



December 23, 2011

Margaret Glowacki  
City of Seattle – DPD  
700 Fifth Avenue, Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019

BY EMAIL: [Margaret.Glowacki@seattle.gov](mailto:Margaret.Glowacki@seattle.gov)

RE: Comments on 2011 2<sup>nd</sup> Draft Shoreline Master Program

Dear Ms. Glowacki:

Vigor Shipyards appreciates the ongoing opportunity to provide comments and feedback on the City's draft SMP. We had previously submitted comments on the first draft in a letter dated May 26, 2011 (copy attached), and note that the 2<sup>nd</sup> Draft SMP incorporates some of the concerns we expressed at that time. However, we continue to have significant concerns about the current draft.

We at Vigor understand the careful balance of economic and environmental stewardship on the Seattle waterfront. We know that our industry and business cannot grow and thrive unless we operate in an environmentally responsible manner. We also know that a successful and profitable industry provides the resources needed to maintain and enhance the shoreline environment. Both parts of the equation have to be in place to have a sustainable waterfront.

Unfortunately, we do not believe that the current draft will achieve such sustainability. We can foresee two possible futures for Seattle's waterfront. One in which water-dependent businesses (cargo operations, cruise terminals, ferry terminals, shipyards, etc.) can no longer afford to operate in Seattle. Some of these businesses would move to other locations on the Puget Sound and others would simply leave the State altogether. The impact on Seattle would be the loss of thousands of living wage jobs. Many waterfront properties could become derelict and left abandoned until the funds were found to clean them up or re-develop them. The City would lose millions of dollars in tax revenue, and at some point probably have to invest City resources in helping to redevelop or clean up certain properties. In essence, the waterfront would become a burden to the City rather than an asset.

Alternatively, the waterfront can continue to be a rich asset for the City of Seattle. An appropriate mix of industry, recreation and natural space can exist in a sustainable fashion in which the jobs, taxes and resources generated by water-dependent uses help maintain a vibrant and healthy shoreline. To achieve this goal, the proposed SMP needs significant revision.

Attached to this letter is a document which provides specific point-by-point editorial changes we would like to see to the proposed Ordinance. These edits, however, are limited in large part by an attempt to edit the existing document rather than doing a “de-novo” re-write of the entire draft. As such, we would like to outline, in broader fashion, our key concerns about the current draft. It could be that these concerns, and those voiced by other water-dependent users, are of sufficient merit that DPD determines it is necessary to abandon the current draft and start drafting an entirely new document. So while we have provided the attached edits, we do not believe that simply agreeing to all of our proposed edits would be sufficient to address our concerns. The current draft remains far too complex and far too difficult for owners or plan reviewers to use in a clear and useful fashion nor does it allow DPD sufficient flexibility to support and sustain water-dependent uses.

Our key concerns are:

**(1) Dredging:** The provisions related to dredging are of grave concern to water-dependent businesses such as Vigor Shipyards. Vessel owners have consistently increased the size of vessels used in commercial and military operations. This means that for a shipyard to remain competitive we may, at some point in the next 3 to 5 years, have to acquire new larger dry docks. That in turn would require additional dredging to provide a larger basin in which to operate the dock. As currently drafted, the SMP would prohibit us from doing such dredging and prevent us from acquiring a new larger dry dock and/or re-configuring where we position our current dry docks. Dredging should not be strictly limited to “existing” uses if that refers to existing size or depth limits of existing dredged basins or channels. The DPD needs to revisit its language regarding dredging and take a less restrictive approach with water-dependent businesses.

Furthermore, dredging is already a highly regulated activity and other regulatory agencies have far more expertise and experience in this field than DPD. DPD should not use scarce budget dollars to train staff or hire outside consultants to review dredging plans that already receive thorough review from the Army Corps of Engineers and the Dept of Ecology.

**(2) Non-conforming structures and mitigation:** The draft is still problematic in relation to existing non-conforming structures that are part of a water-related use. There are many piers, wharfs, buildings, bulkheads and other structures that are in use at water-dependent businesses through out the City’s shoreline. The current draft is still unclear with regard to when mitigation is required as it relates to renovation or replacement of an existing non-conforming structure. Specifically, there needs to be greater clarity with regard to new ecological impacts and existing ecological impacts.

The WAC directing the City to create this new SMP is very clear when it says: “Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions before implementing other measures designed to achieve no net loss of ecological functions.” (emphasis added). It also says “impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist” (emphasis added).

It would be helpful to the plan review process by clarifying when mitigation is required. Specifically, by adding the word “new” to the phrase “no net loss” so that it becomes “no new net loss”. This would be helpful.

As an example, consider the situation in which an owner of an existing creosote pile pier wants to replace it with a new steel pile pier. If the DPD reviewer considers the overwater coverage of the new pier (assume it is the same as the old pier for this example) as an ecological impact that requires mitigation, the owner may choose to not replace the pier in order to avoid mitigation costs. In fact, it is likely that a new pier with steel piles would improve ecological function over the old pier simply by replacing creosote piles with steel piles. Reviewer’s, however, may interpret the “No net loss” in the most restrictive fashion possible and require mitigation for the overwater coverage that already exists. This would not be a good outcome, and does not seem to be the intent of DPD. Making it clear that “no net loss” means “no new net loss” would be helpful.

Likewise, there are numerous places where “adverse effects” should be replaced with “new adverse effects”.

**(3) Mitigation Program:** We reference the Port of Seattle’s letter dated December 21, 2011 on this subject. These provisions are not a State required element of the SMP and as written have significant ambiguities and undefined elements. We wholeheartedly agree with the Port’s comments in this area and support their recommended changes.

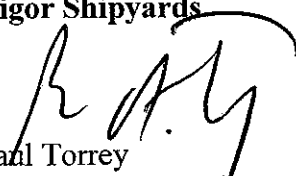
**(4) Height Limitations:** The draft SMP in many cases limits heights to values lower than currently allowed by the underlying zone in which a property is located. Height restrictions should not be changed from current zoning rules. As it stands the implementation of a lower height standard under the SMP could immediately make certain structures into non-conforming structures which would potentially cause the owner to have to engage in mitigation in order to do major repairs, upgrades or refurbishments of a currently conforming building. In many cases, allowing a tall building (at least in the case of industrial facilities in the UI Environment) could result in moving work indoors which can provide better environmental controls and reduce accidental discharge into the environment. Height limits should not be changed and should certainly not push an otherwise compliant structure into non-compliance.

**(5) Failure to protect Water-Dependent Uses:** While some progress has been made in this draft to protect water dependent uses, there are still numerous areas in the SMP where it is not clear that Water-Dependent uses are encouraged or that the nature of certain water-dependent uses is understood. So, for example, if a water dependent use requires a tall building adjacent to the shoreline (shoreward of the set back) to allow for the fabrication and launching of vessels (an allowed and encouraged water-dependent use) how is a DPD plan reviewer to interpret these rules other than to say the building is too tall and too close to the water. What guidance are they provided in weighing the needs of a water dependent use against specific development standards? The SMP needs better clarity on this issue.

We are glad to see that the City continues to work with local stakeholders on this issue and Vigor plans to remain engaged with the City on this effort. We would encourage the City to consider revising the draft Ordinance and issuing a 3<sup>rd</sup> draft for further comment. We would also like to encourage the DPD to review other internal initiatives that it has underway to ensure the draft SMP is consistent with other plans. In particular, DPD is concurrently developing new zoning plans as part of implementing the State's Growth Management Act. DPD needs to make sure that these two efforts are not in conflict.

We appreciate your attention to our concerns, and look forward to a new draft and an additional review period.

Sincerely,  
Vigor Shipyards



Paul Torrey  
Director of Facilities and Commercial Affairs

cc: Richard Conlin, President, Seattle City Council  
Diane Sugimura, Director, City of Seattle, Department of Planning and Development  
Stephen Johnson, Director, City of Seattle, Department of Economic Development  
John Lockwood, Paul Torrey, Mike Marsh – Vigor Shipyards  
Stephanie Jones Stebbins, Eric Hanson - Port of Seattle

## Vigor Shipyard suggested revisions to the SMP

Section 23.60.014: Add “provided it is not inconsistent with WAC 173.26” to end of the first paragraph.

Section 23.60.016 C. 2.: add at the end of the sentence, “and except in the Urban Industrial (UI) Environment where the height limit shall be that allowed in the underlying zone after taking into account any overlay district.” The height limit in parts of the UI is already 85 feet. There are existing buildings within the UI that will immediately become non-conforming structures if the SMP is adopted as is. These existing buildings which were built in compliance to code would then be subject to mitigation for things like major repairs or renovations. These buildings are necessary for water-dependent and water-related uses and forcing them into a conforming status is not required by the State Master Program.

Section 23.60.018: After the words, “apply to operation add the following, “, repair, maintenance, conversion or construction “. At the end of that sentence add the following sentence “For the sake of clarity, commercial repair, maintenance or construction of a vessel shall be considered a use related to navigation under this regulation”.

Section 23.60.020: The dollar threshold for a development being deemed a “Substantial Development” is far too low for water-dependent or water-related uses in the UI. Almost any development on an industrial site that meets OSHA requirements is going to exceed this threshold. We recently erected a temporary shed over a piece of equipment on a pier. The equipment will be on the pier for ~12 months in support of an ongoing vessel repair. The cost of this simple shed was over the proposed threshold. Furthermore, the cost to comply with this requirement – preparing plans, submitting plans, etc – will likely on their own exceed the threshold. So imagine a case where there is a development that will cost \$7,000 to build. The costs of preparing and submitting the paperwork required for a Substantial Development could well exceed 50% of the projects expected cost. This threshold is understandable in the context of residential development, but is far too low for large industrial sites. Therefore providing a higher limit for those properties within the UI limits this to those properties where the higher limit makes sense.

23.60.020 C. 1. a: Add the word “new” between the words “substantial” and “adverse”. Also in the entire Ordinance replace “No Net Loss” and “NNL” with “No New Net Loss” and “NNNL”. Throughout the ordinance there is reference to “No Net Loss”, “adverse effects” and similar language. WAC 173-26 is clear in a number of places that the intent of the updated SMP is “*protect existing ecological functions and avoid new impacts*”. For DPD reviewers in the future, the term “No Net Loss” can be misleading as it does not define the time frame in which the loss occurred. For existing developments that were originally allowed and permitted under old standards, a loss of ecological function may have already occurred. The purpose of “No Net Loss” is not to recover previously impaired function, but rather to “*assure that the end result will not*

*diminish the shoreline resources and values as they currently exist*". And while the WAC contemplates some level of restoration of impaired ecological function, that is addressed through the ordinance's mitigation provisions. By clarifying the term to cover new net loss, reviewers will have better guidance on this issue.

26.60.020, C.2: "Normal bulkhead" repair seems to be limited to residential bulkhead. Either the definition of "Normal Bulkhead" repair needs to be expanded to include industrial bulkheads or a new exemption is required for the repair of existing industrial bulkheads which entails installing a new bulkhead immediately outboard of the existing bulkhead (limited to some appropriate size limits). It is not clear why residential properties would be allowed to repair an existing bulkhead by installing a fronting wall, but industrial properties would not be allowed to do a similar repair.

23.60.032 A: There is a typo in the heading of the subsections here

23.60.124:

Section C prohibits the substantial improvement, replacement or expansion of a nonconforming structure that is overwater or within the setback, but does not provide any exemption or preference for water-dependent or water-related uses. The second sentence of this paragraph should be changed as follows: After "A nonconforming structure or development" add "that is not related to a water-dependent or water-related use". Many structures that are related to a water dependent use cannot by their very nature be moved over land or upland of the setback. Without this change the City is "chasing" water dependent/water related businesses out of the City because it discourages improvements to the facilities owned by such businesses.]

Section D sets out the standards for the replacement or substantial improvement of a nonconforming structure. However, the standards do not allow for the replacement or improvement of a structure related to a water-dependent or water-related use that must by its use be waterward of the shoreline setback. For example, in replacing an existing structure that is either adjacent to the water or over the water, a shipyard would not be able to make this replacement under the standards listed in 23.60.124, D, 1, a, b & c. The following section d should be added: "d. within the UI Environment, paragraphs a, b and c above do not apply provided the replacement or substantial development is for a water-dependent or water-related use."

23.60.124, H, 2: At the end of this paragraph add the following sentence to provide clarity for reviewers, "Increased cost of more than 5% of the reconstruction cost shall be considered economic hardship".

23.60.152, B: At the end of this sentence add, "to the extent practical and consistent with preferred uses." This additional wording helps to bring this section in to better conformity with WAC173-26.

23.60.152, D: At the end of this sentence add, “to the extent practical and consistent with preferred uses.” This additional wording helps to bring this section in to better conformity with WAC173-26.

23.60.152, I: At the beginning of this sentence add, “To the extent practical and consistent with preferred uses,”. This additional wording helps to bring this section in to better conformity with WAC173-26.

23.60.152, M: The light transmitting features should be limited to within 75’ of OHW. Beyond that distance, the ecological benefit of light transmitting features is greatly diminished. Also, a similar change should be made at 23.60.187.5

23.60.152, P: After the words “shall be minimized”, add the following, “to the extent practicable and consistent with regulations including those related to workplace safety.” Both OSHA and WISHA have standards relating to lighting in outdoor work areas. For industrial waterfront developments worker safety rules may require lighting that is brighter rather than dimmer. Ensuring worker safety in industrial facilities is a very high public interest.

23.60.152, Q: At the end of this section add the following language: “ In the event that the owner has a spill response plan already in place to satisfy a State or Federal agency, such plan satisfies this requirement”. Many shoreline line properties already have other permit requirements that include the requirement for a spill response plan (i.e. NPDES permits). To avoid duplicative work, the City should not invest resources in review plans that other agencies have already reviewed and approved. Furthermore this prevents potential conflicts where the City requires changes to a plan that has already been submitted and approved by another agency.

Alternatively, subsection Q could be completely deleted since it is duplicative of other State and Federal requirements.

23.60.152, V: This provision is redundant in light of the activities of other government agencies. The US Coast Guard and the US Army Corps. Of Engineers already have jurisdiction over this area.

23.60.158: It is critical in this section that that terms “loss of ecological function” or “net loss” be prefaced with the word “new”. There are many existing water-dependent uses that WAC 173-26 encourages, but which when originally developed may have reduced ecological function. The mitigation sequencing required in this ordinance is not meant to remediate past impairments but rather to maintain existing function. Thus for example if an application is submitted to replace an existing pier, mitigation is required only to the extent the new pier further reduces ecological function beyond whatever impairment was caused by the old pier. Clarity about this language is critical otherwise, certain non-conforming structures will be left intact rather than redeveloped. In the case of an old pier on creosote piles, the impact of leaving the pier intact is worse than letting the pier be replaced by a new steel pile pier.

23.60.158, E, 3: Add language to the effect that off-site mitigation is not limited to sites within the City of Seattle. Since the intent of WAC 173-26 is to manage state-wide impacts, and since there may be very limited opportunities within the City of Seattle to do off-site mitigation, the City should allow for other sites in the State to be used for mitigation purposes.

23.60.160, B, 3, a: Add the following at the end of this sentence, “or the structure is required to maintain an existing water dependent use”.

26.160.162: If would be helpful to have better clarity around the term “parking”. In certain water-dependent uses such as commercial vessel repair, commercial vessel moorage, passenger vessel terminals, etc. it is necessary to park vehicles such as pumper trucks, crane trucks, and other vehicles related to servicing a vessel on overwater structures or adjacent to the shoreline. This use should not be prohibited.

Table A for Section 23.60.172 should be revised as follows:

Line 5a, Column UI: Change to “A”. Dredging that is necessary for a water dependent use and which meets all US Army Corps of Engineers and Dept of Ecology requirements should be allowed. There is nothing in WAC 173-26 that compels the City to limit this type of development.

Line 5b, Column UI: Change to “A”. Dredging that is necessary for navigational access and which meets all US Army Corps of Engineers and Dept of Ecology requirements should be allowed. There is nothing in WAC 173-26 that compels the City to limit this type of development.

Line 5c, Column UI: Change to “A”. Dredging that is necessary for ecological restoration and enhancement and which meets all US Army Corps of Engineers and Dept of Ecology requirements should be allowed. There is nothing in WAC 173-26 that compels the City to limit this type of development.

Line 5f, All columns: Change to “A”. Dredging related to an MTCA of CERCLA approved project should be allowed. Such projects already receive a high level of regulatory oversight and running them through as a Special Use review process and expending additional City resources to accomplish such a review does not improve ecological outcomes.

Line 7b, All columns: Change to “A”. Fill related to an interagency environmental clean-up plan should be allowed. Such projects already receive a high level of regulatory oversight and running them through as a Conditional Use review process and expending additional City resources to accomplish such a review does not improve ecological outcomes. It is also likely that Federal



requirements would trump any City imposed restrictions, in which case this clause is unenforceable.

Add a new line 11c as follows: 11c Hard Shoreline Stabilization to protect existing uplands area accessory to a water dependent or water-related use. These should be marked as SU across all columns.

23.60.174: This is an example of a provision that is likely to be duplicative of the regulations enforced by other government agencies such as the USACE, USCG, NOAA or EPA.

23.30.182: In general the City should not get involved with the technical review of dredging plans. The USACE and the WA State Dept. of Ecology already exercise sufficient regulation and review of dredging activities. All of the waters covered by the Cities SMP (with the possible exception of Greenlake) are considered “navigable waters of the United States” are therefore covered by USACE rules and regulations. To eliminate the expenditure of City resources on training staff and developing the required expertise in a technical area that will involve very few permit applications, the City should revise the language of this section to provide for DPD to provide a basic administrative function in this area. In specific, DPD’s role should simply be to ensure that the USACE has issued a dredging permit for the project. The following wording is suggested: “Dredging to maintain, expand, establish or reconfigure navigational channels, basins (including dry dock basins) shall be allowed if approved by the US Army Corps of Engineers.

Alternatively, paragraph O could be added to 23.30.182 which states: “In instances where the dredging activity is subject to an US Army Corps of Engineers or Department of Ecology Permit, the extent of the City’s review shall consist of assuring that the USACE or DOE has issued a permit for the proposed project.

23.60.186: This is an example of a provision that is likely to be duplicative of the regulations enforced by other government agencies such as the USACE, USCG, NOAA or EPA.

23.60.190: This entire section needs revision to reflect the fact that many NPDES permits and/or CERCLA remediation projects require an entire shoreline facility to be covered with impervious paving. Also, in general planting in industrial facilities that are either water-related or water-dependent uses is often not practical in the manner required by this section. DPD should consider adding language that takes industrial facilities into account.

23.60.486: The maximum height in the UI should not be limited to 35 feet. Paragraph A should be revised to read: “The height coverage of the underlying zone shall not be exceeded.” Also change “80 feet” in paragraph B, 2, to read “85 feet”. There are currently properties in the UI that can build up to 85 foot structures. Limiting

buildings to less than 85 feet could force some existing structures in to non-conformance standards which would then result in mitigation requirements being invoked for the repair or replacement of such a structure.

23.30.492:           After the words “more than 50 percent of the dry land area of the lot” add the following, “in which case a view corridor is not required”.



May 26, 2011

Margaret Glowacki  
City of Seattle - DPD  
700 Fifth Avenue, Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019

BY EMAIL: Margaret.Glowacki@seattle.gov

RE: Comments on 2011 Draft Shoreline Master Program  
Dear Ms. Glowacki:

This letter provides comments from Vigor Shipyard (formerly Todd Pacific Shipyards) on the 2011 Draft Shoreline Master Program (SMP) distributed February 8, 2011. We appreciate the opportunity to comment on the draft SMP, as well as the opportunity to contribute to the SMP Citizens Advisory Committee (CAC). An appropriate and implementable SMP is critical to the continued health of Seattle's maritime industry, Seattle's overall economic health, as well as the health of our marine ecosystem.

The Vigor/Todd facility has been serving the marine industry since 1916. A Seattle icon, we are one of the most experienced and respected shipyards in the country, offering government and commercial customers broad expertise in new construction, conversion and repair. Our experienced and highly skilled workforce has earned the reputation for being a full-service ship construction, conversion and repair company. In Seattle alone, our dedicated union workforce averages more than 800 employees during the year.

We have set an example for environmental stewardship by proactively and comprehensively changing the way the business is operated. As a key member of the Seattle waterfront community and a highly productive waterfront industry, we understand that it is essential to protect the water quality of Elliott Bay and prevent pollution to ensure ecological value and prosperity for future generations. To reach these goals, we have implemented physical upgrades and instituted workplace requirements that extend well beyond the minimum regulatory requirements for environmental protection. Over the last eight years, we have been presented with 11 substantial awards for environmental excellence - from King County, the Coast Guard, the City of Seattle, the Association of Washington Businesses and others. A summary of our environmental efforts and awards can be found here:

<http://www.vigorindustrial.com/company/our-shipyard-environmental-awards.php>

1801 10th Avenue SW Seattle, WA 98148 Mailing address: P.O. Box 34019 Seattle, WA 98124

A subsidiary of VIGOR INDUSTRIAL LLC

Phone: 206-822-3888 / Fax: 206-422-8208 / [VIGORindustrial.com](http://VIGORindustrial.com)

INDUSTRIAL EVOLUTION

There is no organization that understands better than we do the importance of the very careful balance between economic and environmental stewardship on the Seattle waterfront. We trust that as you consider our comments on the Draft SMP, you will not take our expertise and experience in this lightly. Following our review of the Draft SMP, we conclude that there are significant shortcomings and defects in the draft as written. The Draft SMP is unnecessarily complex and overly prescriptive – and it will NOT support us in working with you to achieve the goals for economic and environmental stewardship that we should share. *We recommend that DPD withdraw this draft, revisit the significant issues raised by the City's maritime industries, and redraft the plan.*

A thorough comment letter has been submitted by the Port of Seattle, and we completely support their conclusions and concerns. We have expressed our concerns at the CAC meetings, and will continue to participate as required. We would like to emphasize the following key issues – which must be addressed in a revised draft:

**The SMP does not value and prioritize water-dependent uses as required by state law** – As described in the Port of Seattle comment letter, the Draft SMP introduces new measures for environmental protections without appropriate emphasis on the equally important requirements of the State SMA to foster and support water-dependent uses. Revisions to the Urban Industrial zone requirements for piers, docks and wharves would make water-dependent uses and structures very difficult to operate, maintain and improve.

- The City needs to acknowledge and prioritize the importance of water-dependent maritime businesses to the regional economy, and support us in the development and maintenance of our essential facilities.

**The SMP institutes a redundant layer of oversight which significantly increases costs and does NOT improve outcomes** - In a number of ways the City is adding another layer of oversight and regulation on top of oversight and regulation already required by other public entities. For example, maintenance dredging is already regulated by State and Federal agencies (Dept of Ecology and Army Corps of Engineers). The draft SMP appears to require that the City review dredging plans as well as these other agencies – and requires dredging means and methods that are already addressed by the Corps of Engineers process. This is redundant oversight that significantly increases costs to the City, increases costs to businesses and which would not improve environmental outcomes. This is not just an issue with dredging. It also applies with reference to language on stormwater systems which are already regulated through the NPDES process, shoreline stabilization (Dept of Ecology) and others. The draft SMP should be amended to remove City review of issues already subject to State or Federal review and/or approval. If another agency has oversight the City's role should be limited to ensure property owners have obtained Federal or State approval.

- The City does not need to institute redundant regulations in one of the most environmentally regulated places in the country. Instead the City's role should be limited to ensuring that projects have obtained the required

approvals from other agencies in a check the box manner rather than attempting to do their own review.

- The City does not have the resources in place to handle more complex environmental issues that are already subject to regulation. Training staff on issues such as allowable turbidity in a dredging operation is a waste of DPD's time and budget.
- Given the City's budgetary constraints, the City needs to focus its resources on regulating things that are not already regulated.

**The SMP contains inappropriate mitigation requirements that are not consistent with state law and regional practice** - requiring an applicant to mitigate "all adverse impacts to adverse effects to ecological functions" (emphasis added; SMC 23.60.032(D), .034(B)(4) and .036(A)(4)) is more burdensome than requiring "no net loss of ecological functions" (SMC 23.60.152(A)). This standard is impractical and unachievable in the Urban Industrial shoreline areas – it requires shoreline developments to restore and enhance ecological functions instead of maintaining these functions per the "no net loss" policy. It also increases requirements for off-setting adverse impacts due to proposed development actions, adding mitigation requirements in excess of the existing SEPA threshold. Seattle is an ideal location for certain water dependent operations (deep draft cargo handling, cruise ship port calls, ship construction and repair, etc). Our combination of shoreside facilities and deepwater berths is rare in the Puget Sound. Some of these uses could be expanded in the future and bring additional jobs to the region. If there are Seattle-specific mitigation requirements that are difficult to meet, industry will want to go to areas in the Puget Sound outside of Seattle. The environmental impact of placing such operations in other locations within the Puget Sound could be much worse than the impacts of expansions to existing facilities or operations. We recommend that the City withdraw this emphasis on increased mitigation in the draft SMP revisions and adhere to the "no net loss" standard mandated under the state SMP rules.

- The SMP should not contain unreasonable requirements that will force maritime businesses to locate outside of Seattle city limits. Since the founding of Seattle, Elliott Bay has been recognized as the most appropriate location in the region for deep and medium draft maritime industry, providing vital jobs and services to the City. It is entirely inappropriate for the SMP to increase regional environmental and economic impacts by pushing Elliott Bay uses out of the Seattle City limits. That is what will happen if mitigation requirements within the Seattle City limits are significantly more stringent than other areas of the state.
- Since our facilities are already subject to mitigation requirements imposed by multiple state and federal agencies – review, clarify and *simplify* the Seattle SMP so that your role is to confirm that our work is consistent with regulatory standards in Puget Sound as applied by state and federal

agencies. Again, do not impose another unnecessary layer that will NOT produce results.

**The definition of “water dependent use” on an individual structure basis is completely inappropriate** - The definition as used in the draft SMP looks at individual structures rather than larger facilities. Water dependent businesses in the Urban Maritime, Urban Industrial or Urban Harborfront categories are integrated facilities rather than individual structures. A ferry terminal consists of piers, wharfs, and loading facilities, but also offices, maintenance sheds and passenger services (restaurants, gift shops, etc.). Likewise a shipyard has dry docks, piers, wharves, machines shops, offices, warehouse facilities, cafeteria, etc. that all work as an integrated whole. Under the current definition, it is possible that an application to build a warehouse – essential to our business - on a parcel designated for water dependent use could be denied since warehousing could be deemed to be not water dependent.

- The SMP needs to provide facility owners with flexibility to improve and/or configure water dependent facilities without having to be second guessed by City planners.
- 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.
- As a subset of this issue, the SMP must include a 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. This circumstance could apply to tug boat and other vessel crews as well.

**The shoreline stabilization rules are too narrowly focused on protecting structures and not “facilities”** – The SMP notes that no new shoreline stabilization is allowed unless the foundation of a primary structure located on the property will be undermined. Such a rule fails to take into account an industrial water dependent use where by a lay down area, storage areas or paved areas may play an integral role in the water dependent use. A paved container storage area or a paved shipyard area where major vessel components are stored could be undermined without adequate bulkheads or riprap. The simple fact that a building is not being undermined does not diminish the loss of use of the facility.

- The SMP should recognize that new stabilization should be allowed whenever the existing use of the property is impaired. Any references to primary structures or appurtenant structures as a measure of property impact should be removed.

**The requirement for Geotechnical Study to demonstrate that soft solutions are not feasible is overly prescriptive** - For water dependent urban industrial shoreline, the burden should be on the City to show that a soft solution for shoreline stabilization is a feasible alternative. If the City surveyed the water dependent businesses that currently exist along the urban industrial shoreline (excluding non-water dependent businesses), the City would quickly learn that soft solutions are highly unlikely to be feasible in these locations. The City is simply creating an additional consulting burden and cost to businesses. The Geotechnical studies will not result in greater use of soft solutions in these locations; they will simply result in increased use of consultants.

- We understand why this approach makes sense in other areas that don't have water dependent uses or are not industrial in nature, and agree with including this requirement in the SMP. However, water dependent facilities in the urban industrial shoreline should be exempt from this requirement.

**The height restriction for urban industrial shoreline is unnecessary** – Along much of the urban industrial shoreline, there are no views. Adding height restrictions above and beyond existing zoning rules is redundant and unnecessary. Increasing the height restriction to 100' or 120' could be 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.

- The SMP should either remain silent on the issue of height restrictions or allow for greater than 80' along the Urban Industrial waterfront.

**Additional restrictions on legally non-conforming structures do not improve environmental outcomes** – Under the proposed SMP, the additional restrictions on the maintenance of existing legally non-conforming structures are overly burdensome on water dependent businesses and could result in a lack of maintenance rather than improved environmental conditions. The draft proposes to limit maintenance on such structures to 60% of market value over 5 years. With such a restriction in place an owner may be forced to neglect a structure and not repair it in order to avoid going over the threshold. Old, poorly maintained structures are more likely to have adverse environmental impacts than well maintained structures.

- The SMP should “grandfather” set backs, uses, heights and sizes of existing buildings that are part of a water dependent facility in the urban industrial shoreline. Repairs to such grandfathered structures should not be limited, but rather should be encouraged.

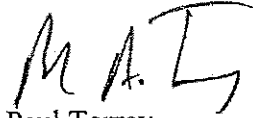
An overall comment on the Draft SMP is that it is WAY more detailed and complex than it needs to be. The proposed revisions are extraordinarily detailed and too prescriptive, impeding what should be your goals of improving the SMP and creating a successful implementation framework. Having extraordinarily detailed requirements risks the creation of unintended consequences that you can not in any way have the expertise or foresight to

VIGOR SHIPYARDS  
MAY 26, 2011

predict – it will stifle practical, realistic solutions for development, construction and environmental mitigation throughout our shoreline environments. The Draft SMP includes excessively detailed prescriptions for protection and mitigation of shoreline resources, and insufficient emphasis on protection of water-dependent uses and developments – which are equally protected under state statute.

The Vigor/Todd facility truly models the balance of economic and environmental stewardship that is necessary for Seattle maritime industry. This comes from daily, focused, and extremely hard work and investment on both of these initiatives. We need the City's support to meet these goals, not additional hurdles. We appreciate your attention to our concerns, and look forward to a new draft and a second review period.

Sincerely,  
**Vigor Shipyards**



Paul Torrey  
Director of Facilities and Commercial Affairs

cc: Marshall Foster, City of Seattle Planning Director  
John Lockwood, Paul Torrey, Mike Marsh – Vigor Shipyards  
Stephanie Jones Stebbins, Eric Hanson - Port of Seattle