pile. Generally when repairs are made they must be made in groups. This is because the cost</p>	<p>Solution:</p> <p>a. Defer to the American Wood Preserver Association on both a state and local level that will allow us to use practical marine approved treated wood. (Example: Bad CCA versus good ACZA)</p> <p>b. Deterioration of a fresh water piling is almost always at the top portion of the wood that succumbs to dry rot. The ability to cap, splice or sleeve a piling is of paramount importance in maritime industries. Do not require the removal of existing pile (creosote or otherwise), nor should there be penalty in environmental habitat credit costs for continued use of the existing pile unless the City pays for the change. The private sector already paid permit fees for its installation and the City did not object to its installation. The city therefore has ownership in part of the problem in its original acceptance of the designs.</p>	<p>DPD has revised the original creosote pile replacement standard and is allowing sleeving of creosote piles.</p> <p>ACZA will be allowed when necessary and with consultation with other resource regulatory agencies. ACZA leaches copper and increased levels of copper are toxic to fish and aquatic organisms that live on and in the sediment.</p>

	<p>to mobilize a crane and materials is high. Three years ago our annual cost to maintain our marina was 70% of our income when we were full. Due to the economy, we are currently 23% vacant. For the past few years this relates to a negative cash flow.</p> <p>c. The cost of repair versus replacement is huge. A report from KPFF Consulting Engineers dated September 24, 2010 for pile replacement at Harron Island was approximately \$21,000 / pile. Using this as a guideline, it would cost over \$50,000,000 for our marina to comply and this excludes the refit of the existing structures to the replaced pile.</p> <p>d. Disturbing the sediments during replacement of a piling can be more detrimental to the environment than capping a piling.</p>		
253	<p>2. Problem: In the Urban Maritime (UM) environment, there are nine uses allowed outright, on waterfront lots. Of the nine, only three deal with non-public entities that include Parks, Utilities, bridges and tunnels or streets. We can either; start a tugboat company, have dry boat storage or start a light sales or service of marine parts.</p> <p>a. Any other uses are tied to confusing and irritatingly hard to fathom sections of the code that is so laced with double negatives that it is impossible to comprehend.</p>	<p>Solution: The UM environment should be expanded. Flexibility of uses on waterfront properties must be encouraged.</p>	<p>Use table for the UM environment has been revised. All water-dependent and water-related commercial and industrial uses are allowed. See Section 23.60.502</p>
255	<p>3. Problem: The draft SMP and strict adherence to</p>	<p>Solution: Recognize that property owners built in good faith and included sanctioned uses that made economic sense and should be able to</p>	<p>The uses allowed under the existing code compared to the uses allowed under the proposed code have not changed</p>

	<p>it has the unintended consequence of making most all of the structures and a number of land uses in the area from the Locks to Webster Point 'non-conforming'.</p> <p>A 'non-conforming' use designation has created and will continue to create a stagnant business environment in which property owners stop investing in their assets. Any attempt to upgrade a property will be met by an expensive and time consuming maze of Special Use, Shoreline Conditional Use permits or Variances. Expecting a reasonable economic rate of return will be impossible due to its financial burden of requirements.</p>	<p>continue to do both into the future without being held hostage to pay exorbitant fees for the privilege of changing the use.</p>	<p>significantly so there will not many new non-conforming uses created.</p>
256	<p>4. Problem: Public Access on private property. The SMP shifts the requirement of providing public access onto the backs of private property owners.</p> <p>a. Public Access is being required for commercial or recreational marinas – which are preferred water dependent uses and are inherently being used for the public.</p> <p>b. The requirement for Public Access is being tied to the percentage of water dependent uses on the property without being able to count the submerged property – which is our water dependent use, all be it under an existing conditional use.</p> <p>c. Public access requirements are being tied to any future permitting application which creates a forfeiture of private property ownership rights.</p> <p>d. Liability and insurance issues and the</p>	<p>Solution:</p> <p>a. If the City wants public access it should fund the purchase of waterfront property with good access or upgrade existing public property to take advantage of views and direct water access.</p> <p>b. Incentives for allowing public access should be given to property owners.</p> <p>c. Adhere to the Advisory Memorandum by the State Attorney General to avoid the unconstitutional takings of private property.</p> <p>d. All private land or land under control of upland property including permitted land that is used, submerged or otherwise, should be used in all calculations.</p> <p>e. Recognize existing moorage is already providing public access to the water.</p>	<p>The WAC requires public access and has required public access since at least 1987.</p> <p>The public access requirements have not changed from what is required by the existing SMP regulations except that a new provision to allow “payment in lieu” to meet the public access requirement is included in the proposed new regulations.</p>

	<p>hardships created for businesses is not addressed.</p> <p>e. Forced Public access on IG1 (zoned Heavy Industrial Land) with UM overlay should not be required.</p>		
257	<p>5. Problem: The draft code requires payment of Habitat Credits or Pay-in-Lieu for numerous permit submissions. However upgrades to meet code are not recognized in any manner. Every time a permit is requested, more upgrades or payment is required. Bringing in a new tenant without a change of use will still trigger costly Habitat Credit fees.</p>	<p>Solution:</p> <p>a. Eliminate the Habitat Credit or Pay-in-Lieu provisions for change of use applications with an existing building footprint.</p> <p>b. The code should be giving credit to the property to 'bank' for requirements already met in like manner as they do for requirements needed to be done.</p> <p>c. Eliminate all Habitat Credit charges and use a flat rate fee.</p>	<p>Habitat credits are required if a use that is not water dependent or water-related is being proposed. If Habitat credits were not allowed then these uses that are not water-dependent or water-related could not be allowed. The WAC requires that for such uses another goal of the SMA is required otherwise such uses should be prohibited.</p>
258	<p>6. Problem: View corridors, Lot coverage</p> <p>a. The View Corridor requirement of 35% of the width of the property is excessive especially on Marinas that have doglegs in the piers to accommodate existing lot lines. The doglegs unfortunately limit the straight view to the center of the channel. The improvements are a result of leases or permits with the State or Washington and permitted by the City of Seattle. The property owners should not be penalized for upgrading their properties by having to eliminate previously permitted structures in order to improve their properties.</p> <p>b. The Lot Coverage requirement of 80% for Water related /water Dependant use on an industrial zoned property defeats the purpose of industrial zoned property. Even the most recent study made by the City of Seattle indicates that there is three times more property</p>	<p>Solution: Work with property owners on the code language and requirements to achieve SMA compliance while ensuring the long-term economic viability of the UM community.</p>	<p>a. View Corridors for a water-dependent use is 15% of the lot. A marina is a water dependent use and moorage is allowed in the view corridors.</p> <p>b. The Industrial Lands Market study suggests that there is less land than required to meet the demand for water-dependent and water-related uses.</p> <p>c. this standard is not required if the project cannot accommodate the requirement. If an applicant can demonstrate that this requirement will significantly interfere with the operation of their business this standard can be modified or waived.</p>

	<p>available in the ship canal than can be filled with water related businesses in the next 20 years. Industrial Property should allow outright the existing limitations for the underlying zone and not be hindered by overlaying UM zoning.</p> <p>c. The Waterward requirement for docks or piers is 15' from the shoreline or a depth of 8' of water. This will severely restrict the ability to hand launch watercraft or moor small boats in the near shore, sheltered areas and discourages water dependent uses.</p> <p>d. The combined overall requirements become excessive exactions.</p>		
259	<p>7. Problem: The draft code is requiring landscaping to screen both boats and trailers. This is contrary to the goal of encouraging water dependent/water related uses. Land is scarce and dealers and service providers must be able to showcase their products</p>	Solution: Delete this language.	DPD continues to evaluate this standard.
260	<p>8. Problem: Micromanagement of current business practices by SMP code greatly restricts private property owners' ability to conduct day-to-day business.</p> <p>This is especially clear in 23.60.200, Standards for marinas, commercial and recreational.</p> <p>Examples of this:</p> <p>a. Genders for bathrooms</p> <p>b. Hours of operation for bathrooms</p> <p>c. Number of live-aboards; definition of live-aboards</p>	Solution: Work with the marina owners to amend and delete as necessary.	<p>See revised Section 23.60.200.</p> <p>Many of the proposed requirements have been deleted and are now addressed through the requirement to follow the BMPs outlined in the Department of Ecology's Resource Manual For Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811 in a Director's rule.</p>

	<p>d. Best Management Practices that exceed anything physically capable.</p> <p>e. Number of people working on a boat</p> <p>f. Amount of transient moorage in a private facility</p> <p>g. Amount of commercial moorage in a recreational marina and vice versa.</p> <p>h. Uses onboard vessels</p> <p>i. Creation of a new registration form and criteria for live-aboards with penalties for violations</p>		
261	<p>9. Problem: In many cases, the language of the draft SMP is unclear, inconsistent and difficult to follow to a conclusion, especially in the UM section. Often the requirements are overreaching, unclear relative to Federal and State regulations and not practical.</p>	<p>Solution: Work with business and property owners on the language and intent in order to create a more workable document for all.</p>	<p>Clarified uses allowed and shoreline modifications to address this comment. See updated section 23.60.172 and 23.60.502.</p>
262	<p>10. Problem: The City of Seattle is overreaching its directive from the State of Washington. The City is attempting to exercise its authority fostering a clear undertaking of over exuberance and control contrary to what is reasonable for the city and businesses to survive during next twenty years.</p>	<p>Solution: Examine what exactly is being required and not read into the directive more restrictive language. Interpret the directive in a corporative business friendly environment that will enhance economic development rather than restrict it. The DPD should partner with property owners and businesses around the affected waters to draft appropriate language that works for all parties who know the issues first hand rather than trying to train city planners in the intricacies of business management of marinas or the economics of doing business in the City of Seattle. The different water bodies should be treated differently due to their inherent differences. The Duwamish industrial area has significant different characteristics than the Lake Washington Federal Ship Canal. One shoe will not fit all in our Seattle boundaries. Legal issues are also apparent due to the Federal nature of Admiralty Law and the fact that the Lake Washington Federal Ship Canal incorporates Federal Waters transferred back to the Federal Government from the States original receipt by the equal footings doctrine as a result of the Congressional Act of 1894.</p>	<p>The City has followed the requirements of WAC 173-26 Shoreline Master Program Guidelines and continues to work with the Department of Ecology staff regarding the proposed SMP regulations.</p>
263		<p>boat storage. Seattle must allow this type of shoreline use in the near future. Seattle will need to have storage like this example to come close to</p>	<p>Dry boat storage is allowed with exceptions to exceed the height limit for certain structures in the Urban Maritime, Urban</p>

		the economic forecast for Lake Union and the Ship Canal.	Industrial and Urban General shoreline environments.
264		New "boat moorage, recreational marina and vessel upland storage" In UI ( ship canal), UC and UM. This is where your study showed the growth. Boat Clubs and community yacht clubs as well as eating establishments are a part of the boating industry. These items make the marina property attractive. This will result in a large number of new jobs. This is important with the loss of fishing, shipyard, tug boat and other maritime jobs we have seen in the past 10 years I see no reason not to allow.	Draft regulations have been revised to allow recreational marinas in both the Urban Maritime and Urban Industrial shoreline environments and recreational marinas have always been allowed in the UC shoreline environment.  As stated above dry boat storage is allowed in the UM, UI and UC shoreline environments.  There has been no change in how yacht boat and beach clubs are regulated in the UI, UM and UC shoreline environments.
265		Ferguson Terminal Company is located in the Urban Industrial environment. It is a 6-acre marine terminal with a large warehouse. Vessels to 400 feet moor at the terminal for off loading/ loading and repair. The proposed draft presents many changes to our current and future operations: Vessel maintenance Suggest no new shore side over water regulations for maintenance.	Code section clarified to address slip-side maintenance of non-commercial vessels.  See subsection 23.60.187.D
266		Regulations of uses on vessels while moored We must allow crew to stay on board large seafood processing and other vessels in the harbor	See 23.60.200 code section has been revised to eliminate 25% live-aboard limit.
267		Offices in the UI and UM We should have additional options	Office use is allowed pursuant to 23.60.482, 502 and 504.
268		Ship Canal UI needs different rules than Duwamish River UI Through the use of additional caveats?	Uses in UI have been adjusted see revised Section 23.60.504
269		Caretaker on property in UI This is most important for security	Caretaker units are considered an accessory use and are allowed as such when required for the operation of the business.
270		Additional options in the 20 % non WD/WR List of allowed uses must be expanded Height restrictions should be 60 ft Allows for future dry stack marinas and warehouse options (Ferguson Terminal warehouse is 60 ft in height) (How else are we going to come up with the 315,866 sq ft of moorage?)	Additional uses are allowed see revised Sections 23.60.482 and 23.60.502. Height exceptions exist for equipment and if needed for the operation of the water-dependent/water related use. Heights can be 55-ft in the ship canal and 80-ft in the Duwamish.
271		Recreational moorage in the UI According to your "Comparison of Land Supply and Demand for Water Dependent and Water Related Uses" (12/09), recreational moorage in the Ship Canal will have a future growth of 315,866 sq ft or 66% of total Ship Canal growth by 2030. Why make this use a conditional use and force future operators to go through the City Council? The conditional use process is very expensive, and may require 1 to 2 years for approval. There are 10 recreational moorages in the Ship Canal UI at this time, including one of the largest covered moorages in Puget Sound. A new recreational moorage would not be a new industry. Boating clubs are a major factor in making industry grow. If we are going to have the amount of moorage in the Ship Canal and Lake Union as proposed in your study, we should allow yacht and boat clubs. The industry often says to sell boats, sell boating.	Conditional uses do not go through City Council approval but go through the Department of Ecology for approval and the code has been revised to allow recreational marinas in the ship canal and Lake Union if they do not interfere with WD and WR manufacturing and industrial uses.

272		Public access not needed on private property in UI The city should not force industry to provide public access in the UI or force payment for an alternative location. This will only reduce future growth and present serious security problems. I have been advised by an attorney that public access is not required by DOE.	Public access is not required for WD uses in the UI except for recreational boating facilities. Additionally there are other exceptions to the view corridor requirements, see Section 23.60.170.
273		View corridor restrictions Why no wet moorage, storage of boats under repair, open storage or parking? Most of the Ship Canal is at the bottom of a hill and very little, if any, of the view would change by allowing the above. These restrictions would not be acceptable for a cargo operation.	These are all allowed in the view corridor see Section 23.60.170.
274		No wood piling repair This requirement is not acceptable. Do you have any studies that show how much of a problem a 25-year old wood piling is compared to removing the piling and roof as well as a floor of a building to drive a new steel piling? I understand no new wood piling, but a 25-year old piling may not leach an amount that could be considered a threat to the environment.	Creosote continues to leach throughout its existence.  This requirement has been modified to allow sleeving of the creosote piles .See 23.60.152 J
275	Comprehensive Plan LU G57 stresses the need to “encourage economic activity and development (of water-dependent uses) by supporting the retention and expansion of existing water-dependent and water-related businesses on waterfront lots.”	Implore you to return to this goal. Seattle is such a unique spot because of the myriad of waterfront businesses, access and life. Please provide an update that respects our region’s maritime heritage.	The SMP is required to balance the need for water dependent uses, public access and shoreline protection. Seattle is committed to meeting all three goals and has revised the use tables for the Urban Industrial and Urban Maritime shoreline environments to clearly state the allowance for WD and WR industrial and commercial uses. Additionally provisions have been added and clarifications made for shoreline modifications for WD and WR uses.
276	<ul style="list-style-type: none"> <li>As I’m sure you’re aware, the maritime industry in Seattle has taken a beating in recent years, and many water-dependent businesses have had to close their doors. As such, it is more difficult than ever to attain the required mix of office to water-dependent/water related use. If I have vacancies because I cannot find a water-dependent/water related tenant, I will eventually run through my reserves and be unable to maintain the moorage aspect of my marina (or pay my property taxes, for that matter), which I’m sure is counter to what the SMP is trying to achieve. Further, in “Comparison of Land Supply and Demand for Water-Dependent and Water-Related</li> </ul>	If I am reading this information correctly, the study is projecting that the primary source of increased water-dependent demand in Lake Union relates to recreational marinas. Yet in the UM zone, the development of future marinas, or the expansion of existing ones, is prohibited. While I find this to be a contradiction, it does seem that my small marina is doing its part to satisfy the demand in Lake Union for recreational moorage, and as such, it is important for my marina to remain economically viable.	Code revised to allow recreational marinas in the UI and UM shoreline environments in the Ship Canal and Lake Union if they do not conflict with WD/WR industrial and manufacturing uses.

	<p>Uses,” a study commissioned by the DPD, one of the findings is:</p> <p>“While the vacant land supply appears adequate in total, it falls well short of projected demand in Duwamish, Lake Union, Portage Bay, and Ship Canal. The increased demand in Portage Bay and Lake Union is primarily related to recreational moorage.” (p. 42)</p>		
277	<ul style="list-style-type: none"> <li>The setbacks, view corridors, and lot coverage restrictions are difficult to swallow. If my facility burns down or otherwise needs to be rebuilt, I would like to know in no uncertain terms that I will be able to occupy the same footprint as before. I want to be able to maintain an attractive property, not one that detracts from the neighborhood because I can't get approval to fix it up.</li> </ul>		<p>Maintenance and repair is allowed under the existing code and will continue to be allowed under the proposed code. These are exempt activities but do require review by DPD for compliance with the SMP, which is required.</p> <p>If your property is destroyed by fire you can replace to the existing foot print.</p> <p>If you rebuild/replace then you will be required to meet the standards in the place at the time. The only new requirement is for setbacks. If you have a small lot and within the UM shoreline environment then see Section 23.60.504 and if you are in the UC shoreline environment see Section 23.60.124 for development standards on small lots.</p>
278	<ul style="list-style-type: none"> <li>Bathroom facilities used to be only “adequate to serve the marina;” now, men’s and women’s rooms are required. Under the new SMP, the Director of DPD would have the power to dictate hours and number of facilities based on providing “reasonable hygiene.” (23.60.200.B.3). Many smaller marinas really only need one bathroom. Space on the uplands at these small marinas is already at a premium, and giving the Director power over minutiae like hours and numbers of restrooms seems overly intrusive. I’m also concerned about the potential added cost of having to add a restroom as a stipulation for</li> </ul>		<p>Code section has been revised to address your concerns see Section 23.60.200.</p>

	<p>completing a marina renovation. I suggest setting a threshold below which it is acceptable to have only one restroom.</p>		
279	<ul style="list-style-type: none"> <li>The proposed SMP places increased restrictions on moorage (23.60.200.B.8): Puget Sound, Lake Washington—8' from OHW. Lake Union and Portage Bay—15' from OHW. This is too restrictive to our ability to moor small boats, thus reducing our ability to generate water-dependent income. I would hope that this regulation could be relaxed, at least so that Lake Union, Portage Bay, Lake Washington, and Puget Sound all have the 8' rule.</li> </ul>		See Comment #258
280	<ul style="list-style-type: none"> <li>Under the proposed SMP, Chemonite-treated lumber will no longer be allowed (23.60.187.B.13). Eliminating this product for use in dock repair will increase the frequency of repairs dramatically. Durable products do not exist as a practical substitute for replacing caps and stringers on existing docks. If operators are forced to use non-treated wood for these repairs, maintenance costs will increase dramatically, and the environmental impact of having to make the same repairs to the same section of dock will unnecessarily increase, as well—not to mention the waste created by using more wood products over time.</li> </ul>	<p>I suggest that Chemonite-treated products continue to be permitted. BMPs employed by the industry make the product resistant to leaching, and the product has been approved by EPA for use in marine environments.</p>	<p>Treated lumber is allowed if necessary see response to Comment #19.</p>
281	<ul style="list-style-type: none"> <li>All marinas (unless under 2,000 of moorage and 100% WDWR) must provide public access (23.60.514). This is problematic on many levels: liability, operations, and logistics, to name a few. I imagine that</li> </ul>		See Comments #101, #114 and #126.

	<p>many of us will have difficulty getting insurance coverage for this stipulation, and smaller marinas simply do not have space for the requirements outlined in 23.60.164. I suggest setting a higher threshold based on the upland characteristics of an individual lot, assessing whether public access is practical on a case-by-case basis.</p>		
282	<ul style="list-style-type: none"> <li>The proposed SMP limits live-aboards to 25% of the marina (23.60.200.E1.b.2.). In addition, we must register with the Department annually and pay a fee “to recover the cost of issuing registration numbers.” This clause makes us subject to fines if we don’t manage this to the satisfaction of the DPD, and subjects us to potential “fee inflation” over time.</li> </ul>		Code revised see response to Comment #49
283	<ul style="list-style-type: none"> <li>Additionally, a live-aboard vessel is defined as a “...vessel that is used as a live-aboard vessel for four or more days in any seven day period.” (23.60.200.E.1.b) However, in the definitions section, it is defined as “...a vessel that is used as a dwelling unit for any period of time.” Live-aboard usage can be difficult to identify and enforce. The potential for additional fees and fines is concerning, and these definitions will be very difficult to observe on a day-to-day basis. Many boat owners might stay on their boats for a few days during one given week. This does not make them live-aboards in the practical sense of the word. I suggest striking both definitions with language based on number of days in a given month, like the</li> </ul>		Code revised see response to Comment #49

	DNR does. This would be much easier to observe and comply with.		
284	<ul style="list-style-type: none"> <li>23.60.724 allowed beach clubs and yacht clubs, but has now been deleted. (Table A, 23.60.502). This further reduces the options for operators trying to comply with Water-related/Water-dependent language, increasing the potential for prolonged vacancies, and endangering economic viability of the operation as a whole. I suggest continuing to allow for conditional approval of yacht clubs.</li> </ul>		Code revised to address concerns. Deleted proposed changes to yacht boat and beach clubs. See Sections 23.60.482 and 23.60.502.
285	<ul style="list-style-type: none"> <li>Existing recreational marinas may not expand (23.60.502.H), including over-water coverage due to "piers, floats, larger vessels, house barges, or floating homes, or additional vessels or house barges. New recreational marinas are prohibited." This is a huge issue in terms of reconfiguration. What if the square foot coverage of water is the same, but many small vessels are replaced by fewer large ones? Is that permitted?</li> </ul>		This provision is deleted. Recreational marinas are an allowed use if they can demonstrate that they will not conflict with industrial users.
286	Further, this language might prevent an operator from having a boat dealer or other water-dependent business as a tenant. Many water-dependent businesses need the option of rafting boats when necessary. Moorage is a fluid thing; this regulation seems overly burdensome to day-to-day operations of marinas, and could make it increasingly difficult to survive financially.		See response to comment #285
287	I am requesting that existing dwelling units, on upland		Code revised to address comment. See Section 23.60.402.

lots in the UG environment be permitted outright as they are in the existing shoreline code (23.60.780. A.) . This will affect only about 5 houses which were all built as residences in 1900-1915 in the only UG Environment in Seattle.

Under the new code, they would be turned into non-conforming uses and non-conforming structures (J13 in table A for section 23.60.402 ). Please note that Part 2, 23.60.122 B1.A. has provisions that are even more strict than the underlying zoning for non-conforming uses.

I could find no support in the Citizen Advisory Committee Report for making existing SF residences on upland lots in UG environments not permitted. Indeed, on page 37 the CAC expressed concern that proposed changes , " appear to create widespread structural and use non-conformities"

Under the existing shoreline regulations, an owner would be governed by underlying zoning which allows these structures to have new dormers and decks and balconies.

Under the new rules, an owner could make no changes to the building exterior that increase bulk in any way as they would be governed by shoreline nonconformities.

I can find no net ecological benefit in making this change.

As a fall back provision if the proposed change must be made, then match your nonconforming

	standards with underlying zoning language as is present in 23.42.106 A which gives homeowners more flexibility.		
288	23.60.027	not well defined	Section rewritten see revised Section 23.60.027
289	23.60.032.D and 23.60.034.B.4	mitigate all adverse effects to ecological functions” misunderstanding	Standard removed see revised sections 23.60.032, 34 and 36.
290	23.60.039	feasible doesn’t include cost analyses/economic component	Feasible is defined by the Department of Ecology. See WAC 173-26.
291	23.60.152.K	Creosote pile repairs	Repair is allowed through “sleeving” and when opportunity to remove creosote piles, DPD is evaluating how mitigation funds could be used to do this.
292	23.60.187.D	slip side repair – people misunderstand this provision need to clarify.	Clarified see revised subsection 23.60.187.D.
293	23.60.188	Hard engineering see comment from Pacific Fisherman	See response to Pacific Fishermen’s comment.
294	23.60.200	The new SMP Completely redefines commercial moorage to be commercial marinas, and thus all commercial moorage will now fall under the rules for marinas. This is not well considered or well thought out. Commercial moorage has very different needs from marinas. More vessel repair and maintenance happens on commercial vessels. Commercial vessels often have crew living aboard, which will conflict with the proposed live aboard rules.	Definition revised to address concerns. See revised definition for Marina, commercial.23.60.926.
295	23.60.214. A	The overly broad definition of dwelling unit and live aboard will directly conflict with commercial vessel operations and their need to have crew stay on the vessel. This needs to be significantly changed to accommodate commercial vessel needs or eliminated	Comment addressed see revised section 23.60.214
296	23.60.900	There are many issues with definitions in the SMP	Definitions revised base on Pacific Fisherman’s suggestions.
297	CW Zone 23.60.300	This zone undergoes a significant change in what are allowed uses, outlawing long term moorage and most vessel repair activities in the CW zones. Most shipyards in Lake Union and the Ship Canal have piers built on their shared property lines with CW zones Street ends and have been using them as part of their working waterfronts for decades. If Seattle is being honest in its stated goal of supporting the marine industry around here, it cannot make this change which will drastically cut into these yard’s ability to continue to function.	Uses allowed in the CW have been revised and include all uses that are currently allowed. See revised Section 23.60.60.310
298	UM Shoreline 23.60.502	Offices uses are not being outright banned in the UM zone in the proposed SMP. This is a change from the current code and does not take into account reasonable and viable maritime related business that should be allowed. These uses include naval architects and engineers, marine insurance companies, naval inspectors, maritime law specialists, and other specialized professional services that support the marine trade industry. I realize that some of these could be allowed via the conditional use process, but that only allows a small percentage of a site to be utilized and	In the existing code office uses are limited and required a conditional use. The proposal in the 1 <sup>st</sup> draft was identical to the existing regulations.  However, based on comments the conditional use approval process has been removed and offices meeting the standards in Section 23.60.502 are allowed.

		takes up to a year or more to complete the conditional use permit process. The realities of leasing a property and securing tenants cannot wait on a 12 month approval process. It simply is not practical.	
299	23.60.504.D	There should be not be separate dredging standards in the SMP. This is more than adequately covered in the DOE, Army Corps, and Fish Wildlife permitting standards. Another level of permitting is not required.	Required by WAC 173-26-231(3)(f)
300	23.60.504.H	Piers, docks and floats should be an allowed use for WR uses as well as WD uses. If WR uses are allowed on sites b/c they have need to have access to the water. That being the case, the facilities that allow that access to the water (piers, docks and floats), should be an allowed use for WR uses without having to go through special use or conditional use process.	Piers, docks and floats are allowed for WR uses that require use of such structures. See revised section 23.60.187 Table A.
301	23.60.504.I	Existing armored bulkheads should be replaceable and maintainable without having to justify their need or existence within the commercial and industrial waterfront areas. This does not represent a loss of ecological function and is critical to maintaining a working waterfront, as is contemplated by the WAC guidelines.	Proposed code allows this, section clarified to clearly include this provision.
302	23.60.510	There should be no required setbacks for WDWR uses. If WR uses are to be allowed on a shoreline property because they have need to access the water, then they have need to be coming and going to the water and the setbacks are unreasonably hindering the very work those businesses need to do and why they are located there.	The setback requirement is for structures and a minimal set back of 15-ft is proposed. This setback is good policy to reduce impacts caused by structures including artificial lights and the need for larger shoreline stabilization structures.
303		Vessels only allowed to be used for "customary" uses while moored. What the heck does this mean and who determines what is customary.	DPD is working to clarify this language.
304	Best Available Scientific Information	Documents referenced are not from studies of Salmon Bay and the documents cited are old some date back to 1931 WAC 365-195-905(2) Criteria for determining which information is the "best available science" states "The department will make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter. Such information should be reviewed for local applicability" Based on our review, there is no information that has local applicability sufficient to reach the conclusions made in the report.	DPD respectfully disagrees with these statements and in fact our Best Available Science was challenged during the update of our Environmentally Critical Areas Code and the Growth Management Hearings Board upheld DPD's conclusions drawn from the BAS document. Additionally, DPD was challenged on a project for our science in regards to requiring mitigation for impacts to the aquatic environment. DPD won the challenge on a summary judgment in which DPD submitted information from our BAS and the rationale that DPD used for requiring mitigation.
305		Furthermore, WAC 365-195-905 (5a) Characteristics of a valid scientific process provides a list of the characteristics expected in a valid scientific process. WE have addressed our concerns below for each characteristic listed in 365-195-905 (5a). 1. Peer Review Section 3-2 of the report states that the lead author was one person from a local consulting company and two employees from the City of Seattle. There was no representative of the maritime industry to who provided peer review	See longer explanation titled Best Available Science response.
306		2. Methods. The apparent method provided was that the documents were "reviewed"... with pertinent information developed in recent years that identifies the effects of urban development on the aquatic habitat and those actions appropriate to protect and restore natural functions to this habitat. No such document(s) listed in the reference for Section 3 Salmon	See longer explanation titled Best Available Science response.

		Bay and the Ship Canal.	
307		3. Logical conclusions and reasonable inferences. Gaps in data are written off as taking too long to gather, as stated in the Purpose & Background section of the report.	See longer explanation titled Best Available Science response.
308		4 Quantitative analysis. There is no discussion regarding the quantitative methods or appropriate statistical data analysis. We believe this is the case since there is very little or no data available for Salmon Bay or the Ship Canal.	See longer explanation titled Best Available Science response.
309		5. Context. Since there is very little or no data, the conclusions drawn in the report are not representative of aquatic habitat in Salmon Bay or the Ship Canal.	See longer explanation titled Best Available Science response.
310		6. References. As previously stated, the majority of the documents references have no direct references to or discussion of Salmon Bay and the Ship Canal	See longer explanation titled Best Available Science response.
311		Based on our review the BAS information is weak to non-existence for Salmon Bay and The Ship Canal. Since This is the basis for policy making by the City of Seattle for the SMP, we believe that many of the conclusions regarding aquatic habitat made in the report are not valid for Salmon Bay and the Ship Canal.	See longer explanation titled Best Available Science response.
312	Part 3. Development Standards 23.60.152.C Are too restrictive for operating businesses that require bulkheads to conduct daily business operations. Barges, ships and other watercraft require bulkheads to load and unload raw materials, products and other materials.	The City of Bellingham SMP has no buffer (0 feet) for vertical features including sheet piling for water oriented uses. The City of Seattle should consider same for our vertical features.	Seattle is proposing a 15-ft building set-back for WD and WR uses in the UI and UM shoreline environment. This provision will prevent future stability issues and the potential need for larger bulkheads which in turn will trigger additional mitigation.
313	SAMP – Habitat Credits & Mitigation Alternative Selection using Disproportionate Cost Analysis	The City should evaluate the economic incentives of the purchase and sale of habitat credits for mitigation banking. Mitigation credits for projects conducted in Salmon Bay and the Ship Canal may be better suited for mitigation in other parts of the city. Cost should be an important consideration for the determination of mitigation projects. We request that DPD consider using Disproportionate Cost Analysis (DCA) when considering mitigation alternatives, where costs are disproportionate to benefits if the incremental costs of an alternative exceed the incremental degree of benefit achieved.	Due to limitation of staff time, DPD proposes to do this after the SMP is adopted. DPD will seek public input on this process.
314	Dredging and Fill 23.60.182 and 23.60.184	Standards for dredging and fill should be deleted. Dredging and fill are already highly regulated by the Corps of Engineers, WA State Department of Ecology, and other agencies. Dredging and Fill rules promulgated by the City are over-reaching and unnecessary.	WAC requirement 173-26-231 DPD is required to include this see response to comments #199 and #200.
315	Previous Planning Effort We are concerned that the proposed SMP has direct conflict with the City of Seattle Comprehensive Plan to preserve		One of the goals of the SMP is to provide for preferred uses and WD industrial uses are a preferred. All WD industrial uses are an allowed use on waterfront lots in the UI and UM shoreline environments. BINMIC is not specifically mentioned because the UI and UM

	<p>industrial uses, especially those that rely on the shoreline and are water-dependent. Further[ ]more, there is no discussion of the Ballard Interbay Northend Manufacturing and Industrial Center Plan (BINMIC Plan), which was completed as a requirement of the GMA and the City of Seattle Neighborhood Planning to retain and attract employment in Seattle. The BINMIC Plan is available on the City of Seattle Department of Neighborhood webpage.</p>		<p>environments are the shoreline environments where BINMIC occurs; therefore the purpose and management policies of the UI and UM environments align with the Comprehensive Plan and the direction and effort to preserve industrial lands for maritime industrial uses.</p>
316	<p>Recommend to DPD to form an industry advisory committee that meets on a regular basis with DPD staff to work through in detail the SMP, to ensure that protection of the environment does not lead to economic loss.</p>		<p>DPD had a Citizen Advisory Committee that met for 13 months and discussed the requirements of the Department of Ecology's WAC guidelines. Present on this committee were industrial and commercial interests including the Port, Todds Shipyard, Salmon Bay Marine Center, Fergusson Terminal, the Longshoreman's Union, and Martin Nelson.</p>
317	<p>We are concerned about the provisions of the draft Seattle Shoreline Master Program (SMP) distributed February 8 in regard to live-aboard marinas, particularly the limit of liveaboard slips to 25% of total moorage slips and associated registration requirements.</p> <p>Live-aboard Moorage Regulation We have had a vibrant live-aboard community for 36 years using about 35% of our slips for live-aboard purposes without any known environmental degradation. Over the years, we developed a self-imposed live-aboard limit based on the capacities of our shoreside facilities, rather than a random arbitrary number. While a percentage limit is desirable due to WAC 332-30-171 and is</p>	<p>The SMA requires protections for shoreline natural resources to ensure no net loss of environmental function. We believe that live-aboard regulations requiring toilet facilities, sewage waste disposal facilities for boats, and shower facilities connected to a sanitary sewer are appropriate to carry out the policy goals the Shoreline Management Act (SMA) has set for SMPs. A limit that reduces the number of long-established live-aboard uses goes well beyond the goal of "no net loss", however.</p> <p>Draft SMP regulations do not conform to proposed Shoreline Comprehensive Plan Goals.</p> <p>Proposed goal LU235 reads: "Allow live-aboards on vessels in moorage areas and provide standards that mitigate the impacts of live-aboard uses on the shoreline environment" (emphasis added). We believe this is an appropriate goal, and that standards mitigating any impacts of liveaboard uses are appropriate. A percentage limitation on existing live-aboard slips is not "a standard mitigating impacts", bu[tr] rather a flat out limitation on existing live-aboard uses.</p>	<p>Live-aboard regulations revised see Sections 23.60.200 and 23.60.214.</p>

	appropriate to regulate new uses, we believe the grandfather provisions should apply to moorage slips rather than to particular vessels. The SMP is a land-use ordinance that should not have its applicability changed when a vessel is moved, rather than when a residential use is abandoned.		
318	<p>Additionally, we find the annual registration and fee requirement for live-aboard use to be unnecessarily burdensome. This is equivalent to requiring apartment building owners to register their apartments and pay a fee annually. If live-aboard uses are limited at a facility, they should be limited in the same manner as the number of living units are limited in an apartment complex – by designation or one-time registration only.</p> <p>We respectfully request the grandfathering of existing moorage slips used for liveaboard purposes, and the removal of the annual registration and fee imposed on live-aboard uses, from the draft Seattle Shoreline Master Program.</p>		Live-aboard regulations revised see Sections 23.60.200 and 23.60.214.
319	<p>Impractical Mitigation Standards</p> <p>Proposed SMC 23.60.162(E) requires that additional parking or reconfigured parking “remove to the maximum extent feasible contaminants from surface water runoff” (emphasis added). The standard of “to the extent feasible” as defined in proposed SMC 23.60.039 does not allow for considerations of cost or practicality. This standard</p>	<p>We request that the standard for filtration of water runoff from parking facilities be changed to “remove to the extent reasonable...” Preferably, any standard for filtration of water runoff from parking areas in shoreline districts should be no more stringent than that applied to any other parking facility in the city whose surface waters run directly to bodies of water; they both have the same effect on the marine environment.</p>	Feasible is a term used when applying mitigation sequencing and mitigation sequencing is required for all development within the shoreline environment. Therefore, this is the appropriate term for this standard. The City’s stormwater coded provides guidance on what is considered feasible in treating stormwater.

	<p>would require extremely expensive active filtering systems utilizing large tanks and pumped filtration similar to that used in boatyards to remove pollutants (often resulting in water with less copper content than Seattle tap water!). By contrast the standard of “reasonable” as set forth in proposed SMC 23.60.040 allows the consideration of costs and alternatives.</p>		
320	<p>Similarly, under proposed SMC 23.60.152, light transmitting features are required to be installed for all replaced piers, floats and similar structures to the maximum extent feasible. Under the “to the extent feasible” standard, our heavy cargo handling wharves would be required to be replaced with light transmitting material irrespective of cost or practicality, which would make their replacement prohibitive. Likewise, our floating docks, which contain utility chases in the center section, would need to have these utility chases constructed out of light transmitting material – an impractical requirement.</p> <p>This standard would prohibit the replacement of our floating concrete docks with the same. These are narrow docks for which floatation consumes the entire surface area of the dock. Grating the deck of these narrow floats would accomplish no light transmission purpose whatsoever, and anything spilled on the float (a not infrequent experience) would immediately fall into and pollute the water rather than pooling on the surface</p>	<p>We request that the standard for light transmission in piers, floats and similar structures be changed to “the extent reasonable.” In a related provision, proposed SMC 23.60.200 would require marina piers and floats to be “grated to the maximum extent feasible taking into account the structural and use requirements of the pier...” It is difficult to understand what the qualifier – “taking into account the structural and use requirements of the pier” – means when the standard is one of feasibility (i.e., can be accomplished without regard to cost or practicality).</p> <p>We respectfully request that the requirement for grating marina floats be removed in order to prevent increased pollution. If the requirement is not removed, the standard should at least be changed to, “marina piers and floats shall be grated to the maximum extent reasonable taking into account the structural and use requirements of the pier or float.”</p>	<p>Standards have been revised to address the comment. Solid decking will be allowed based on the new standards. See Section 23.60.187.C.5.</p>

	for clean up.		
321	23.60.182 Dredging requirements	Dredging is already regulated by State and Federal agencies; stormwater, shoreline stabilization  The draft SMP should be amended to remove City review of issues already subject to State or Federal review and/or approval. The City's roll should be to require that	See response to comments #199 and #200
322	23.60.032 and 23.60.034 and 23.60. 036	The SMP contains inappropriate mitigation requirements that are not consistent with state law and regional practice This standard is not achievable and goes beyond the required no net loss of ecological functions.	Language clarified, See revised Sections 23.60.032, 23.60.034, 23.60.036.
323	23.60.158 Mitigation requirements	Review clarify and simplify the Seattle SMP so that the City's role is to confirm that work is consistent with regulatory standards in Puget Sound as applied by State and Federal agencies	WAC requirement see WAC 173-26-201(2)(e)
324	Water-Dependent use definition	Definition of water dependent use on an individual structure basis is completely inappropriate  The SMP needs to provide facility owners w/flexibility to improve and/or configure water dependent facilities w/out having to be second guessed by City planners	The language is to clarify what water-dependent uses are allowed overwater. An office and warehouse use may be accessory to a water-dependent use but is not an appropriate use over water. Accessory offices and warehouses are allowed on the dry land of waterfront lots. The water-related definition allows for accessory offices and for warehouse uses .
325		The SMP should include a category for "water-dependent facility" over which the 20% rule does not apply unless the essential use of the entire facility is changed.	The City is required to meet the Shoreline Master Program Guidelines (WAC 173-26), which require that waterfront lots be used by the preferred water-dependent and water-related uses. The City is meeting this obligation by limiting the use by uses that are not water-dependent or water-related on waterfront lots. The suggested proposal does not provide the specificity on how it would meet the WAC requirements.
326		As a subset of this issue, the SMP must include zoning provision that allows "water-dependent facilities" to provide temporary housing for essential ship's crew that need to be housed near a vessel for security and firefighting purposes. There are occasions when a vessel is undergoing repair and crew cannot be housed onboard, and yet they must be close to the vessel. In one case last year, it took our shipyard four months to get a zoning waiver from the City to accommodate US Navy personnel in the shipyard. The circumstances could apply to tug boat and other vessel crews as well.	This is and would be considered an accessory use and would be allowed as such.
327		Shoreline stabilization too focused on protecting structures not facilities	See regulations for replacement of existing hard shoreline stabilization, which is allowed for water-dependent uses. Additionally, the provision that is sited includes uses not just structures for new shoreline stabilization. This provision does not pertain to water-dependent uses, which maintenance, repair and replacement of hard shoreline stabilization is allowed see 23.60.198.E
328	23.60.486  Height restriction is unnecessary	Along much of the UI shoreline there are no views. Adding height restrictions above and beyond existing zoning rules is redundant and unnecessary. Increasing the height restriction to 100' to 120' could be	Height is required to be regulated see RCW 90.58.320.

		<p>beneficial as it could allow some industrial users to construct enclosed operations which would still accommodate the water dependent use. This would be an environmentally favorable outcome as it could move certain industrial activities indoors.</p> <p>The SMP should either remain silent on the issue height restrictions or allow for greater than 80' along the UI waterfront.</p>	
329		<p>Additional restrictions on legally non-conforming structures do not improve environmental outcomes.</p>	<p>In land use planning nonconforming structures have impacts, as determined by the regulations.</p>