



December 19, 2011

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

Re: Seattle Shoreline Master Program Update

Dear Ms. Sugimura:

Thank you for the second opportunity to comment on the City of Seattle's proposed update to its Shoreline Master Program. CalPortland's manufacturing and industrial operations in the Duwamish Manufacturing Industrial Center depend on a shoreline location in order to supply aggregate and concrete to Seattle and surrounding communities, and cement to the Pacific Northwest.

More than 50% of the material we produce is for public infrastructure projects and nearly all the building materials we provide to the Seattle market arrives on the water eliminating hundreds of thousands of truck trips every year. The building materials CalPortland provides and the water facilities our company and customers operate provide are essential components the City needs to achieve goals ranging from storm and wastewater management to mass transit, walkable communities and build sustainable buildings and other structures.

We carefully reviewed the earlier proposed Seattle Shoreline Master Program (SSMP) and incorporated careful analysis into several detailed comments with the help of a prominent local land use attorney. We have carefully reviewed the second draft, but regrettably, I simply do not have the time and resources to prepare a second similarly detailed analysis and comment letter. For that reason, I am providing general

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comments on the second draft in this letter and have attached an updated matrix of comments included with our previous letter indicating concerns that are addressed in the proposed SMP, the areas where we request additional changes and our comments on the first draft are not addressed in the recent draft. Because a majority of our comments resulted in no change to the second draft without explanation, we respectfully request that the City reconsider our comments presented in the matrix with the comments in this letter.

The over arching concern expressed in our first letter remains that the proposed SMP is not consistent the goals of Shoreline Management Act, the Growth Management Act and the City's Comprehensive Plan to foster water dependent use and preserve industrial lands for industrial uses. The proposed SMP erodes protections provided to industrial and water dependent land uses by increasing the regulatory burden associated with building and maintaining the facilities they depend upon. The proposed SMP make some of the existing structures and uses land owners and operators depend upon non-conforming reducing their value and restricting the ability of existing operations to modify, adapt and innovate. These restrictions are imposed in an effort to improve habitat conditions and speed ecological recovery but fail to consider they ways these improvements are intertwined with the financial incentives the lead to redevelopment and improvement of shoreline properties.

While most comments focus on technical program requirements and details related to legal questions, consideration of the relationship between financial incentive and ecological priorities is key to the ultimate success of the proposed SMP.

The notion that establishing additional regulator authority and ratcheting down regulatory requirements compel actions that preserve and promote ecological recovery warrants careful examination. While regulatory programs are an effective tool for accomplish several ecological goals, it is important to recognize as the actions required to achieve ecological goals become more complex and difficult to define, the burden of regulatory compliance increases discouraging the financial investment needed to implement the actions required to achieve ecological goals.

Projects along our shores already bear a considerable regulatory burden. Even projects purely for the enhancement of fish habitat such as stream restoration and culvert replacement projects can take a year or more to permit and the cost of the regulatory process is a considerable part of any project budget. Extensive regulatory review puts a considerable financial burden on public and private projects in the region. Much of this burden stems from the listing of threatened and endangered species and their habitat along our shorelines. The potential economic, ecological and cultural benefits make improving habitat conditions and promoting ecological recovery both an ecological and an economic priority. Regulatory oversight has a necessary and important roll in achieving these priorities, and is most effective when it is judiciously and efficiently applied.

The proposed SMP clearly recognizes the importance of habitat protection and restoration to ecological recovery, but fails to appreciate the extent ecological and economic priorities are intertwined. As evidence of the interdependence between economic incentive and ecological recovery, please consider the following observations.

### **Habitat Conditions Improve with Industrial Property Investment**

Over the past ten years nearly all of the substantial improvements in habitat conditions on water front property CalPortland owns or operates were part of a project intended to repair, maintain or improve the value of existing facilities through improvements in efficiency, safety or profitability.

These habitat improvements differ from project to project but include,

- removal of creosote treated timber structures,
- net reductions in over water coverage,
- revegetation of near shore areas,
- improvements in storm water and process water management,
- removal and capping of contaminated sediments
- improvement in operations to eliminate spillage of aggregate reducing the frequency of maintenance dredging
- improvement of containment and treatment systems for storm water and process water.
- Installation of wheel wash systems and other equipment to reduce track out, improving storm water and air quality.

While some of these improvements may not have occurred in the absence of regulatory requirements it is certain that none of these improvements would have occurred without the financial commitment the Company made to conduct the project. Without the economic incentive to conduct these projects, these habitat benefits are not realized. By encouraging appropriate shoreline uses and attracting the investment in the activities and structures that support them the SMP can create more opportunities to improve habitat conditions along our shores.

### **The SMP and Incentive**

Companies considering a new location or planning to make capital investments in operations within different jurisdictions choose where they invest limited capital resources and have a fiduciary responsibility to their owners to invest where they can get a reasonable return on investment. While attracting investment may not be a resounding battle cry for ecological recovery, it is the realistic and effective approach needed to get actual improvements needed on the ground.

In an effort to preserve ecological function and encourage habitat restoration the revised SMP should balance the regulatory control with impact of the following elements on the value of a project and financial incentive for investment.

- **Timing** – The time between project conception and completion has substantial impact on the value of a project. The time required to review and approve permits under the current SMP is difficult to predict and it is not uncommon for the process to take two or three years. An investor needs to consider the cost of tying financial resources to the proposed project for an extended period of time during which market conditions, and permit conditions like the addition of endangered species or critical habitat could change and make the project infeasible. Additional requirements in the proposed SMP are likely to increase project review time and further discourage investment. Changes to the proposed SMP that shorten project review time have the potential to increase opportunities to improve habitat conditions by attracting investment that redevelop and improve structures and practices on the City's shore.
- **Uncertainty** – Uncertainty with regard timing, cost, future requirements or probability of completion is significant disincentive to investment. The fact that few projects proposed are actually denied permits demonstrates what a powerful disincentive uncertainty is. Many projects are scrapped before an application is prepared based on conversations with attorneys, consultants and regulators. A smart project proponent is not going to invest time, money and resources in project when they are not confident that the permitted project will meet their objectives. The proposed SMP includes conflicting sections, ambiguous requirements and does not present the information a project proponent needs to evaluate the consistency of a potential project with the program requirements. Experience would be an unreliable guide for predicting future outcomes of the permit process because the proposed SMP is a substantial revision of the existing rule. The updated SMP should be a resource project proponents can use to reliably evaluate a prospective project and have confidence in their understanding of the permit process and its potential impact on the project as well as those areas in the program where uncertainty is unavoidable and flexibility allows for innovative and adaptive adjustment.
- **Cost** – All the costs of the permit process including fees to consultants, reimbursement of City's cost for regulatory review and the Cost related to the time-value of money incurred until a project is operational are cumulative, reducing the value and incentive to invest in the project. It is common small waterfront projects in Seattle to cost more to permit than they do to construct. The SMP should avoid requiring extraneous analysis and duplicative prescriptive requirements that do not provide valuable information for decision making or advance the goals of the SMP. The SMP should recognize that attracting investment is a necessary part of managing and improving or shoreline property to advance the goals of the City, and

that avoiding unnecessary costs encourages the investment needed to manage these properties.

- **Compensatory Mitigation** – Compensatory mitigation is a disincentive to project investment due to cost and potential constraints and obligations it often places on the property and operations. The proposed SMP would increase cost related to mitigation and compound it with uncertainty related to a mandatory mitigation and measurement program (23.60.027) and standards from mitigation sequencing (23.60.158) that are not presented in the proposed SMP update and do not appear to be consistent with other state and federal programs having jurisdiction in the area. The proposed SMP appears to require mitigation over and above what might be required by other regulatory programs, and potentially requires ecological restoration activities as compensatory mitigation for nonconforming use over water or in the shoreline setback (23.60.122 D.2) that are not directly related to ecological impacts.

Intensifying stringent requirements for compensatory mitigation compels landowners and operators to avoid making habitat improvements in order to preserve potential mitigation opportunities need to obtain needed permits in the future. Requiring compensatory mitigation beyond what is required to mitigate ecological impacts further reinforces the landowners incentive to retain and maintain every potential mitigation opportunity and avoid taking voluntarily taking action that would improve habitat conditions. Mitigation can be a profoundly expensive part of a project especially if it needs to be satisfied by off-site or out-of-kind.

The SMP should encourage the City and stakeholders to work with other agencies and programs to develop a program that generously rewards land owners and operators who improve habitat conditions on their property. Current habitat mitigation banking programs typically require perpetual conservation easements or otherwise encumber property tying up future use of the property reducing its usable value to the owner. A program that provides generous incentives for habitat mitigation without significant restrictions or penalties on the property owner, could encourage private investment in habitat improvements that provide real and important long-term ecological benefits even if they are not in place for ever.

The flexibility of an in-lieu-fee mitigation option is a welcome concept but it is certainly not what is described in the preceding paragraph. Based on the limited information in the SMP, it appears to be a way for project proponents to provide additional mitigation requirements imposed under the proposed SMP over and above the mitigation required by state and federal agency requirements. The ecological mitigation and measuring program (23.060.027) defers development of procedures for determining habitat units used to establish mitigation requirements

and in-lieu-fee mitigation payments to future Director's Rule implementation. The methods for determining and satisfying mitigation obligations are essential components of the SMP. Without including these elements full consideration of the proposed SMP and the potential ramifications of its implementation on the feasibility of any given project or property is impossible. The alternative mitigation approach should have federal approval, be optional and fully defined and included in the SMP public review process. Please do not adopted mitigation measurement or mitigation programs through Director's Rule.

- **Property Restrictions** – Prescriptive restrictions on property development such as making conforming structures and uses non-conforming restrict their capacity to adapt to market needs and the needs of the facilities they support. Limiting the depth of dredging prevents the ability of the property to accommodate larger ships and may prevent that facility from participating in a market or realizing important transportation efficiencies. These restrictions reduce the value of the property to the owner discouraging future investment in a questionable trade off for ecological benefits that are better considered on a project-by-project basis against the standards for habitat protection and improvement that should clearly articulated in regulatory guidance documents.

### **The proposed SMP Discourages Small Business**

The cumulative affect of the proposed SMP on the elements described above impact small businesses that are not able to spread their investment risk over a boarder portfolio of investments and properties like larger companies. The proposed SMP reduces property values by restricting established uses and re-designating established structures as non-conforming and could have a substantial impact on the value of a small business limiting access credit they could use to finance future investment in their property. Because they cannot access the capitol needed to invest in property improvements, these improvements may be deferred, maintenance of existing facilities may be deferred allowing the structures to deteriorate and value of the property to decline.

### **The proposed SMP rewards non-compliance**

The proposed SMP includes numerous provisions and requirements and programs that would be difficult for business and property owners to comply with and difficult for the agency to monitor and enforce. If provisions in the SMP are un enforced or not enforced equally, those who comply bear the burden of compliance that their competitors may not share. For example the, the ability of the City to enforce 23.60.062 requiring a shoreline exemption for any shoreline modification, use is a considerable burden of time and expense to land owners and operators that would require considerable City resources to monitor and enforce. The concern in this example could be resolved by revising this section to define categorical exemptions and only require shoreline exemptions when a determination

of exempt status is required for review by other regulatory agencies, or the landowner request confirmation of the projects exempt status.

Another example is the Standards for vegetation and impervious surface management (2.60.190). This section includes four and a half pages of provisions limiting how many square feet of vegetation can be replaced, what size trees can and cannot be removed depending on whether they are native or non-native both within and outside the shoreline setback. This section includes extremely detailed provisions regarding the maintenance and management of vegetation that would require a considerable investment of resources for the agency to enforce and will require a considerable investment of time, energy and resources for the landowner and operator to obtain required permits, prepare and update required plans. The City should remove the unenforcable provisions in this section and fold them into an incentive based program that encourages and rewards of the landowners and operators who improve the presence of native vegetation.

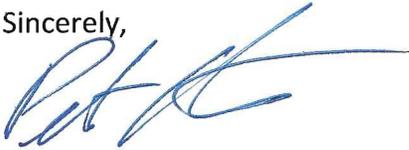
### **Implementation will demand additional City Resources**

The City of Seattle should consider the impact of the proposed SMP on City Resources Requirements of the proposed SMP that are not well defined are open to a range of interpretations that is likely to make it difficult to apply consistently. Unclear criteria make regulatory decisions difficult to make defend and enforce. The proposed SMP includes new programs including an ecological monitoring and mitigation program that is not consistent with established mitigation programs. The regulatory program in the proposed SMP ventures outside the established programs and processes that are established or developed by other local jurisdictions. Additional resources may be required to implement the proposed program in Seattle if the City is not benefit from the investment and experience shared between other local jurisdictions.

Because the proposed SMP does not address many comments we provided on the earlier draft, we request the opportunity to review and comment on a third draft of the SMP. We also ask that the ecological mitigation and measuring program be incorporated into the process and future revisions of the SMP. A draft of the required Restoration Plan should also be released so that it can inform future comments and revisions to the SMP.

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

Sincerely,



Pete Stoltz  
Manager – Permitting and Government Affairs  
CalPortland

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

SEATTLE SHORELINE MASTER PROGRAM UPDATE DRAFT #1		
SUBCHAPTER I: PURPOSE AND POLICIES		
Code Section	Analysis and Requested Changes	Draft #2 Changes
23.60.002 <ul style="list-style-type: none"> <li>regulates shoreline developments and “shoreline modifications”</li> </ul>	<p><b>Analysis:</b> 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>	No change.
<ul style="list-style-type: none"> <li>“protect and <i>restore</i>”</li> </ul>	<p><b>Analysis:</b> 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</p>	<p>Removed “restore” but added new Shoreline Restoration and Enhancement Program to SSMP.</p> <p>Restoration and enhancement appears to be required under mitigation sequencing, where compensation for impacts is required, and is defined as revegetation, removing intrusive shoreline structures, removing or treating toxic materials, or similar actions to restore impaired shoreline ecological processes or functions by reestablishing them or upgrading them. Restoration and enhancement does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement. Draft at 23.60.934.</p> <p>A “Restoration and Enhancement Plan”</p>

	<p>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><b>Request:</b> The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to prefer water dependent and water related industry over protection and restoration. We support the Port’s proposed language to reserve “appropriate areas” for restoration. The UI is not an appropriate area.</p>	<p>means the plan that is adopted by Resolution (add resolution #) on the same day as the ordinance approving this chapter is adopted. Draft at 23.60.934.</p>
<p>23.60.004</p> <ul style="list-style-type: none"> <li>• adds lands “adjacent to” the shoreline</li> </ul>	<p><b>Analysis:</b> 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><b>Request:</b> The SSMP regulations pertaining to the UI environment in the Duwamish should be reviewed and refined to foster retention and expansion of water dependent and water</p>	<p>No change. City says authority for “adjacent” is in statue at 90.58.340 and that they are simply repeating state requirements.</p>

	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.	
<b>SUBCHAPTER II ADMINISTRATION PART 1 APPLICABILITY</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
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.	No change.
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.
23.60.020 exempt actions and shoreline modifications must still comply with Act even if not a substantial development see also 23.60.062	<b>Analysis:</b> 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)  <b>Request:</b> 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.	No change.
23.60.020 C.	<b>Clarify:</b> Is the new term “act of nature” intended to include	“Acts of nature” deleted; the word

<p>The exemptions include normal maintenance or report of existing structures or developments, including damage by accident, fire or acts of nature; the word “elements” has been deleted and replaced with the new phrase “act of nature”</p>	<p>normal weathering? If not, it should be. It should not just be for extraordinary acts of nature, like earthquakes.</p>	<p>“elements” restored.</p>
<p>23.60.027 A. Allows Director to create Ecological restoration and mitigation program; B. payment in lieu option allowed</p>	<p><b>Analysis:</b> 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><b>Request:</b> 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>Section not revised to vary by zone as requested. Added explanation that the “Program” is to be used to measure the impacts of development.</p> <p>Unclear what the relationship is between the Ecological Mitigation and Measuring Program; Shoreline Habitat Unit and Mitigation Program; and the Shoreline Restoration and Enhancement Plan.</p>
<p><b>PART 2: CRITERIA FOR APPLICATION REVIEW</b></p>		
<p><b>Code Section</b></p>	<p><b>Analysis and Requested Changes</b></p>	
<p>Overview of Impact to Industrial Uses</p>	<p><b>Analysis:</b> 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 <b>no longer permitted outright in the UI</b> environment. Thus, the uses may technically become nonconforming uses and any expansions will trigger the new permit requirements and</p>	

	<p>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><b>Request:</b> The use table needs to be substantially re-written to prefer WD and WR industrial, commercial and manufacturing uses, and allow such uses outright. The use that requires a special use or conditional use should be rare; where required, the criteria need to be revised to make them achievable, otherwise it amounts to preclusion of the use.</p>	
<p>23.60.032 <b>Special Use</b> criteria          Uses identified as requiring special use approval may be approved, conditioned, denied if an applicant has demonstrated all of the criteria:          ...          D. use can mitigate <i>all</i> adverse effects to ecological functions...”          E. the public interest suffers no substantial detrimental effect</p>	<p><b>Analysis:</b></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, but the</li> </ul>	<p>Use table updated to clarify that most industrial and commercial uses allowed outright if WD or WR. Non WD/WR uses allowed up to 20% of dry land portion of lot. See below for more on Use Chart.</p> <p>Deleted requirement in D. to mitigate all adverse effects to ecological functions. Added requirement that <i>no net loss</i> to ecological function must be achieved.</p>

	<p>conditional use category has the “no <u>significant</u> adverse effects” language).</p> <p><b>Request:</b></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>	
<p>23.60.034 <b>Shoreline conditional uses</b> 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><b>Analysis:</b> W/R heavy manufacturing is allowed as a shoreline conditional use (Note cement terminals are considered WR under the definitions.)</p> <p><b>Request:</b> See above comment for special uses.</p>	<p>W/R heavy manufacturing now permitted outright.</p> <p>Deleted requirement to mitigate all adverse effects to ecological functions. Added requirement that no net loss to ecological function must be achieved.</p>
<p>23.60.036 <b>Variances</b> 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><b>Analysis:</b> 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</p>	<p>Deleted requirement to mitigate all adverse effects to ecological functions. Added requirement that no net loss to ecological function must be achieved.</p>

	<p>of the variance under the Act is to allow for flexibility in unforeseen situations.</p> <p><b>Request:</b> The criteria should be deleted; the section already requires conformance with the WDOE WAC on variances. Additional criteria are not warranted and will only create confusion. If any new criteria are added, they should provide more flexibility for WD and WR uses in the UI environment.</p>	
<p>23.60.039 If the regulations require that an action be feasible, such as a project, mitigation or preservation requirement, then the applicant shall demonstrate the following standards are met:</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> <li>3. the action does not physically preclude achieving the project’s primary intended legal use</li> </ol> <p>Criteria for feasible/infeasible actions</p>	<p><b>Analysis:</b> 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><b>Request:</b> 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>Section .039 deleted. Feasible/infeasible moved to definition section. Cost to applicant now a factor for determination of feasible.</p> <p>Section .040 deleted. Reasonable also moved to definitions section. .040.A still refers to “least impact.”</p>

23.60.040 Criteria for determination of reasonableness A....least impact to ecological function B. ...lowest level of impacts to the ecological function		
<b>PART 3 PROCEDURES</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
23.60.066 requires WD component or phase and public access must be done by final inspection		No change.
23.60.066 Plan shoreline permits allowed, but just for utilities	<b>Analysis:</b> The SSMP proposal contains very limited opportunities for early shoreline permitting.  <b>Request:</b> 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.	No change.
<b>SUBCHAPTER III GENERAL PROVISIONS</b>		
<b>PART 1 USE STANDARDS</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
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	<b>Analysis:</b> 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	Minor changes. Subsection C reworded.

<p>CCU and is</p> <ol style="list-style-type: none"> <li>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</li> <li>2. rail, rail transit, street and bridges, tunnels...</li> <li>3. allowed, allowed as a special use, conditional use or CCU overwater in specific use regulations....</li> </ol>	<p>requirement for special use, shoreline cond. use or CCU appears twice)</p> <p><b>Request:</b> Criteria #3 should at least add the words “or shoreline environment.”</p>	
<p>23.60.092 allows temporary uses of 4 weeks, up to six months with Director approval</p>		
<b>PART 2 NONCONFORMING USES AND STRUCTURES</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
<p>23.60.122 Nonconforming uses b. deletes renovations from what is allowed</p>	<p><b>Analysis.</b> 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</p>	<p>No change.</p>

	<p>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.</p> <p>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><b>Request:</b> Revise the use tables to allow industrial uses outright. Add renovation back into the section. Make sure the new development standards do not create nonconformities for existing industrial uses. New standards should only apply to “new” development.</p>	
<p>23.60.124 Nonconforming structures</p> <p>D. Maintenance and Repair—</p> <p>1. total footprint may not increase</p> <p>3. portions of existing principal structures on dry land may be reconfigured as part of a repair if</p> <p style="padding-left: 40px;">b. views from neighboring residences are not affected</p>	<p><b>Analysis:</b> 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><b>Request:</b> Delete the reference to residential views, at a minimum, for uses in the UI Duwamish area. Revise the criteria to provide more flexibility as needed for industry in the UI area.</p>	<p>Section D.1. – maintenance and repair removed from list of permitted alterations; otherwise no change.</p> <p>Section D.3 – reconfiguration of nonconforming structure limited to portions of a principal structures. Clarify that portions of nonconforming accessory structures may also be reconfigured. Reference to residential views not changed.</p>
<p>H. The Director shall require compliance with 23.60.152</p>	<p><b>Analysis:</b> This section could be a significant obstacle to maintaining nonconforming uses. It does not appear to</p>	<p>No change.</p>

<p>(general standards, minimize impacts, etc) if a nonconforming structure is substantially improved, replaced or rebuilt under this section, if the Director finds that continued nonconformity will cause adverse impacts; if an impact cannot be mitigated, the application shall be denied with some exceptions</p>	<p>provide any flexibility for WD/WR industries.</p> <p><b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	
<p>I. Nonconforming structures destroyed by fire, act of nature may be rebuilt only if conditions are met  1.a same or smaller configuration  1.b. reconfigured to result in reduced impacts on ecological functions</p>	<p><b>Analysis:</b> 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><b>Request:</b> Clarify and rewrite this section to allow more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	<p>No change.</p>
<p><b>PART 3 DEVELOPMENT STANDARDS</b></p>		
<p><b>Code Section</b></p>	<p><b>Analysis and Requested Changes</b></p>	
<p>23.60.152 General Development standards  B. all shoreline development shall be located designed, constructed and managed to first avoid and second to minimize adverse impacts...  C. prevent shoreline stabilization  D. minimize adverse impacts</p>	<p><b>Analysis:</b> 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</li> </ul>	<p>No change to Section B. Minor changes to sections G to T.</p> <p>J. Arsenic removed from list of prohibited substances.</p> <p>K. Creosote piles allowed to be repaired under certain circumstances.</p> <p>L. Included reference to subsection that</p>

<p>E. manage shoreline uses to protect the public health and safety</p> <p>F. minimize land clearance</p> <p>I. all in and over water structures shall be designed, located and managed to keep adverse impacts on habitat to a minimum</p> <p>J. requires nontoxic treatments consistent with AWPA</p> <p>K. requires creosote pilings replaced</p> <p>L. light transmitting to be controlled to maximum extent feasible</p> <p>S. regulates water related uses on waterfront lots</p>	<p>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</p> <ul style="list-style-type: none"> <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, 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</li> </ul> <p><b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish. WR and WD uses both should have priority; convene a technical working group to make sure these standards fit the real world Duwamish MIC.</p>	<p>includes standards for when light transmitting features are required for docks and piers.</p>
<p>23.60.156</p> <p>ECA incorporated by reference; if there are any conflicts, the more protective applies</p>	<p><b>Analysis:</b> the Port had asked for and obtained ECA amendments for developed areas; these should be incorporated into the SSMP.</p> <p><b>Request:</b> The two sets of regulations should be made internally and externally consistent.</p>	<p>No change.</p>
<p>23.60.158 <b>Mitigation</b></p>	<p><b>Analysis:</b> No preference given for Water-dependent uses in</p>	<p>Shoreline mitigation clarified to</p>

<p><b>sequencing</b>; means the steps required to achieve no net loss of ecological functions</p>	<p>Table A; compare Essential Public Facilities.</p> <p><b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	<p>indicate that mitigation is required for new shoreline development and to compensate for loss of ecological function.</p>
<p>23.60.160 Establishes priority habitat prohibits structures from intruding into or over priority saltwater habitats unless conditions are demonstrated by the applicant and those include: a. public need; b. not possible to avoid; c. state interest in resource protection and species recovery</p>	<p><b>Analysis.</b> 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><b>Request:</b> 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>Added “as determined by the Director” for hypopheric zones. Zones to be mapped after adoption of regulations.</p> <p>As written, determination criteria is not defined enough.</p>
<p>23.60.164(I)(3) Public Access  requires public access; may seek exception from Director; must show some hazard or inherent security issue</p> <p>23.60.170 View Corridors</p>	<p><b>Analysis:</b> 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><b>Request:</b> 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> </ul>	<p>No change.</p>

	<ul style="list-style-type: none"> <li>At a minimum, the public access and view corridor requirements must be N/A (not applicable) in the Duwamish MIC.</li> </ul>	
<b>PART 4 STANDARDS APPLICABLE TO SHORELINE MODIFICATIONS</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
23.60.182 Standards for Dredging	Industry should review in detail with City staff or a working group.	Part 4, Shoreline Modifications updated to provide chart with use provisions per zone. Deleted shoreline modifications development standards from each zone.  Dredging necessary for a water-dependent use is a special use. Maintenance dredging to previously established depths no longer an exempt action - now a special use.
23.60.184 Standards for fill	Industry should review in detail with City staff or a working group.	Fill necessary to support a water dependent use a conditional use.
23.60.186 Standards for grading, landfill and slope stabilization	Industry should review in detail with City staff or a working group.	Generally permitted outright if accessory to permitted use.
23.60.187 Standards for Piers and overwater structures C. Nonresidential development 1. piers and floats allowed if applicant demonstrates they	Industry should review in detail with City staff or a working group.	Updated to address Port comments.

<p>are necessary to accommodate boat repair or off-loading of goods</p> <p>2. covered moorage prohibited; over water work sheds allowed in UI if accessory to legitimate vessel repair and light permeability retained to extent feasible</p>		
<p>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</p> <p>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</p>	<p>Industry should review in detail with City staff or a working group.</p>	<p>Updated to address Port comments. Standard in D. meant to regulate non-commercial slip-side maintenance.</p>
<p>23.60.188 Shoreline Stabilization</p> <p>D. new hard engineering is prohibited unless geotech report shows all of criteria are conclusively met</p>	<p>Industry should review in detail with City staff or a working group.</p>	<p>Replacement of existing hard engineering permitted for WR and WD uses at new Section F.</p>

E. Replacement of existing hard engineering is prohibited unless strict criteria are met		
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	<b>Analysis:</b> 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.  <b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Minor clarifying changes made; however, “all adverse impacts” language remains at F.
<b>PART 5 STANDARDS APPLICABLE TO SPECIFIC USES</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
23.60.199 Intakes and outfalls		
23.60.210 Signs	<b>Analysis:</b> 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.	No change.
<b>SUBCHAPTER IV SHORELINE ENVIRONMENTS</b>		
<b>SUBCHAPTER XIII THE URBAN INDUSTRIAL (UI) ENVIRONMENT</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
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	Use table updated to clarify that most industrial and commercial uses allowed

	<p>with the Comprehensive Plan. The proposed SSMP appear to make it more difficult, burdensome and impossible to retain and expand industrial uses. Uses are no longer allowed outright in many cases; they become special uses, conditional uses, or uses with many strings attached.</p>	<p>outright if WD or WR. Non WD/WR uses allowed up to 20% of dry land portion of lot; otherwise prohibited.</p> <p>Section D re prohibited uses on submerged lands removed.</p> <p>New non water dependent warehouses prohibited.</p> <p>Existing non WD/WR warehouses may not expand.</p>
<p><b>B. General sales and services, Outdoor and warehouse storage uses, Light Manufacturing and General Manufacturing</b> on waterfront lots allowed if they are WD or WR and comply with 23.60.482.B.2.</p> <p><b>D.</b> Certain listed uses are prohibited on submerged land, except allowed on existing pier structure at existing terminals if WD or WR or an accessory office as provided ; listed uses include cargo terminal and light manufacturing and accessory office less than 1000 sf for WD use or as allowed as a special use or as a shoreline</p>	<p>Industry should review in detail. These uses should be permitted outright in the UI, especially in the Duwamish area.</p>	<p>Allowed if WD/WR.</p>

<p>conditional use</p> <p><b>E. Heavy commercial</b> services are prohibited on waterfront lots except as provided in E</p> <p><b>F. Heavy Manufacturing</b> uses on waterfront lots are allowed as a special use if they are water dependent; if not WD they are allowed on upland lots as a special use and on waterfront lots as a shoreline conditional use if the meet conditions of subsection F</p>		
<p>L.2 Storage, outdoor 23.60.482B</p>	<p><b>Analysis:</b> 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><b>Request:</b> The use should be allowed when related to WD/WR uses.</p>	<p>Allowed if WD/WR.</p>
<p>L.3 Warehouses 23.60.482 B, D and H</p>	<p><b>Analysis:</b> 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><b>Request:</b> The use should be allowed when related to WD/WR uses.</p>	<p>Existing WD/WR warehouses allowed, but may not expand. New non WD/WR warehouses prohibited.</p>
<p>M.2. Cargo Terminal WD/WR-see 23.60.482.D</p>	<p><b>Analysis:</b> 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</p>	<p>Allowed if WD/WR.</p>

	<p>be unduly restrictive and at odds with recent comp plan amendments to support marine trade terminals.</p> <p><b>Request:</b> The section should be rewritten to support cargo terminals.</p>	
M.8 Vehicle storage and Maintenance-X/ prohibited	<p><b>Analysis:</b> 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><b>Request:</b> The use should be allowed when related to WD/WR uses.</p>	No change.
23.60.484 Shoreline Modifications in the UI	Industry should review in detail with City staff or a working group.	Deleted Section .484. Shoreline modification development standards moved from specific zones to general development standards in Part 4.
D. Dredging Dredging is allowed as a special use if a.necessary for a WD use, or b. to provide navigational access for existing navigational uses ...	<p>Industry should review in detail with City staff or a working group.</p> <p><b>Request:</b> Develop a programmatic permit or other process for maintenance dredging that is routine and necessary for WD/WR uses.</p>	Moved to Part 4.
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.	<p><b>Analysis:</b> 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.</p> <p><b>Request:</b> Revise the criteria to provide more flexibility as</p>	Moved to Part 4.

3. prohibited otherwise	needed for industry in the UI area, at least in the Duwamish.	
G. Grading	<p><b>Analysis:</b> Industry should review in detail. Same concerns as noted under Fill, above.</p> <p><b>Request:</b> 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.</p>	Moved to Part 4.
H. Piers and Floats	Industry should review in detail with City staff or a working group.	Moved to Part 4.
<b>PART 2 DEVELOPMENT STANDARDS</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
23.60.486 Height: Maximum height is 35 feet but water dependent uses may have cranes, lights, conveyers above max	<p><b>Analysis:</b> 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.</p> <p><b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	Revised to allow additional height exceptions for structures accessory to WD or WR uses.
23.60.488 Lot Coverage may not exceed underlying zone		
23.60.490 Shoreline Setbacks  Require a 15 foot setback in UI	<p><b>Analysis:</b> 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.</p> <p><b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.</p>	No change to 15 foot requirement. Open space setback dropped. 50 foot structure setback for non WD/WDR uses revised to 60 feet (which is the same as existing).
23.60.492 View Corridors 35% of the width of the lot	<b>Analysis:</b> 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,	No change.

shall be provided and maintained as a view corridor on all waterfront lots, except I water dependent or water related uses occupy more than 50% of the dry land area of the lot	conveyors, cranes and such are needed.  <b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	
23.60.494 Regulated Public Access public access must be provided on private lots for developments that are not water dependent except on certain lots in the Lake Union area.	<b>Analysis:</b> 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.  <b>Request:</b> Revise the criteria to provide more flexibility as needed for industry in the UI area, at least in the Duwamish.	Not required for WD uses. Required for WR uses if there is a functional requirement for a waterfront location.
<b>SUBCHAPTER XVI DEFINITIONS</b>		
<b>Code Section</b>	<b>Analysis and Requested Changes</b>	
	<b>Analysis:</b> Industry should review the definitions in detail with City staff or a working group.  <b>Request:</b> Revise the definitions if needed to provide more clarity or consistency	
<b>Fill</b> means the addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM ....		No change.
<b>Grading</b> means excavation , filling, in place ground modification, removal of roots or stumps, stockpiling		No change.

<p>of earth materials, establishment of a grade following demolition of a structure</p>		
<p><b>Cargo terminal</b> means a transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or accessory warehouses, rail yards, storage yards, and offices</p>		<p>No change.</p>
<p><b>Manufacturing</b>-- defined in the zoning code</p> <p>23.84A.025 <b>Manufacturing, general</b> means mnf. use having the potential of creating moderate noise, smoke, dust, vibration or other env. impacts including:  ...a) production of items made from stone or concrete</p> <p><b>Manufacturing, heavy</b> 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</p>		<p>No change.</p>

...b. processing or refining of raw materials		
<b>Shoreline Modification</b> 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	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.	No change.
<b>Water Dependent use</b> 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.		No change.
<b>Water Related</b> means a use or portion of a	Note: A business that is otherwise water-related would be water dependent if it meets the definition above; the water	No change. Sand and gravel mine example not removed.

