

May 16, 2011

Marshall Foster
City of Seattle
Planning Director, Department of Planning and Development
700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Dear Mr. Foster:

Re: Comments on 2011 Draft Shoreline Master Program

The Port of Seattle appreciates the opportunity to provide comments on the draft Seattle Shoreline Master Program (SMP), distributed February 8. The Port respects the amount of time and effort applied by City staff in preparing this draft document, as well as the opportunity to contribute to the SMP Citizens Advisory Committee.

We sincerely appreciate your recent announcement of a second draft and a second public comment period. We look forward to working at the staff level as a refined version is created in the coming months.

The Port of Seattle is the largest owner of marine cargo facilities and related industrial and commercial properties within the shoreline jurisdiction of the City of Seattle. The Port is committed to sustaining our 100 year-long record of providing marine industry employment, cargo and passenger infrastructure, and resulting business and tax revenue for the city and the region. The Port is a publicly owned and operated municipal corporation, authorized by state law to construct, operate, and maintain harbor improvements within the port district, including management of aquatic area in Elliott Bay and the East and West Waterways under a port management agreement with Washington State. As a public port, Port of Seattle marine cargo facilities are categorized as a *preferred use* under the Shoreline Management Act (SMA), and state regulations require that the local SMP be consistent with Port plans and harbor area statutes and regulations.

Further, the Port has a commitment to stewardship of our shoreline property and natural resources. We fully support the balance the SMA intends between economic considerations and environmental protection. In reviewing the draft SMP, Port planning, environmental and legal staffs have catalogued a number of concerns guided foremost by this principal of balance.

Some general observations:

- Our interpretation of the draft is that it goes beyond the “no net loss of ecological function” standard established by the state SMP regulations (Chapter 173-26 WAC). We therefore view it as inconsistent with the goals and policies of the SMA (Chapter 90.58 WAC), which gives equal measure to the development of water-dependent uses.
- The current draft is unnecessarily complex and overly prescriptive, and in many cases the language is internally inconsistent.
- The current draft does not include clear language recognizing the Port’s plans, nor does it incorporate protection of harbor areas established under the State Constitution. Recognition and incorporation of such plans is a requirement of the state SMP regulations.
- We found it difficult to assess the implications of numerous sections of the draft regulations without clear and accurate updates of the shoreline designation maps, and without the availability of the City’s Shoreline Restoration Plan. We look forward to the release of the Restoration Plan as soon as possible.

This letter includes an attachment which summarizes our general concerns with policy issues. A second attachment provides a detailed matrix containing our comments by section and includes suggestions for alternative language.

We appreciate the opportunity to continue a collaborative approach to refine the draft SMP, with the common goal of a practical and predictable framework for directing shoreline development, meeting the City's marine transportation needs, building a strong economy, and catalyzing environmental remediation and restoration.

Thank you again for the opportunity to comment. We look forward to working with the City on these issues in the coming months.

Sincerely,

Stephanie Jones Stebbins
Port of Seattle
Director, Seaport Environmental Programs and Planning

Overall Policy Comments and Considerations:

The Port's water-dependent facilities are a preferred use under the Shoreline Management Act (SMA):

The Port of Seattle is the largest owner of marine cargo facilities and related industrial and commercial properties within the shoreline jurisdiction of the City of Seattle. The Port is committed to sustaining our 100 year-long record of providing marine industry employment, cargo and passenger infrastructure, and resulting business and tax revenue for the city and the region. The Port works to provide coincident economic and environmental benefits to the city, including re-development and remediation of former industrial sites and maintaining and operating marine cargo facilities with the highest environmental standards. In recent years, the Port has led efforts to restore fish and wildlife habitat and construct public shoreline access improvements throughout Elliott Bay, the East and West Waterways, and the Duwamish Waterway. The Port is a publicly owned and operated municipal corporation, authorized by state law to construct, operate, and maintain harbor improvements within the port district, including management of aquatic area in Elliott Bay and the East and West Waterways under a port management agreement with Washington State. As a public port, Port of Seattle marine cargo facilities are categorized as a *preferred use* under the Shoreline Management Act (SMA), and state regulations require that the local SMP be consistent with Port plans and harbor area statutes and regulations (WAC 173-26-201(2)(d)(ii)).

Shoreline master programs must be consistent with the required elements of the Department of Ecology's guidelines. RCW 90.58.080. When preparing shoreline master programs, WAC 173-26-201(2)(E)(ii) directs local governments to

Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

Consistent with this direction, the Department of Ecology has required that shoreline master programs be "consistent with state shoreline management policy goals and specific policies listed in this chapter and the policies of the Shoreline Management Act. WAC 173-26-191(2)(a)(i)(A). The proposed SMP fail to achieve the balance required by the SMA and state law, introducing new measures for environmental protections without appropriate emphasis on the equally important requirements of the SMA to foster and support water-dependent uses. Examples of this lack of balance are found in the Urban Industrial (UI) environmental where neither marine cargo terminals nor piers and docks located in saltwater habitats are uses that are allowed outright. SMC 23.60.160(B)(3)(a-c). Contrary to the constitutional mandate to protect "wharves" and similar structures that are necessary for waterborne commerce, the draft SMP would make water-dependent uses and structures very difficult to operate, maintain, and improve.

Cargo use regulation:

The proposed SMP revisions do not include marine cargo and transportation as uses that are allowed outright in the UI environment. This restriction is inconsistent with state regulatory requirements for the City to develop master programs that address port plans (WAC 173-26-201(E)(ii)). The proposed revisions fail to "reserve shoreline areas for water-dependent and associated water-related uses" including harbor areas established pursuant to Article XV of the Washington State Constitution and WAC 173-26-201(2)(d)(ii). The SSMP also fails to provide for "utilization of shorelines for economically productive uses that are particular dependent on shoreline location or use." (WAC 173-26-176(3)(a)). This oversight should be corrected in the next draft, particularly since the expressed purpose of the UI environment is to: "...provide for efficient use of industrial shorelines by major cargo facilities and other water-dependent or water-related industrial uses."

Inconsistencies with state and federal regulations:

The dredging and fill standards (SMC 23.60.182 and .184) are inconsistent with federal and state requirements with state regulatory requirements, and inconsistent or redundant with the many overlapping local, state, and federal regulations that may apply to port developments and operations. The dredging section uses confusing language that does not acknowledge current terminology, methods, and established interagency policies and regulations affecting dredging and water quality. Our specific comments are incorporated in the attached document, and the Port looks forward to working with the City to correct these inconsistencies.

Regulatory changes for nonconforming uses and structures (SMC 23.60.122 and .124):

Proposed restrictions on non-conforming structures and non-conforming uses will not be effective within the economic reality of the maritime waterfront economy. The City is proposing a narrower restriction on the required by the state on such uses, by imposing a 12 month limit on discontinuances instead of a two-year limited as established under WAC 173-27-080(9). Because the right to reestablish uses or rebuild structure can extinguish after 12 months, the master program provisions create an unnecessary burden for economically important water-dependent uses. These built and committed uses are also very often scale dependent and loss of effective use and operations areas severely limits their viability. Flexibility is needed to constantly improve and reinvest in Port facilities, especially considering permit uncertainties and economic cycles. This requirement, and several related sections have the potential to create nonconformity for existing productive port uses, including substantial areas at Terminal 25 and Terminal 108, existing structures and facilities at the Terminal 86 grain shipment pier, and upland structures at Fishermen's Terminal. We request that the language be amended to be consistent with the state standard for discontinuance of nonconforming uses, which is considerably more practical. See WAC 173-27-080(9), which sets the standard as discontinued for twelve consecutive months or for twelve months during any two year period, a more realistic requirement.

Impractical mitigation standards, inconsistent with regional practice:

Similarly, 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)). Besides being impractical and unachievable, this standard appears to stray towards requiring shoreline developments to restore and enhance ecological functions instead maintaining these functions per the "no net loss" policy.

The proposed SMP mitigation language also appears to increase requirements for off-setting adverse impacts due to proposed development actions, adding mitigation requirements in excess of the existing SEPA threshold (when there is a likelihood of probable adverse environmental impacts under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW). This language is inconsistent with policies and practices that have been established by forty years of administration and litigation related to SEPA. SEPA is clear that temporary minor impacts may be allowed, and that mitigation imposed under substantive authority provisions must be reasonable and capable of being accomplished. RCW 43.21C.060. We suggest 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 Port is concerned that the proposed revisions regarding mitigation sequencing and standards for mitigation of adverse environmental effects due to shoreline developments are inconsistent with the practice of mitigation as an established decision-making process, and inconsistent with the State Environmental Policy Act (SEPA) as well as other laws and regulations applicable to projects and proposals within the shoreline. As proposed, mitigation requirements (SMC 23.60.156(c) and 23.60.158) are linked to the type of permit and not directly related to anticipated or potential adverse environmental effects of specific development uses and activities. This means that the mitigation is not directly related to adverse effects expected from the proposal, and it confuses and is contrary to the decision-making hierarchy established under SEPA.

Mitigation sequencing included in the revisions presupposes a significant adverse impact based on the permit type, rather than effects based on analysis and evaluation of the proposed development action. In addition, this approach is inconsistent with the statutory restrictions in the GMA. RCW 82.02.020 prohibits municipalities from imposing permit conditions on development unless the condition is "reasonably necessary as a direct result of the proposed development..." Isla Verde Int'l Holdings Inc. v. City Camas, 146 Wn. 2d 740, 49 P. 3d 867 (2002) (30 percent of land set aside for open space.) Under the mitigation sequencing proposal, because the type of mitigation will be tied to the type of permit rather than the type of adverse environmental impact, the type of mitigation imposed won't necessarily be linked to the type of impact. Since the SMP will be incorporated into the GMA comprehensive plan as an element of that plan, the City should satisfy the requirements of RCW 82.02.020.

Since Port development proposals are already subject to mitigation requirements imposed by multiple state and federal agencies, we suggest that this entire section be reviewed, clarified, and simplified, particularly with respect to compensatory mitigation, so that the requirements are consistent with regulatory standards and legal practice in Puget Sound as applied by state and federal agencies. The state SMP guidelines provide suitable language without the potential complications introduced by the proposed SMP.

Relationship between GMA and SMA:

We are concerned about the interface of Growth Management Act (GMA) requirements, particularly Environmental Critical Area (ECA) requirements and how they have been incorporated into the SMP. Specifically, SMC 23.60.156(A) imposes language that "in case of conflict between Chap. 25.09 SMC and shoreline master program, the "most protective standards" apply." While we recognize that this interface has been an area of conflict and confusion, we believe the legislative direction in this area is very clear at this point under ESHB 1653. The goals of the SMA are different from those of the GMA. The SMA supports water-dependent uses as having priority on the shorelines of the state, while the GMA is silent concerning water-dependent uses. Water-dependent uses, including marine cargo and transportation piers, moorage structures, on-dock and shoreline cargo facilities, marinas, and public shoreline access improvements are protected by the SMA, and may be incompatible with the critical areas requirements inserted by the proposed SMP revisions. The clear legislative directive has been for cities to achieve no-net-loss of critical areas within their shorelines using plans, regulations, and permit processes appropriate to shoreline environments, rather than using the upland, non shoreline-oriented ECA requirements used in GMA planning and decision-making. The proposed SMP, with policies and regulations requiring the protection and restoration of shoreline resources, and adoption of the standard of no net loss of shoreline ecological functions, can achieve this goal without inserting conflicting ECA ordinance language as proposed in the SMP draft revisions.

In addition to giving proper deference to water-dependent uses, the proposed SMP does not properly anticipate the upcoming adoption of the port element in the City's comprehensive plan. RCW 36.70A.085. The legislature created this new requirement for a port element in the City's GMA comprehensive plan in 2009 because

It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts. [2009 c 514 section 1.]

When the City adopts the port element of its GMA comprehensive plan, this element will need to be consistent with the remainder of the GMA comprehensive plan and the shoreline master program. As currently drafted, the SMP fails to properly anticipate the port element because it doesn't sufficiently recognize and foster marine industrial uses.

Unnecessary complexity:

The revised SMP will regulate shoreline uses and developments for decades. Future economic and environmental conditions are not possible to anticipate at this time. The proposed revisions are extraordinarily detailed and too prescriptive, impeding the goals of improving the SMP and creating a successful long-term implementation framework. Extraordinary detail risks unintended plan implementation consequences, including stifling practical, realistic solutions for development, construction, and environmental mitigation in Seattle's shoreline environments. The Port has identified critical sections in the proposed revisions that are difficult to comprehend and, in many instances, redundant. The proposed revisions include excessively detailed prescriptions for protection of shoreline environmental resources, and insufficient emphasis on water-dependent uses and developments, which are equally protected under statute.

Despite the detail included in the proposed revisions, the changes do not include needed distinctions between *new* uses on undeveloped properties and redevelopment of existing uses, where shoreline areas have been extensively developed. Undeveloped shoreline areas, i.e., "green-field" sites" are rare in Seattle, with nearly all shoreline industrial areas altered by 75 to 100 years of past uses and development. This is a critically important plan feature. The Port owns approximately 1300 acres of shoreline and near-shoreline industrial and commercial property. The majority of this property has been purchased from previous users and the Port's goal is to redevelop these "brown-field" sites, recycling the areas to meet constantly changing economic needs. The SMP revisions must acknowledge this practical matter and create durable plan requirements that meet the needs of present-day site redevelopment, cleanup, and restoration. The SMP must make it possible to maximize the use of existing development sites and reserve any undeveloped locations, while using SMA authority to protect natural resources values at undeveloped locations.

The term "feasible" is applied in many critical sections of the revisions and should be replaced with "practicable." The standard of "to the extent feasible" is one of the most stringent. The concept typically does not allow for considerations of cost or practicality. The "practicable" standard is more flexible and retains the realistic potential for incorporating additional factors, including public costs and benefits considerations, consistent with the WAC definition (173-26-020(13)). Finally, in the interest of clarity and straight-forward plan review and future application of the SMP code, it would be helpful to avoid the numerous uses of double-negatives in the proposed revisions (e.g., "is prohibited unless...and, except, unless, but only when allowed in..."etc). Where it is possible to do so, please simply state what is allowed or encouraged in direct, concise language.

Regulation of uses on vessels while moored:

The draft SMP has improperly expanded into areas that should not be regulated by the land use code. SMC 23.60.018 states that the regulations are generally not to be applied to vessel operations, yet numerous sections of the proposed code do so. In particular the Port is concerned with regulation of vessels while the vessel is moored at Port facilities. The Port opposes the new live aboard regulation and registration program. It is not clearly linked to SMA goals and objectives. Enforceable state and federal regulations are already in place to ensure marina tenants respect water quality. Further, we are concerned this proposal simply adds unproductive administrative burdens to businesses without any proven nexus to improving water quality in Seattle.

This intrusion into the operation of the Port's facilities is a particular concern with respect to the exclusion of "open wet moorage" from the view corridor requirements for Urban Harborfront (UH) designation (SMC 23.60.452(A)) and the requirement to protect the view from adjacent right-of-way areas when vessels are moored at site improved consistent with the SMP requirements. (SMC 23.60.452(1)). Piers 66 and 69 are both located in the UH environment and support water-dependent "open wet" moorage of vessels. Under this proposed section, moorage of any vessel at these piers could be construed as a non-conforming use if the vessel blocks pedestrian views. This approach is inconsistent with the protections that water-dependent and marine cargo uses enjoy under the state constitution, SMA and shoreline master program regulations.

SMP fails to acknowledge the Port's plans, harbor areas:

The proposed SMP revisions should include clear language addressing Port plans, and incorporating harbor areas statutes and regulations (required by WAC 173-26-201(3)(d)(ii)). We are disappointed that neither the jointly adopted 1985 Comprehensive Public Access Plan for the Duwamish Waterway nor the Port's 2007 Seaport Shoreline Plan were acknowledged or incorporated into the SMP, despite direction in the Ecology SMP guidelines to consider these plans. Both plans have been formally adopted by the Port Commission. WAC 173-26-221(4)(C) allows the City to integrate the Seaport Shoreline Plan and the public shoreline access plan as part of the shoreline master program, and we are requesting that the SMP revisions do so.

Shoreline view standards:

The proposed revisions control shoreline structures with respect to view obstruction from neighboring residential properties. The revised standard refers to view obstruction at neighboring private waterfront property rather than adverse view effects from public right-of-way (SMC 23.60.446(C)(b);(b)(4)). For marine industrial locations it is imperative that shoreline view matters focus on public right-of-way areas rather than views from distant private property.

Section- by- section comments

| Draft SMP Section | Draft Language with highlight | Port comments | Suggested edit |
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| SMC 23.60.002. B.1 | 1. Protect and restore the ((ecosystems)) <u>ecological functions</u> of the shoreline areas; | Inconsistent with WAC guidelines. City shoreline use policy LU231 only calls for protection and enhancement of shoreline areas. WAC 173 -26-201-2(d) calls for reservation of appropriate areas for protecting and restoring ecological functions. | Amend as follows: "Reserve appropriate areas for protecting and restoring ecological function, and restore appropriate areas of the shoreline;" |
| SMC 23.60.002. B.2 | 2. Encourage water-dependent uses; | Inconsistent with protections of water – dependent uses in the RCW and WAC, which protect the use of shorelines for economically productive uses that are dependent on a shoreline location or use. See RCW 90.58.020 and WAC 173-26-201(2)(d)(ii). | Amend as follows: "Reserve shoreline areas for water-dependent and associated water-related uses." |
| SMC 23.60.004 | Shall be considered in making all discretionary decisions in <u>and adjacent to the Shoreline District, et seq.</u> | The language to is too broad and implies that the SMP applies equally to the shoreline jurisdiction and adjacent lands | Amend as follows: "Shall be considered in making all discretionary decisions in ..." |
| SMC 23.60.016.C. 2 | 2. The height ((permitted)) <u>limit for a structure</u> in the Shoreline District ((shall be)) <u>is the lower of the height</u> ((e permitted by the applicable)) <u>limit provided in the shoreline environment, ((and))</u> <u>the underlying zone, or overlay district,</u> except in the Urban Harborfront (UH) Environment where the shoreline height limit ((shall)) <u>controls.</u> | All of C is redundant and/or more consistent with underlying land use code or specific standards related to individual environmental designations. It is only necessary to state A and B. C.1 restates B. C2 and C3 and C4 are located in specific conditions per individual area already and 5, 6.7, should be moved or are already in the measurement section 23.60 subchapter XVII. | Delete C and eliminate redundancies within the section. |
| SMC 23.60.016.3 | 3. The floor area ratio (FAR) of the underlying zone may not be exceeded, regardless of whether ((or not)) the maximum height and lot coverage <u>allowed</u> ((permitted)) in the <u>applicable</u> shoreline environment can be achieved. | See above. | See above. |
| 23.60.027 Ecological restoration and mitigation program | | In relation to this section, it is important to note of the existence of previously approved shoreline plans from Port of Seattle that should be integrated into planning process as the Port has identified many potential restoration and mitigation sites. The Port is concerned with the implication that rules related to this program would be adopted as a Director's Rule without sufficient public input, and that these post-adoption rules may be beyond the scope of the SMP. | The section should be altered to make clear that this is an alternative to compensatory mitigation in areas where it is difficult to plan and permit. Applicants opting for compensatory mitigation would skip this requirement, and any associated fees or payments. Eliminate reference to "best available science" which is a GMA term, and inappropriate within the SMP. Suggested language: 23.60.027 Shoreline Alternative Mitigation Program |

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

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| SMC 23.60.090.B. C. and D. Identification of principal uses. | B. ((Unless otherwise stated in this chapter all principal uses on waterfront lots shall be water-dependent, water-related or non-water-dependent with public access.)) <u>Any principal use allowed, allowed as a special use, allowed as a shoreline conditional use, or as a Council conditional use in a specific shoreline environment may be an accessory use and shall be administered as an allowed use, or as a special use, shoreline conditional use or Council conditional use, using the same process as the principal use.</u> | These sections are vague and ambiguous. These sections appear to redefine all accessory uses as principal uses, and to require the regulation accessory uses as principal uses under the SMP. Would a separate permit approval now be required for accessory uses? | Delete or substantially revise to clarify intent and impact on regulated uses. The language appears to redefine all accessory uses as principal uses, and regulate them identically. |
| SMC 23.60.092 Temporary uses and developments | A. Development, shoreline modifications, limited to floats, and uses that will occur for four weeks or less may be exempt from obtaining a Shoreline Substantial Development Permit as provided in Section 23.60.020; developments that are exempt shall comply with the Shoreline Management Act and the standards and provisions of this Chapter 23.60. | It is unclear why the definition of a temporary modification limited to “floats”. The rule simply should be applied consistently to all shoreline developments. | Again, language should be consistent with RCW and WAC, and refer to shoreline uses and developments without particular emphasis on “modifications”. |
| SMC 23.60.122.A.2 Nonconforming uses | 2. Any nonconforming use ((which)) that has been discontinued for more than ((twelve (12))) consecutive months ((in the CN, CP, CR, CM, CW, UR, UH and US Environments or more than twenty-four (24) consecutive months in the UM, UC or UI Environments)) shall not be reestablished or recommenced. | Inconsistent with WAC 173-27-080 (9), which defines a discontinuance to a nonconforming use as “...discontinued for twelve consecutive months or for twelve months during any two-year period...” | The WAC allows greater flexibility and would allow for the realities of maintaining shoreline developments during periods of economic uncertainty or hardship. The WAC definition should be adopted instead of the restrictive 12 month limit offered in the current draft of the SMP. |
| 23.60.150 Applicable development standards | All <u>development, and uses</u> (and developments)) in the Shoreline District ((shall be))are subject to the ((general development)) standards ((applicable to all environments, to the development standards for the specific environment in which the use or development is located, and to any development standards associated with the particular use or development.)) <u>set out in Subchapter III of this Chapter 23.60 and to the standards for the specific environment in which the development, shoreline modification or use is located.</u> | This section does not make clear allowance for vested uses and for associated permitted infrastructure or legal non-conforming uses. There is the implication that a positive obligation is created immediately upon adoption with enforcement obligations. | Redraft and clarify. At the minimum, the word “new” should be inserted in front of “development and uses” throughout this section. |
| 23.60.152 General Development | | This whole section is redundant, and selectively incorporates language from other sections of the code. Some developments are singled out for mitigation sequencing, when these provisions are laid out separately in 23.60.158 as they apply to all shoreline developments. Unless clarified to apply to <u>new</u> developments, the whole section implies that the existing condition requires mitigation. | Redraft, clarify, and simplify. Insert “new” before “development and uses” throughout. Avoid repetition of requirements and redundancy with separate city codes, such as the stormwater ordinance. Eliminate the use of “managed”, which implies that the City SMP will be applied to facility operations. “Managed” should be replaced with “maintained”. |
| 23.60. 152.D | D. All shoreline developments, shoreline modifications and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area. | Unclear, and appears to expand the SMP jurisdiction to an undefined area. | This concept is covered in multiple sections elsewhere in the SMP. Delete. |

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| SMC 23.60.152. I | I. All ((shoreline developments and uses)) <u>in- and over-water structures shall be ((located and)) designed, located and managed to ((minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion))keep adverse impacts, such as increased salmonid predator habitat and those adverse impacts due to shading, to a minimum.</u> | This requirement is covered elsewhere in the code e.g. in mitigation sequencing and requirements for “no net loss” of shoreline ecological functions. | Delete. |
| SMC 23.60.152.J. | J. Durable, non-toxic components are the preferred materials for in-water and over-water structures. Wooden components that will be in contact with standing water or floodwaters shall not contain polycyclic aromatic hydrocarbons, pentachlorophenol, creosote, chromate copper arsenate (CCA), arsenic, or comparably toxic substances. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use. | As written, this would prohibit all use of treated wood. The AWPA standards for aquatic use allow for the use of ACZA-treated piles, and use of such materials has been approved in adopted SMPs in other jurisdictions. | Amend as follows: “Durable, non-toxic components are the preferred materials for in-water and over-water structures. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.” |
| SMC 23.60.152.K | K. Pilings treated with creosote shall not be repaired to extend the life of the piling. Such pilings in need of repair shall be replaced and shall comply with subsection 23.60.152.J. | As written, this would prohibit the use of casings, or fresh heading of piles. In some cases (e.g. historic piers) repair of the existing pile is the only option. | Amend as follows: K. Pilings treated with creosote shall not be repaired to extend the life of the piling. Such pilings in need of repair shall be replaced and shall comply with subsection 23.60.152.J. Creosote piling may be repaired to increase life is permitted when it can be demonstrated that aquatic area effects are minimized. |
| SMC 23.60.152. L | L. Light transmitting features are required to be installed for all replaced covered moorage, piers and floats, over-water boat repair facilities and similar structures to the maximum extent feasible. | This is an example of language that is too detailed and prescriptive, and which could prevent other innovations. Avoidance of impacts of over-water coverage is covered in section requiring mitigation sequencing and “no net loss”. In some cases such as heavy industrial piers, “light transmitting features” are impractical. | Delete, and rely on mitigation sequencing |

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| SMC 23.60.154 D Standards for archaeological and historic resources | D. If identified historical or archaeological resources are present, site planning and access to such areas shall be designed and managed to give maximum protection to the resource and surrounding environment and any permit issued shall be revised. | The use of the term "maximum protection" does not account for the relative significance of a resource. | Revise to be consistent with WAC 173-26-221 (1), which allows for consultation with the OAHP and affected tribes in the event that a resource is uncovered. |
| SMC 23.60.156 Standards for environmentally critical areas | A. Applicable regulations. The standards and procedures in Chapter 25.09, as set out in Ordinance 122050, and amended by Ordinances 122370, 122738 and the 2011 ordinance are incorporated by reference into this Chapter 23.60. These standards and procedures are modified as set out in subsections 23.60.156. E through N for environmentally critical areas in the Shoreline District. If there are any conflicts between the standards and procedures in Chapter 25.09 incorporated into this Chapter and other provisions of the Shoreline Master Program, the requirements most protective of ecological functions apply. | This section appears to require that the ECA ordinance would apply whenever it might contain more protective regulation of ecological functions. This is in direct contradiction of the guidance of the Legislature (ESHB 1653) regarding the SMP/CAO interface. It is essential that the SMP not compromise this approach by carefully considering how incorporating CAO regulations will affect priority uses, such as Port uses, under the SMA. | Revise and incorporate this language, which appears in the adopted Anacortes SMP: "In the event a conflict occurs between the provisions of this Master Program and the laws, regulations, codes or rules of any other authority having jurisdiction within the City, the regulations that provide more protection to the shoreline area shall apply, EXCEPT when constrained by federal or state law, or where specifically provided otherwise in this Master Program." |
| SMC 23.60. 158 Standards for Mitigation Sequencing | | The Port is concerned that the proposed language introduces new and vague concepts to a well-established understanding of mitigation, especially as established under SEPA. | Amend as follows: A. Mitigation, as used in this Chapter, is the action taken to prevent, minimize or replace the loss of ecological functions that may result from shoreline development, shoreline modifications and/or shoreline uses. Determinations regarding the type and extent of affected ecological functions shall consider the location, design, materials, construction methods, construction timing, and post-construction operation of the development, modifications and/or uses. B. Application of a mitigation sequence shall be undertaken to prevent net loss of ecological functions pursuant to SMC 23.60.152.A. The mitigation sequence, as required by this Chapter, shall be consistent with the Washington State Environmental Policy Act (WAC 197-11-768) and include six steps: 1. Avoiding the impact altogether by not taking a certain action or parts of an action (Step A); |

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| | | | <ol style="list-style-type: none"> 2. Minimizing the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts (Step B); 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to its ecological function at the time a permit for development is issued (Step C); 4. Reducing or eliminating the impact over time by preservation and maintenance operations (Step D); 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments (Step E); 6. Monitoring the impact and the compensation projects and taking appropriate corrective measures (Step F). <p>C. Mitigation sequence Steps C, D, E and F, when required by this Chapter to offset a net loss of ecological functions, shall be considered "compensatory mitigation actions". Compensatory mitigation actions shall be designed and undertaken to achieve equivalent ecological functions relative to pre-project baseline conditions, as determined by the Director.</p> <p>D. In the event that the requirements of this Chapter are inconsistent or in conflict with other local, state and federal environmental regulations, conditions which are most protective</p> |
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| | | | <p>of ecological functions shall apply.</p> <p>E. The mitigation sequence shall be applied in the order of steps listed in subsection 23.60.158.B, except where otherwise indicated for specific project types listed in Table A. If a project includes more than one type, the mitigation sequence shall start at the higher step.</p> |
| SMC 23.60.160 B.3 Standards for priority habitat protection | <p>3. No structure, including but not limited to bulkheads, bridges, fill, floats, jetties, utility crossings, and piers, except for piers that are regulated under subsection 23.60.160.B.4 and for Essential Public Facilities regulated pursuant to, shall intrude into or over priority saltwater habitats unless the applicant demonstrates that all of the conditions below are met:</p> <p>a. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;</p> <p>b. It is not reasonable to avoid adverse impacts to priority saltwater habitats by an alternative alignment or location or avoidance would result in unreasonable and disproportionate cost to accomplish the same general purpose; and</p> <p>c. The project is consistent with the state's interest in resource protection and species recovery.</p> | The proposed outright prohibition for bulkheads, bridges, fill, floats, jetties, utility crossings, and piers in a saltwater habitat is far too restrictive to allow for reasonable protection of container port uses, a mandatory element of the City's comprehensive plan (see RCW 36.70A.085). | The section should be revised to allow for periodic refurbishing and upgrades to support existing uses at marine industrial facilities. |
| SMC 23.60.162.C Standards for parking requirements | <p>2. Existing over water parking areas shall not be expanded or restriped to create additional parking stalls.</p> <p>3. Existing over water parking areas may be relocated over water if the relocation results in a 20% reduction in parking area.</p> <p>4. Loading zones are allowed to be located over water on existing structures if the applicant demonstrates that:</p> <p>a. loading zones are necessary for the operation of a water-dependent or water-related use;</p> <p>b. no reasonable alternative location exists; and</p> <p>c. there is no increase in overwater coverage.</p> <p>D. Accessory parking is not allowed unless it is accessory to a use allowed in the shoreline environment in which the parking is located.</p> | This section appears to disallow restriping of existing parking unless the parking is reduced by 20%. This would make some existing parking non-conforming, and could create a significant issue for Pier 69, and other UH piers. We need to be able to manage existing approved uses including minor revisions to parking and circulation. | Delete #3. |
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| SMC 23.60. 162E Standards for parking requirements | E. The design and construction of parking facilities shall remove to the maximum extent feasible contaminants from surface water runoff prior to its entering adjacent waters and shall prevent erosion of soil or beaches. Control measures may include oil separators, retention ponds, and pervious materials where there is sufficient separation from the shoreline to allow for complete filtration of pollutants. | This is storm water regulatory language and has the risk of introducing duplications and/or inconsistencies with other sections of the city code, as well as state and federal regulatory requirements. It is an impractical standard for overwater facilities. | Delete. |
| SMC 23.60 162F. Standards for parking requirements | F. Parking facilities in non-industrial areas shall be screened from residential, recreation, and natural areas using a 5 foot wide landscaping strip with native evergreen plantings at least 3 feet tall. The screening shall be located outside any required sight triangle. The requirement for screening may be waived or modified by the Director to address traffic safety. | It is not clear what is meant by “non-industrial”. For example would this include existing marinas? This should be covered by zoning and development standards for the development, and does not belong in the SMP. It introduces the risk of duplications or inconsistencies with other sections of the city code. If those conditions are adopted, existing parking could become non-conforming | Delete or clarify the intent of the regulation, and whether the standards are to be applied to new construction. |
| SMC 23.60.164 I Standards for regulated public access. General exceptions | I. General Exceptions. 1. The requirement for one ((4)) public access site for each ((major)) terminal or facility ((shall)) may be waived if the terminal or facility is included in a public access plan approved by the Council and the applicant complies with the plan. | Fails to allow for full flexibility in public access planning when the Port has an adopted public access plan, as indicated in state SMP regulations. | Revise and insert language consistent with WAC 173-26-221(4)(c): “ Where the Port or other public entity has incorporated public access planning into its master plan , that plan may be serve as a portion of...public access planning. This planning may justify more flexible off-site and special area public access provisions in the master program.” Where public access requirements are referenced in the environment designation rules (e.g. -164, -236, -392, etc.) the process should defer to the Port’s adopted public access plan for Port facilities. |
| SMC 23.60. 170 B View corridors | B. <u>Minimum Standards.</u> ((When a view corridor is required the following provisions shall apply:)) <u>1. View corridors shall provide a view of the water through the lot from the public right-of-way.</u> ((4)) <u>2. A view corridor or corridors of not less than the percentage of the width of the lot ((indicated in the development))pursuant to the standards for the applicable shoreline environment shall be provided and maintained. Applicants may meet their total percentage by providing multiple view corridors on a lot if each view corridor has a minimum width of 10 feet except in the UH environment, where the maximum number of view corridors is two and each view corridor has a minimum width of 20 feet.</u> ((2)) <u>3. Structures, including but not limited to buildings, fences, and covered walkways, may not be located in view corridors ((#))unless the slope of the lot permits full, unobstructed view of the water over the structures. Eaves and open railings may be located in view corridors.</u> | The Port is concerned that view corridor requirement could be interpreted to apply to marine terminal equipment and cargo marshalling; transshipment; moored vessels, and/or stacks of cargo, including containers. | Amend language to make clear that marine terminal cargo and equipment are not structures subject to view corridor requirements. |

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| SMC 23.60.182C Standards for dredging | C. Dredging for the purpose of establishing, expanding, ((or))relocating or reconfiguring navigation channels and basins is allowed if the applicant demonstrates ((shall)) dredging is necessary for assuring safe and efficient accommodation of existing navigational uses. | By limiting dredging only to "existing navigational uses" the proposed codes does not comply with the mandate in Ecology SMP rules to accommodate water-dependent uses, and incorporate port plans. See WAC 173-26-201(3)(d)(ii). New dredging could be a component of a cleanup and restoration plan as part of a terminal expansion, and this should be allowed under the SMP. | Delete "existing". |
| SMC 23.60.182D Standards for dredging | D. Maintenance dredging of established navigation channels is restricted to maintaining the location, depth, and width previously authorized by the Army Corps of Engineers. | It is important to make the distinction between "authorized" (which refers to congressional approval of navigation channels) and "permitted" which refers to previously allowed, and thus defines what maintenance is. | See main comment letter. Replace "authorized" with "permitted". |
| SMC 23.60.182 E | E. Dredging shall be timed to not interfere with state aquatic priority species and aquatic species protected under the Endangered Species Act as prescribed by the state and federal regulatory agencies. | This sections introduces a risk of confusion and/or inconsistency with other state and federal regulations. | See main comment letter. Replace with: "Dredging shall be timed to comply with requirements imposed by state and federal agencies with jurisdiction." |
| SMC 23.60,182K.2. Standards for dredging | 2. The dredged material will be disposed of at a dry-land or contained submerged disposal site that has been approved by the federal Environmental Protection Agency and the Director of the Seattle/King County Department of Public Health, or any successor agency. | Dredged material is not solid waste and in-water disposal is not regulated by the health department, but by the interagency Dredged Material Management Office. | See main comment letter. Omit reference to Director of Seattle/King County Department of Public Health. |
| SMC 23.60.184. A Standards for fill | A. In shoreline environments where fill is allowed or allowed as a special use or a conditional use it shall comply with the standards for fill in the applicable shoreline environment and in this Section 23.60.184. | The section requires compliance with both general development standards for fill and the standards in each shoreline environment. However the standards here are a mixture of engineering standards and use standards and are not consistent with fill standards under specific shoreline environments. For example F,G, and H is the section below are allowed actions in all environments, but are not mentioned in any environment designation. It is not clear whether these uses therefore would be prohibited. The same comment about consistency applies to the dredging language in 23.60.182A. | Clarify requirements here and in shoreline environment regulations. Suggest preparing a table that clearly shows what is allowed for each designation. |
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| SMC 23.60.184.F. | <p>((J))E. ((Incidental landfill which does not create dry land and is necessary for the installation of a utility line intake or outfall may be placed on submerged land if it will not have long term adverse impacts to water quality, sediment quality, aquatic life or human health.)) Fill shall not result in the creation of dry land except where necessary for transportation projects of statewide significance as part of ecological restoration and enhancement, beach nourishment, mitigation or where necessary to repair pocket erosion as allowed in Section 23.60.184.G.</p> | <p>Without the allowance in the first sentence, utility pipe bedding and new fill necessary for geotechnical considerations would be restricted. Fill is often <i>required</i> as a temporary or permanent cap, as an anti-degradation layer after some dredging actions.</p> | <p>The deleted paragraph should be retained, and other regulations affecting fill in the draft SMP should be reviewed so that these types of incidental fill would be allowed. Fill should be allowed as a special use in all sections as part of habitat mitigation, restoration and enhancement, or beach nourishment project, or when allowed as a regional interagency-approved open-water disposal site, or as an anti-degradation layer.</p> |
| SMC 23.60. 187 C. 3. Standards for piers and floats and over water structures | 3. Wood treated with pentachlorophenol, creosote, chromate copper arsenate (CCA), arsenic, or comparably toxic compounds is prohibited for decking or piling. | This section would effectively prohibit all use of treated wood, and introduces an impractical standard. | Insert language consistent with general development standard as amended: "Durable, non-toxic components are the preferred materials for in-water and over-water structures. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use." |
| SMC 23.60.188 E.1 Standards for shoreline stabilization | <p>E. Replacement hard engineering</p> <p>1. Replacement of existing hard engineering structures is prohibited unless:</p> <p>a. the applicant demonstrates need for the replacement structure. In all circumstances, except ecological restoration, enhancement or remediation of hazardous substances and site areas of water-dependent uses, need for replacement of hard engineering shall be demonstrated in one of two ways:</p> | The use of double negatives, with multiple exceptions, makes this section difficult to understand. | Amend as follows: E. Replacement hard engineering 1. Replacement of existing hard engineering structures is allowed when there is a demonstrated need for the replacement structure and when there is a need for t ecological restoration, enhancement or remediation of hazardous substances or the protection of water-dependent uses, The need for replacement of hard engineering shall be demonstrated in one of two ways: |
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| <p>SMC 23.60.188 E. 2 Standards for shoreline stabilization</p> | <p>2. Replacement of hard engineering shall not encroach waterward of the ordinary high-water mark or existing structure unless it is to protect a residence that has been continuously occupied since December 31, 1991, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.</p> | <p>We need to understand the significance of the December 31, 1991 date. This section may create an unnecessary burden for water-dependent uses. It needs to be amended so that it is clear that replacement of existing shoreline stabilization is allowed for water-dependent uses both as an exemption and as a substantial development permit. As written, it appears to imply that there would be loss of upland devoted for marine terminals when shoreline stabilization is replaced. This section creates an unnecessary burden for water dependent uses. The continuity of these uses fluctuates with economic conditions. These built and committed uses within the shoreline are also very often scale dependent and a loss of area limits their viability. Flexibility is needed in order to improve and reinvest in Port and other water-dependent facilities.</p> | <p>Amend as follows: 2. Replacement of hard engineering shall not encroach waterward of the ordinary high-water mark or existing structure unless it is to protect a water dependent marine industrial use or there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.</p> |
| <p>SMC 23.60.188 G Standards for shoreline stabilization.</p> | <p>G. Mitigation sequencing 1. In applying mitigation sequencing for new or replaced hard engineering stabilization pursuant to Section 23.60.158, adverse impacts on ecological functions to be addressed include, but are not limited to, disturbance of underwater substrate, turbidity, loss or disturbance of food, shelter, spawning, and migration habitat, and loss or disturbance of fish runs, biological communities and biodiversity, particularly benthic productivity.</p> | <p>Standards for mitigation are incorporated in the general development standards, and should not be partially excerpted here. This introduces risk of confusion and/or inconsistency.</p> | <p>Delete. This section is redundant, and this is an opportunity to simplify the code.</p> |
| <p>SMC 23.60.190. B3 Vegetation and impervious surface water management</p> | <p>3. In applying mitigation sequencing pursuant to Section 23.60.158, adverse impacts on ecological functions to be addressed include, but are not limited to, disturbance of underwater substrate, turbidity, loss or disturbance of food, shelter, spawning, and migration habitat, and loss or disturbance of fish runs, biological communities and biodiversity, particularly benthic productivity. Note: similar language appears in F2.</p> | <p>Standards for mitigation are incorporated in the general development standards, and should not be partially excerpted here. This introduces risk of confusion and/or inconsistency.</p> | <p>Delete B3 and F2. This section is redundant, and this is an opportunity to simplify the code.</p> |
| <p>SMC 23.60.190.F3c Vegetation and impervious surface water management</p> | <p>c. replicating the function of the pervious ground through methods that are engineered and designed according to the requirements of Chapters 22.800 through 22.808, Stormwater Code.</p> | <p>The specific code reference may change in the future, and require revision to the SMP.</p> | <p>Simply refer to "City Stormwater Code" here. . This section is redundant, and this is an opportunity to simplify the code.</p> |
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| SMC 23.60. 200 B.3. Standards for marinas | 3. Marinas are required to provide upland restrooms for use by any patron of the marina facility. At a minimum, the facilities are required to include one toilet and one washbasin for men and one toilet and one washbasin for women. The Director shall determine hours of operation and the need for additional facilities to provide reasonable hygiene based on the number of slips, percentage of live-aboard slips, and the number of transient moorage slips within the marina. | This is prescriptive and intrusive regulation of operations, and should not be applied to public marinas. | See general comment letter. Delete. |
| SMC 23.60. 200 B.7 Standards for marinas | 7. All buildings and open areas used for boat and/or trailer storage are required to be screened with natural existing vegetated buffers or planted landscaped areas. | It is unclear whether this would make existing facilities non-conforming. In many cases, this requirement may be impractical due to site limitations. | Delete. |
| SMC 23.60. 200 B.8 Standards for marinas | 8. In Lake Washington and the Puget Sound overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 30 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less. In Lake Union and Portage Bay overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 15 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less. | This section is unclear and is likely unachievable as written. There is no datum reference (OHW?) | Delete. |
| SMC 23.60. 200 C. 1.b,c. Standards for marinas | b. The minimum public access for a marina providing less than 9,000 linear feet of moorage space is an improved walkway 5 feet wide on an easement 10 feet wide leading to an area located at the water's edge, which shall be 10 feet wide and shall provide 10 feet of water frontage for every 100 feet of the marina's water frontage. c. The minimum public access for a marina providing 9,000 or more linear feet of moorage space is an improved walkway 5 feet wide on an easement 10 feet wide leading to a public walkway 5 feet wide on an easement 10 feet wide located along the entire length of the marina's water frontage. 99 | It is unclear to whom would such an easement be granted and whether there would be a maintenance agreement. This should not apply to Port-owned marinas, where public access is provided and is publicly owned. | Delete, or clarify that easement requirements would not apply to publicly-owned marinas |
| SMC 23.60. 200 C. 2. Standards for marinas | Transient moorage regulations | The definition of transient here is different than used by the Port at SBM, and at other marinas. Marina operators should be free to determine the mix of moorage based on market conditions and the characteristics and location of the individual facility. The Port is opposed to a new live aboard registration program due to administrative costs, and the unnecessary intrusion of SMP rules into marina management and financial decision-making. | See main comment letter. The entire section should be withdrawn and revised extensively, so that the regulations (apparently with concern about floating inns)are focused on the intended target. |
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| <p>SMC 23.60.207B Standards for public facilities</p> | <p>C. Expansion of Uses in Public Facilities. Uses allowed, allowed as a special use, allowed as a shoreline conditional use, or allowed with modifications pursuant to subsections 23.60.207.A or 23.60.207.B may be expanded as follows:</p> <ol style="list-style-type: none"> 1. Major Expansion. A major expansion of a public facility use occurs when the proposed expansion would not meet development standards or exceed either 750 square feet or 10% of its existing area, whichever is greater, including but not limited to gross floor area and areas devoted to active outdoor uses other than parking. Major expansions of uses in public facilities allowed in subsections 23.60.207.A and 23.60.207.B are allowed following the standards and procedural requirements in those subsections. 2. Minor Expansion. An expansion that falls below the major expansion threshold level is a minor expansion. Minor expansions of uses in public facilities are allowed subject to Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, for a Type I Master Use Permit if the development standards of the zone in which the public facility is located are met. | <p>It is not clear why there are separate standards for private and public projects. Assuming this is meant to apply to Port projects, this would apparently insert City Council approval into Port plans. The Port is concerned with the additional layer of procedure and potential delay created for public projects. The City needs to harmonize these requirements with the required container port element of the GMA, the goals of the SMA, the Port's independent authority to develop its facilities, and other sections of the proposed SMP update.</p> | <p>Delete or clarify how this would apply to Port facilities, if at all.</p> |
| <p>SMC 23.60.214 Standards for uses on vessels</p> | <p>A. Dwelling units are allowed on vessels as follows:</p> <ol style="list-style-type: none"> 1. A vessel may be used as a dwelling unit for one household for three nights or fewer per week, beginning on Monday, if the vessel is moored at a marina or moorage authorized for the particular type of vessel. 2. A vessel may be used as a dwelling unit for one household for four or more nights per week, beginning on Monday, if the vessel is moored at a marina or moorage authorized for the particular type of vessel, and if at a marina, the marina complies with the standards set out in Section 23.60.200. <p>B. Activities and uses on a vessel, except as allowed in subsection 23.60.214.A, that are not customary to that type of vessel are prohibited while the vessel is moored. Customary activities or uses occurring while the vessel is moored are subject to the standards of the applicable shoreline environment unless incidental to the customary use of the vessel or the residential use allowed under subsection 23.60.214.A.</p> | <p>The definition of how a vessel may be used as a dwelling unit is different than that used by the Port at SBM, and at other marinas. Marina operators should be free to determine the mix of moorage based on market conditions and the characteristics and location of the individual facility. The Port is opposed to these standards and an unnecessary intrusion of SMP rules into marina management and financial decision-making.</p> | <p>See comments re live aboards above. Withdraw and revise regulation to apply to the targeted issue, rather than all live aboard situations.</p> |
| <p>SMC 23.60.220 10.b.4 Environments established</p> | <p>4) Areas near, but not necessarily adjacent to, residential or ((n))Neighborhood ((e))Commercial zones ((which)) that require ((preservation of views and))protection from the impacts of heavy industrialization and are therefore inappropriate for a UI Environment designation.((:))</p> | <p>This is an example of detailed and prescriptive language that is inappropriate to the SMP. This regulation belongs in the zoning code, not the SMP.</p> | <p>Delete, or revise to eliminate reference to UI environment designation.</p> |
| <p>SMC 23.60.224 Uses in CM Environment (Use table)</p> | <p>Use tables and explanatory text.</p> | <p>As written, the table prohibits cargo terminals. This would make the existing conveyance system for Terminal 86 a nonconforming use.</p> | <p>Amend to allow existing water-dependent infrastructure within the CM environment.</p> |
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| <p>SMC 23.60.232 Shoreline setbacks in the CM environment</p> | <p>Shoreline setback requirements and over water development standards are as follows: A. Development within 15 feet landward of the OHW mark is limited to the minimum necessary to construct and provide access to parks and open space uses and to shoreline modifications allowed, or allowed as a special use or a shoreline conditional use in the CM Environment for water-dependent and water related uses. B. A shoreline setback of 50 feet from the OHW mark is required for uses that are not water-dependent or water-related. C. Development in the area within 50 feet landward of the OHW mark and more than 15 feet landward of the OHW mark is limited to the type of development allowed in subsection 23.60.232.A and pathways and viewpoints accessory to a parks and open space use allowed, or allowed as a special use or a shoreline conditional use in this shoreline environment or for required public access.</p> | <p>The entire section is confusing as written. We were unable to discern what the standards are, and the language is unnecessary complex. Simply state what the requirements are (perhaps in tabular form) so that this is clear to both applicants and city staff.</p> | <p>Revise and clarify.</p> |
| <p>SMC 23.60.240 Uses in the CN Environment</p> | <p>Use tables and explanatory text.</p> | <p>The DMMP-approved open water dredged material disposal site operated by WDNR is not expressly allowed here. This is approved and existing regional resource, and needs to be allowed.</p> | <p>Revise table to include interagency – approved open water disposal of dredged material as an allowed use within CN.</p> |
| <p>SMC 23.60. 246. F Shoreline modifications in the CN Environment</p> | <p>F. Fill. 1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project;</p> | <p>Per comment above, the regional DMMP open water dredged material disposal site needs to be an allowed use. Fill that is required as an environmental protective measure, such as post-dredging anti-degradation layers, should also be an allowed use.</p> | <p>Revise as follows: 1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project, <u>or when allowed as a regional interagency-approved open-water disposal, or as an anti-degradation layer.</u></p> |
| <p>SMC 23.60. 254 Shoreline modifications in the CP Environment</p> | <p>F. Fill. 1. Fill is allowed as a special use if it is part of an ecological mitigation, restoration and enhancement, or beach nourishment project; 2. Fill is allowed as a shoreline conditional use if it is: a. necessary to install utility lines; b. necessary to install bridges; c. part of the cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan; or d. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible.</p> | <p>Consistent with other sections, fill for cleanup and disposal of contaminated sediments as part of an interagency plan should be a special use, rather than a conditional use.</p> | <p>Revise as follows: F. Fill. 1. Fill is allowed as a special use if it is part of an ecological mitigation, restoration and enhancement, or beach nourishment project; <u>or as an element of cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;</u> 2. Fill is allowed as a shoreline conditional use if it is: a. necessary to install utility lines; b. necessary to install bridges; c. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible.</p> |

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| SMC 23.60. 260. Protection in the CP Environment | ((A-))Development in the CP Environment shall be located and designed to ((minimize adverse impacts to natural areas of biological or geological significance)) <u>avoid disturbing ecological functions</u> and to enhance the enjoyment by the public of <u>the shoreline environment</u> ((these natural areas)). | Note that there may be temporary disturbance to ecological functions during restoration actions. | Revise to allow for temporary disturbances that may occur during construction and restoration activities. |
| SMC 23.60.382 Uses in the UC Environment | Use tables and explanatory text. 23.60. 382B.3. 3. To be approved, development that includes any of the uses listed in subsection 23.60.382.B.1 shall comply with one of the following conditions or a combination of conditions if the Director determines the combination would achieve a similar offset for siting a use that is not water-dependent or water-related on a waterfront lot: Et seq. | This entire section is extremely confusing as written. It sets up a long chain of interdependent criteria, with unclear linkages. We were unable to discern how existing and potential future developments at Port facilities within the UC would be affected. Re parking: it is our understanding parking at Shilshole Bay Marina is an accessory to the water-dependent use, and that zoning regulations direct the number of spaces. It appears that this section would alter this, and disallow several existing water-related uses, Because a large part of the site is parking, the requirement for 50% of dry-land being water-dependent may have unintended consequences. | Withdraw and revise extensively for clarity. Recommend that statements be in the affirmative (e.g. what is allowed) rather than prohibited with multiple exceptions and caveats. |
| SMC 23.60. 384 E Shoreline modifications in the UC environment | E. Fill. 1. Fill is allowed as a special use if it is part of a habitat mitigation, or restoration and enhancement, or beach nourishment project. 2. Fill is allowed as a shoreline conditional use if it is: a. necessary to install bridges; b. necessary to install utility lines; c. part of the cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan; or d. necessary for the expansion or alteration of transportation facilities of statewide significance currently located on the shoreline upon a demonstration that alternatives to fill are not feasible. | Consistent with other sections, fill for cleanup and disposal of contaminated sediments as part of an interagency plan should be a special use, rather than a conditional use. Fill that is required as an environmental protective measure, such as post-dredging anti-degradation layers, should also be allowed. | Revise as follows: 1. Fill is allowed as a special use if it is part of habitat mitigation, restoration and enhancement, or beach nourishment project, <u>or when allowed as a regional interagency-approved open-water disposal, or as an anti-degradation layer.</u> |
| SMC 23.60.442 Uses in the UH Environment | Use tables and explanatory text | Minor repairs are frequently required for cargo, passenger, and other commercial vessels moored at Port facilities within UH environment, particularly Piers 66 and 69. I. | . The proposed revisions should not prohibit minor vessel repair, subject to best management practices, as an accessory use within the UH environment, while noting that vessel repair as a primary use is prohibited. |

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| SMC 23.60.442 B Uses in the UH Environment | Use tables and explanatory text | It is unclear what the effect of the proposed changes would be on existing restaurants, conference facilities, and commercial uses at Piers 66 and 69. The draft revisions are not clear if such existing uses would be categorized as non-conforming. | The draft revisions should not prohibit existing uses identical to those at Pier 66 and 69. Such uses would be subject to DPD review and approval, including permit conditioning. |
| SMC 23.60.442 J Uses in the UH Environment | Use tables and explanatory text: J. Public facilities that are water-dependent or water-related or part of an approved public improvement plan for the Harborfront adopted by City Council. | The Port's principal mission is to provide facilities for water-dependent and water-related uses and activities beneficial to the region. In addition existing shoreline code allows for limited non water-dependent and non water-related uses and activities in the UH environment, subject to DPD review and approval. Requiring City Council approval of "public improvement" plan materials prepared by the Port in the interest of economic development has the potential to create conflict between the interests of the City Council and the Port Commission. | Revise SMP draft to distinguish between intent and specific authority of port improvements plans and "public improvement" plans. |
| SMC 23.60. 448 Lot coverage in the UH Environment | C. Lot Coverage Exceptions. Piers may exceed ((permitted)) allowed lot coverage by the addition of floats for open wet moorage. ((Maximum float size above-)) Existing or new floats may exceed the existing lot coverage or the lot coverage limit, whichever is greater, ((is thirty-six hundred (3,600) square feet or an area equivalent to twelve (12) feet times the length of the pier, whichever is greater-)) by 1,600 square feet total for all floats. An additional ((four hundred (400) square feet of coverage ((shall be permitted))) is allowed for an access ramp. ((Existing floats may be increased in size up to this limit.)) | This section is overly prescriptive, and may have unintended future consequences. If mitigation sequencing is followed during the review process, it would be assured the minimum necessary coverage for the proposed project and purpose would be allowed. | Delete. |
| SMC 23.60.450.B Shoreline and side setbacks in the UH Environment | B. All development allowed in the shoreline setback shall be designed to: 1. avoid reducing vegetation coverage; 2. avoid adverse impacts to habitat; 3. minimize disturbance to natural topography; 4. minimize impervious surface; and 5. prevent the need for shoreline stabilization to protect these structures. | If mitigation sequencing is followed during the review process, these issues would be covered. The standards are vague, and it is unclear what the expectation is, and how it would be determined. | Delete this section and refer to overall mitigation sequencing requirements. This section is redundant, and this is an opportunity to simplify the code |
| SMC 23.60. 452.1. View corridors in the UH Environment | 1. View corridors shall allow views of the water from the street. View corridors shall maintain and enhance pedestrian views from Alaskan Way along traditional view corridors established by submerged street rights-of-way, as well as views from upland areas along east/west rights-of-way. View corridors shall provide views past pier development out into the open water of Elliott Bay and to the Olympic Mountains where possible; | This requirement is already covered under 23.60.443. and it appears that a different standard is described here. The Port has a substantial public investment in water-dependent moorage facilities at Pier 66. We are concerned that this would apply to vessel moorage, and that exemptions for vessels been deleted in this section. | Revise to be consistent with general development standards in 23.60.170 (5) that allow for open wet moorage. Open wet moorage should not be considered non-conforming use. |

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| <p>SMC 23.60. 456 Moorage requirements in the UH Environment</p> | <p>A. Developments in the UH Environment shall ((provide)) offer moorage on a regular basis ((either)) through: 1. Using <u>on-site</u> moorage as an integral part of their operation; 2. <u>Offering</u> ((Leasing their)) <u>on-site</u> moorage for lease for use by commercial or recreational watercraft; ((or)) 3. Actively advertising the availability of <u>on-site</u> transient moorage; <u>or</u> 4. <u>Complying with subsection 23.60.456.D.</u> B. To facilitate moorage(:) developments shall provide((either)): 1. Cleats on the two sides of the pier sufficiently strong for the moorage of vessels ((one hundred)) 100 feet in length; 2. Floats ((, for moorage of smaller vessels,)) that are at least ((one thousand eight hundred ())) 1,800(()) square feet with a minimum width of ((six ())) 6(()) feet, <u>for moorage of smaller vessels</u>; or 3. Alternative moorage facilities providing an equivalent amount of moorage, as determined by the Director. C. To facilitate access to moorage(:) developments shall provide: 1. A pier apron of a minimum width of ((eighteen ())) 18(()) feet on each side and the seaward end of the pier or wharf; and 2. Railings and/or ramps designed to ((permit)) <u>facilitate</u> access to the pier apron or roadway from moored ships and boats.</p> | <p>This section is puzzling and overly prescriptive. It is unclear why moorage would be <i>required</i> (as opposed to simply allowed) within the UH. It is also unclear why floats are specifically called out, when piers are allowed elsewhere, and presumably allowed for moorage uses .</p> | <p>Delete.</p> |
| <p>SMC 23.60.482 Uses in the UI Environment</p> | <p>Use tables and explanatory text.</p> | <p>The tables need to expressly allow existing and potential future WD/WR marine cargo uses, including WD/WR commercial and industrial moorage (M.3), vehicle storage and maintenance (M.8), passenger terminals and cargo terminals (without the proposed restrictions of 482D). See comments below.</p> | <p>Revise tables to expressly allow existing and future WD/WR uses as noted within UI environment.</p> |
| <p>SMC 23.60.482 D Uses in the UI Environment</p> | <p>D. The following uses are prohibited on submerged land, except they are allowed on existing pier structures at existing terminals if water-dependent, water-related or an accessory office as provided below and the requirements of subsection 23.60.482.B.2.c are met: 1. Cargo terminal; 2. Passenger terminal; 3. Food processing and craft work use; 4. Light manufacturing; 5. Warehouse Storage; and 6. Accessory offices less than 1000 square feet for water-dependent uses allowed, or allowed as a special use or a shoreline conditional use provided in Section 23.60.482.</p> | <p>As written, the section is unclear and confusing, and creates a decision loop that would prohibit new or expanded cargo terminals. This is inconsistent with the policy objectives of the SMA as well as specific directives of the SMP rules (again, see WAC 173-26-201(3)(d)(ii)). It is also inconsistent with the required container terminal development element of the Seattle Comprehensive Plan, and with the Port's adopted Shoreline Plan, which describes potential terminal expansion areas.</p> | <p>Revise tables to expressly allow existing and future WD/WR cargo terminal uses as noted within UI environment.</p> |

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| <p>SMC 23.60.486 D Height in the UI Environment p. 302</p> | <p>D. Rooftop Features.</p> <p>1. Radio and television receiving antennas, flagpoles, chimneys, (and) <u>smokestacks, and religious symbols for religious institutions</u> are exempt from height controls, (except as regulated in Chapter 23.64, Airport Height Overlay District,) <u>provided (such features are):</u></p> <p>a. The feature is (N) no closer to any adjoining lot line than ((fifty-))50((+)) percent of their height above existing grade; or</p> <p>b. If attached (only) to the roof, <u>the feature is</u> no closer to any adjoining lot line than ((fifty-)) 50 ((+)) percent of their height above the roof portion where attached.</p> <p>c. <u>The width of the feature does not obstruct the view of the shoreline of a substantial number of residences within the Shoreline District on areas adjoining such shorelines.</u></p> <p>2. Open ((R)) railings, skylights, clerestories, solar collectors, parapets, <u>planters, green roofs, greenhouses,</u> (and) <u>firewalls, communication utilities, and accessory communication devices</u> may extend ((four-))4((+)) feet above the maximum height ((set in subsections A and B of Section 23.60.632)) <u>limit where allowed in the underlying zone.</u></p> <p>3. The following rooftop features may extend ((ten-))10 feet above the maximum height limit((set in subsections A and B of Section 23.60.632, so long as-)), <u>if the combined total coverage of all features listed in this subsection 23.60.486.C((subparagraph C3)) does not exceed ((fifteen-))15((+)) percent of the roof area, or ((twenty-))20((+)) percent of the roof area if the total includes screened mechanical equipment and where allowed in the underlying zone or special district, except where the width of such features obstructs the view of the shoreline of a substantial number of residences within the Shoreline District on areas adjoining such shorelines; in which case the Director may authorize a lower height:</u></p> <p>a. <u>Solar collectors</u></p> <p>b. <u>Stair and elevator penthouses; and</u></p> <p>((b)) c. <u>Mechanical equipment.</u></p> <p>4. Structures may extend 18 inches above the maximum height limit if the proposed roof insulation exceeds the current energy code requirements.</p> | <p>This section is overly prescriptive, and may have unintended future consequences. If mitigation sequencing is followed during the review process, it would be assured that impacts of rooftop features would adequately mitigated. . Industrial edifices, including rooftop features, may be necessary for a variety of WD/WR uses. They should not be restricted. Automation of cargo terminals may require radio controls, antennas, security measures, etc, that are a necessary component of the WD/WR use. The shoreline is a dynamic environment that needs to change and accommodate our customers' needs with changing economic paradigms. On occasion, rooftop features may block some component of the viewshed exposed to neighboring zones/environments.</p> | <p>Section 1.c is overly restrictive and vague regarding what would constitute an obstruction. Revise to clarify .</p> |
| <p>SMC 23.60. 502 Uses in the UM Environment</p> | | <p>This is helpful, and accommodates existing and some potential future uses at Fishermen's Terminal. This flexibility is needed for to maintain the economic vitality of this unique maritime complex.</p> | <p>No change proposed.</p> |

May 23, 2011

MEMO

To: Maggie Glowacki, DPD

Fr: Ellie Ziegler, Sound Transit

Re: Sound Transit comments on Seattle's Proposed Draft SMP

Thank you for the opportunity to comment on the proposed SMP. Sound Transit has reviewed the draft Ordinance made available to the public in February 2011 and offers the following comments.

The existing SMP reflects the prior collaboration between the City and Sound Transit

In 2005, as Sound Transit was planning the extension of its Link Light Rail system to the University District, it approached DPD about making changes to the City's SMP to accommodate light rail, which must pass through the shoreline district at the Montlake Cut in order to reach the University District, and through the shoreline district at Lake Washington in order to reach Bellevue.

Sound Transit met with DPD and the City Law Department over a period of many months in 2005 and 2006 and reached agreement on amendments to the SMP that met the City's regulatory needs while also recognizing Sound Transit's status as a regional essential public facility. These amendments to the SMP were approved by the City Council on August 14, 2006, when it passed Ordinance 122198. The Department of Ecology approved all of the amendments except one, and on July 30, 2007, the Council passed Ordinance 122448 modifying the amendment to SMC 23.60.022.

The proposed new SMP has been prepared without consultation with Sound Transit, and it deletes or modifies the provisions that were agreed-upon in 2006. In particular, Sound Transit is very concerned that the proposed SMP will make its facilities subject to special use approval or a shoreline conditional use, contrary to the City's duty to appropriately accommodate regional essential public facilities under the Growth Management Act.

Proposed deletion of SMC 23.60.090.J

The most fundamental change in the proposed SMP affecting Sound Transit is the change to the status of light rail uses, which will no longer be permitted outright when they are proposed in tunnels or on bridges. In the Conservation Navigation (CN) and Conservation Recreation (CR) environments, both of which will apply to Sound Transit's proposed East Link facility on the I-90 bridge, a "special use" approval will be required. Also, in the Conservation Preservation (CP) environment, a bridge or tunnel containing light rail transit facilities will require a shoreline conditional use permit. The Evergreen Point floating bridge, for example, passes through the CP

environment, so if rail transit facilities are proposed for that bridge, a shoreline conditional use permit will be required under the proposed SMP.

The existing SMP includes SMC 23.60.090.J, which states:

J. Light rail transit facilities approved pursuant to subsection 23.80.004.C are permitted uses in all shoreline environments, and light rail bridges and tunnels are water-dependent uses when they must cross a body of water regulated by Chapter 23.60. A temporary structure or use that supports the construction of a light rail transit facility and that is approved pursuant to Section 23.42.040.F is permitted as a temporary structure or use in all shoreline environments.

This language in existing subsection J was carefully negotiated between DPD and Sound Transit, and was approved by the Department of Ecology. It reflects Sound Transits unique status as a regional essential public facility that must pass through the City’s shoreline district, and Sound Transit is opposed to the deletion of this subsection in the proposed new SMP.

Proposed SMC 23.60.090 states (emphasis added):

A. In all shoreline environments *all uses are prohibited over water* as a principal or accessory use *unless* the use is allowed or allowed as a special use, a shoreline conditional use or a Council conditional use in the shoreline environment where the use is proposed *and* the use is: . . .

* * *

2. Railroad, rail transit, street and pedestrian bridges and tunnels that reasonably need to cross water that is regulated in this Chapter; or
3. Allowed, allowed as a special use, a shoreline conditional use or a Council conditional use overwater in the specific regulations for the type of use.

A regional light rail transit system must cross through multiple shoreline environments, in specific locations as selected by the Sound Transit Board. Under this proposed language, light rail transit facilities will no longer be allowed outright in Seattle when the bridges or tunnels needed to support its facilities are required to cross regulated water bodies (and light rail bridges and tunnels will no longer be water-dependent uses). Sound Transit will be required to obtain either “special use approval” or a conditional use permit, which are highly discretionary approvals that could allow other agencies to second guess the siting decisions of the Sound Transit Board. This result is inconsistent with the GMA. The proposed SMP should recognize that a regional light rail facility is a permitted use in the shoreline district, and should simply allow for appropriate mitigation of the impacts of that use.

The proposed SMP, moreover, is inconsistent with **SMC 23.80.004**, which regulates essential public facilities, where subsections C.1 states:

1. Light rail transit facilities necessary to support the operation and maintenance of a light rail transit system are permitted in all zones and shoreline environments within the City of Seattle.

Thus the proposed SMP will be inconsistent with the way the City has regulated Sound Transit as an essential public facility for the past several years, both inside and outside the shoreline district, since SMC 23.80.004.C.1 was adopted by the City Council in 2000 in Ordinance 119974. No rationale or justification has been suggested for this significant policy change which is contrary to the GMA.

Proposed Use Tables

Sound Transit's concerns similarly apply to the proposed use tables.

Sound Transit's East Link light rail alignment will pass through three shoreline environments within Seattle's shoreline jurisdiction, as those environments are identified in the proposed SMP: Urban Residential (UR), Conservancy Recreation (CR), and Conservancy Navigation (CN). In the area of the I-90 bridge, the UR environment appears to be entirely upland; the CR environment is mostly overwater but may include small areas of upland along the shore, and the CN environment is entirely overwater. It is important to also note that a portion of the Evergreen Point floating bridge appears to pass through the Conservation Preservation (CP) environment, so if rail transit facilities are proposed for that bridge in the future, a shoreline conditional use permit will be required under the proposed SMP.

Sound Transit requests that its light rail transit facilities be allowed as an outright use in all shoreline environments, including UR, CR, CN and CP. Sound Transit is opposed to provisions that would require a "special use" approval or shoreline conditional use permit for its facilities located in a tunnel or on a bridge within the shoreline district.

Proposed SMC 23.60.540 – Uses in the UR Environment

Only in the upland UR environment are "rail transit facilities" allowed outright, per M.6 of the use table, but even in that environment, bridges and tunnels on waterfront lots require a special use permit per M.1.

Proposed SMC 23.60.282 – Uses in the CR Environment

For the CR environment, the use table at N.6 indicates that "rail transit facilities" are allowed, but for "bridges and tunnels" at N.1 the table refers to SMC 23.60.282.H which states "Bridges or tunnels containing rail transit facilities, railroads or streets are allowed as a special use if no reasonable alternative location exists." This language, together with proposed SMC 23.60.090, means that Sound Transit's facilities cannot be located on the existing I-90 bridge without special use approval, despite the fact that the use table purports to allow rail transit facilities outright.

Proposed SMC 23.60.240 – Uses in the CN Environment

For the CN environment, the use table at N.6 for “Rail transit facilities” refers to 23.60.240.E which states “Bridges containing rail transit facilities, railroads or streets are allowed as a special use.” Thus special use approval is needed before any light rail facilities can be placed on the I-90 bridge waterward of the shoreline.

Proposed SMC 23.60.252 – Uses in the CP Environment

For the CP environment, the use table at N.6 indicates that “rail transit facilities” are allowed, but for “bridges and tunnels” at N.1, it refers to SMC 23.60.252.E which states “Bridges containing rail transit facilities are allowed as a shoreline conditional use.”

Proposed SMC 23.60.032 – Provisions for Special Use Approvals

The standards for special use approval are in SMC 23.60.032, which is proposed to read:

23.60.032 Criteria for special use approvals

Uses that are identified as requiring special use approval in a particular environment may be approved, approved with conditions, or denied by the Director. The Director may approve or conditionally approve a special use if the Director finds the applicant has demonstrated:

- A. The proposed use will not interfere with normal public use of public shorelines;
- B. The proposed use of the site and design of the project is compatible with other allowed uses within the area;
- C. The proposed use can mitigate all adverse effects to ecological functions; and
- D. The public interest suffers no substantial detrimental effect.

If the I-90 bridge did not already exist, it might well be impossible to meet these standards.

In addition, neither the existing SMP nor the proposed SMP is clear about what a “special use approval” is. It appears to be best characterized as an “approval” or “decision,” not as a permit, but whatever its proper characterization, it will add a discretionary component to the shoreline permitting process that is not appropriate for a regional essential public facility that must pass through shoreline environments.

Proposed SMC 23.60.208 - Development Standards for Rail Transit Facilities

The proposed SMC 23.60.208, states as follows:

A. In shoreline environments where railroads and rail transit are allowed, or allowed as a special use or a shoreline conditional use, they shall comply with the standards in the applicable shoreline environment, in this Section 23.60.208, and if located on a bridge or in a tunnel, in Section 23.60.196.

A. New railroad tracks are allowed in the Shoreline District only if necessary to serve lots in the Shoreline District except as allowed in subsection 23.60.208.C.

- B. Existing railroad tracks may be expanded and new tracks added within existing rail corridors.
- C. Where possible, new rail transit facilities in the Shoreline District shall use existing highway or rail corridors.
- D. All new railroads and rail transit facilities are required to provide means for the public to overcome the physical barrier created by the facility and gain access to the shoreline.
- E. The Director may approve or condition applications for intermittent or temporary railroad or rail transit uses not approved pursuant to subsection 23.80.004.C if the use complies with the following standards:
 1. All impacted areas are revegetated with 100% native vegetation;
 2. There is no increase in impervious surface from the condition of the site prior to the intermittent or temporary use; and
 3. The rail transit use complies with the standards of subsection 23.42.040.F.

This section appears to state use standards as much as it states “development standards,” since it provides standards for where rail transit facilities may be located, and subsections C, D, and E create unnecessary issues for Sound Transit. Subsection C, regarding the use of existing “highway” or rail corridors, could be inconsistent with a future routing decision by the Sound Transit Board and contrary to the City’s duty to accommodate a regional essential public facility. Subsection D, regarding means to overcome physical barriers to the shoreline, could require a future linear transportation facility to construct a costly overpass or underpass.

Subsection E is the language that is proposed to replace the last sentence in SMC 23.60.090.J, which permits, in all shoreline environments, temporary structures or uses that support the construction of light rail transit facilities. The new language gives the Director discretion whether to permit such temporary structures or uses, and such discretion is not appropriate for a regional essential public facility that must cross through the shoreline district. In addition, subsection 2 would prohibit the staging area at UW station that is necessary for the construction of the tunnels under the Montlake Cut. At a minimum this language should be changed to require that “there be no increase in impervious surface *once the temporary use is concluded and the area restored.*”

Proposed SMC 23.60.157 – Essential Public Facilities

This proposed section is ambiguous. The proposed language states:

- 23.60.157 Essential Public Facilities
- A. Essential public facilities defined in Section 23.84.A.010 and located in the Shoreline District are subject to the provisions of Chapter 23.80.
 - B. Essential public facilities are required to comply with development standards in this chapter and to mitigate all adverse impacts to the ecological functions of shorelines and critical areas by applying mitigation sequencing starting at step C, except as provided in subsection 23.60.EPF.C.
 - C. 1. If the applicant for an essential public facility demonstrates that a provision of this chapter, including mitigation of adverse impacts, precludes siting an

essential public facility, the Director shall waive or modify that provision . This relief is in lieu of any shoreline conditional use, shoreline variance process, environmentally critical areas variance, or environmentally critical area exception otherwise applicable.

2. a. The Director shall require the applicant to mitigate all adverse impacts to the ecological functions of shorelines and critical areas related to any relief granted, starting at step B for uses that are prohibited in the environment where the essential public facility is proposed and starting at step C for all other uses.

b.. Mitigation sequencing does not apply to the scope of the project but does apply to the siting of specific project components of the project.

c. The Director shall modify the mitigation if the applicant demonstrates it precludes siting the essential public facility.

Subsection B refers to the application of “mitigation sequencing starting at step C, except as provided in subsection 23.60.EPF.C” (sic) and as written raises the following questions:

1. Is this intended to be a reference to step C in the next section of the code, 23.60.158, “standards for mitigation sequencing?”
2. Are the references to “step B” and “step C” in subsection 2.a intended to be references to the mitigation-sequencing steps in 23.60.158?
3. Is the citation in subsection B to “23.60.EPF.C” supposed to be a citation to subsection C of the instant section, 23.60.157, which authorizes the Director to waive or modify a provision of the SMP that precludes siting an essential public facility?

Thank you for your consideration of Sound Transit’s comments and concerns regarding the proposed draft SMP. We would welcome the opportunity to work with DPD, as we have done in the past, with regard to the sections of the proposed SMP that directly affect Sound Transit. If you have any questions or need additional information, please feel free to contact me at (206) 398-5135 or ellie.ziegler@soundtransit.org.



UNIVERSITY OF WASHINGTON

OFFICE OF REGIONAL AND COMMUNITY RELATIONS
Theresa Doherty, Director

May 31, 2011

Mr. Marshall Foster
City of Seattle
Planning Director, Department
of Planning and Development
700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Re: Comments on 2011 Draft Shoreline Master Program

Dear Mr. Foster:

The University of Washington (University) appreciates the opportunity to provide comments on the draft Seattle Shoreline Master Program (SMP), distributed February 8, 2011. We are also pleased to have been included on the SMP Citizens Advisory Committee. The University understands the considerable amount of time and effort spent on the part of Staff and its consultant team to prepare this draft and we have provided comment that we think will correct some of the concerns that we have with the draft. Specifically, as explained in detail in this letter, the University believes that the City's proposed SMP update poses potential and significant conflicts with the 2003 University of Washington Campus Master Plan (CMP) or its successor. The University requests that the draft SMP add language that expressly recognizes the CMP or its successor, together with its approved land uses and development standards, as the land use controls applicable to University activities and development, including those within shoreline jurisdiction.

Background:

As your department is aware, the University is one of the largest land owners in the City of Seattle. The University campus includes approximately 12,000 linear feet of waterfront on Portage Bay, Union Bay, and the Lake Washington Ship Canal. This area is varied in character, ranging from a marshy northeastern portion of the Campus in Union Bay, to the more developed commercial waterfront areas along Portage Bay. These areas support the University's mission of teaching, research, and public

service. Examples of support for academic programs include wetland areas for teaching and nature studies, to a working waterfront for fish hatcheries and moorage of University research vessels. These areas are key amenities for both the University and the Seattle community. The public nature of most of the shoreline provides physical use and access and well as visual enjoyment for the campus population and thousands of Seattle residents. Over the years the University has been an outstanding steward of its shoreline. The importance of these shoreline areas to the University's mission are reflected in the Campus Master Plan adopted by Seattle City Council in 2003. This Campus Master Plan represents many years of cooperative work with the goal, as summed up in the agreement, to:

(A)llow the University to pursue its goals of instruction, research, and service to Seattle and the broader society and, at the same time, to foresee, assess, and mitigate the direct, indirect and cumulative impacts of long-term development on the physical and human environment and on the City services.

Joint City/University Planning for the Campus:

The City and the University have a long history of detailed joint agreements and plans for the campus that have been the product of substantial public input, careful environmental analysis, and thorough negotiation before arriving at joint agreement and adoption by both the University and the City Council. Among these efforts are the 1998 Agreement between the City of Seattle and the University of Washington (City Ordinance Nos. 118981 and 118982), as subsequently amended; the SW Campus Plan PUDA (Ordinance No. 120249); and, perhaps most importantly, the 2003 CMP itself (Ordinance No. 121041). While the 1998 Agreement specified that the University has not conceded its independent authority to make land use decisions given its status as an agency of Washington State government, the University has been more than willing to participate cooperatively with the City in land use planning for the campus, as reflected in these joint agreements and plans. Regarding the proposed new draft Shoreline Master Program, however, the University has a number of concerns that we believe undermine and, in some cases, directly conflict, with these joint planning efforts. We also believe that commitments made by the City in the 1998 Agreement do not permit the City to make such unilateral changes to the joint planning processes and results incorporated into the 2003 CMP.

The City has codified key provisions of these agreements and plans in SMC Chapter 23.69, recognizing that:

- the master plan provisions can modify any development standard of the underlying zone (SMC 23.69.028);
- once modified, the development standards of the adopted master plan become the development standards for the major institution (SMC 23.69.030);
- after adoption, the institution “may develop in accordance with the adopted master plan” (SMC 23.69.034);
- and, most specific for the University of Washington, the provisions of these documents and, specifically the adopted master plan “shall govern. . . uses, . . . permit acquisition and conditioning, . . . zoning and environmental review authority” and may modify development standards that otherwise apply in the underlying zone. (SMC 23.69.006(B)).

Provisions in the current draft SMP amendments that eliminate University uses from campus shoreline environments or impose development standards in conflict with those contained in the CMP or its successor are not consistent with this code provision. In fact, the CMP included its own shoreline polices intended to guide development decisions in the shoreline areas of the Campus. It also includes detailed development standards that regulate the physical layout of that development on all areas of the Campus, including height and setback limitations. The adopted 2003 CMP, page 135, specifically reiterates the same principles codified in SMC Chapter 23.69 that the CMP or its successor controls, not underlying zoning or other land use codes. This is the case, even when specific University uses are not expressly addressed in the CMP (to provide substantial flexibility to meet changing University needs). The CMP specifies that if an underlying code development standard is not discussed in the CMP, that code standard “does not apply.” Thus, we believe that silence in the CMP does not give the City the opportunity to apply other code requirements. While the CMP recognizes that new development standards may be adopted in the future, that may only be applied to the University if such amendments are “consistent with and guided by the goals and policies of the 1998 City-University Agreement and the goals and policies of this Campus Master Plan.” Put simply, the 1998 Agreement and the adopted 2003 CMP or its successor are intended to govern use and development on University property; not independently-adopted City plans or regulations.

The fact that the University has historically agreed in the CMP to obtain shoreline permits for development within shoreline jurisdiction, is based upon the recognition that then-current SMP regulations were incorporated into and consistent with the 2003 CMP. In essence, adoption of the 2003 CMP, including its specificity regarding shoreline uses and development standards, has vested the University with the right to develop in those areas consistent with the 2003 CMP or its successor. We have been advised by our legal counsel that the City does not have the right or legal ability to impose different development standards, expand its shoreline jurisdiction, or limit approved university uses without University concurrence, as provided in the 1998 Agreement.

The Draft SMP Amendments Conflict with the Adopted Campus Master Plan

As described in more detail in Appendix A to this comment letter, the proposed draft SMP is not consistent with the CMP. It appears that draft SMP regulations will, in several important circumstances, substantially change or undermine the campus development that was envisioned and approved by those agreements and plans. These inconsistencies need to be corrected. The University is willing to obtain shoreline permits, but not be subject to new criteria or limits that would increase the area of shoreline jurisdiction, prohibit or restrict uses previously permitted in other plans and agreements, or impose onerous additional mitigation on planned-for University expansion beyond that specified in the CMP or its successor. Provided below is a brief summary of the University’s primary concerns. These are overarching problems we have identified that conflict directly with the CMP, the goals and intent of the 1998 Agreement and ultimately with the University’s ability to fulfill its teaching, research and public service mission on those portions of the Campus that are within shoreline jurisdiction. In these instances, we are asking that the City modify its draft SMP to recognize and honor the commitments established in the existing agreement and master plan. In the attached Appendix, we have also provided a more detailed analysis of specific code provisions that are problematic.

The University is especially concerned with:

- The proposed SMP draft appears to expand shoreline jurisdiction in Union Bay/Union Slough area, such that many existing athletic facilities and open spaces areas would be subject to new shoreline permit jurisdiction. Imposing both the use and development standard limitations on these areas would directly conflict with continued use or improvements needed to meet academic, public access and athletic needs. The very real impact of these new use and development standard restrictions would be on the Waterfront Activities Center which is used primarily by citizens of the City of Seattle, the wetlands around the Conibear
- Crew House and the Indoor Practice Facility, both of which are key elements of the University's and public's use of the southeast Campus.
- Further, if Conservancy zoning were to be extended further into the Union Bay natural area it would preclude education and research uses that the University current provides in this area. As you know, this type of environmental research performed by the University is leading edge and has resulted in much of the current sciences and practices regarding shoreline protection, aquatic preservation and wetlands research. Limiting the University's ability to perform this research and provide this public service impacts not only the City of Seattle but the State and the Nation.
- Another serious conflict with the CMP lies in the new use restrictions in the proposed Urban Commercial environment that would limit or prohibit institutional uses in locations previously identified in CMP. Specifically, many of the waterfront lots located in the proposed UC zone would be made non-conforming and in some cases not able to be redeveloped if the UC standards were to apply. It is the flexible redevelopment of these commercial waterfront lots that has allowed the University to provide amenities such as Showboat Beach, and the car-top boat launch at Boat Street.
- Throughout the draft SMP, there are new restrictions on how non-conforming uses may be maintained, renovated or expanded. These new non-conforming provisions are not only inconsistent with the University's planned use areas, such as the proposed UC zones discussed above, but also many of the public access walkways, docks and other appurtenances enjoyed by the citizens of Seattle at the Waterfront Activities Center, the Union Bay natural area and protective shoreline structure such as bulkheads, rockeries and retaining structures that protect University properties.
- Lastly, the imposition of new mitigation requirements through the proposed Shoreline Alternative Mitigation Plan (SAMP) would appear to include new mitigation requirements for projects and development that are already planned for in the CMP. This CMP was subject to a lengthy planning process beginning in the spring of 1999 and concluding with the issuance of a final EIS and Master Plan adopted by the Seattle City Council and University Board of Regents in 2003. That adopted CMP specifies public access and shoreline mitigation requirements. We believe the layering of new SAMP requirements over projects and development already planned and mitigated for is not appropriate.

To summarize, the University believes that the SMP Amendments should recognize the adopted University of Washington Campus Master Plan as controlling use and development on the campus.

Many of the inconsistencies between the City's proposal and adopted CMP or its successor could be corrected with additional language in the ordinance that clarifies the role of the CMP or its successor in review and approval of projects in the shoreline. This simple approach would avoid numerous amendments that would otherwise be required throughout the draft document to address CMP inconsistencies. For example, the City could revise the language at SMC 23.60.016 Regulations supplemental to recognize that the CMP or its successor controls. The City should adopt the following changes to clarify the relationship between proposed regulations and the adopted CMP.

SMC 23.60.016 Regulations Supplemental

- A. The regulations of this chapter are superimposed upon and modify the underlying land use zones in the Shoreline District. The regulations of this chapter supplement other regulations of this title as set out in subsection 23.60.016.B and C except that, pursuant to the 1998 Agreement between the City and the University of Washington, uses and development standards for development located within the University's Major Institution Overlay shall be as described and planned for in the Council Adopted 2003 Campus Master Plan or its successor.

Similar revisions should be incorporated in the corresponding comprehensive plan policies, similar to the following suggestion:

New LU Policy: Shoreline jurisdiction, uses and development standards for the shoreline property within the University of Washington Major Institution Overlay and shoreline environment shall be governed by the 1998 Agreement between the City and the University of Washington and the University's adopted Campus Master Plan.

Conclusion:

The City and the University have long history of careful and thorough joint planning for the University campus, as reflected in the 2003 CMP. That plan both ensures protection of the shoreline environment within the University campus, but also enables the University to fulfill its mandated research, educational and service mission not only for the residents of the City, but also for the state, the nation and, in fact, the world. As specified in the adopted CMP or its successor and City code that adopted plan controls shoreline use and development. The University requests the City to recognize this and make the appropriate amendments to the current SMP draft, thus avoiding what otherwise would be irreconcilable conflicts with that planning effort.

We also request the opportunity to discuss our concerns and suggestions with you and with Diane Sugimura, DPD Director, so that both the City and the University can protect the planning work that has been achieved to date and further strengthen the planning relationship between our respective entities.

Very truly yours,

A handwritten signature in black ink that reads "Theresa Doherty". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Theresa Doherty, Director
Office of Regional and Community Relations

cc: Diane Sugimura, Director DPD
Rebecca Barnes, University Architect, UW
Jan Arntz-Richards, Environmental Planner
T.C. Richmond, GordonDerr, LLP
Jay P. Derr, GordonDerr, LLP

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COMPREHENSIVE PLAN POLICES

- 1) LU231(1): The University is concerned that if this language: “protect or restore and enhance” on waterfront lots is creating a new obligation to enhance. Is the intent to “protect” OR “restore and enhance?” or is the standard to “protect or restore” AND “enhance”? If the latter, then this policy suggests *enhancement* is required on all waterfront lots, which is potentially a significantly increased standard that is not consistent with the University of Washington Campus Master Plan (“CMP”).¹
- 2) LU 231(1)(b): This policy (or a new policy) should recognize the CMP planning effort as controlling.
- 3) LU231(3): This policy appears to be internally inconsistent. How do you “prohibit uses that would negatively impact natural areas” and at the same time “provide mitigation for negative impacts?”
- 4) Shoreline economic development goals: The University suggests that a policy be added that recognizes and promotes the University’s educational mission in its shoreline environments.
- 5) LU286: The prohibition of non-water-oriented recreation is inconsistent with the CMP and represents a problem, especially within expanded shoreline jurisdiction in Conservancy zones. This would seem to undermine the CMP goal of providing athletics programs in the southeast campus.
- 6) The UC Environment (LUG67, 294-296) should be revised to recognize that existing and proposed MIO uses in this environment are conforming and permitted uses.
- 7) LU321: Sets a 35-foot height limit as the standard maximum height in the Seattle Shoreline District. This conflicts directly with the 65-foot height limits adopted in the CMP for section H-3 (p.132) of the Master Plan development standards.

GENERAL PROVISIONS IN DIRECTOR’S REPORT

- 1) Page 17, Director’s Report. New vegetation removal section appears to prohibit the maintenance, expansion and potentially even continued use of a number of ball field and sports field uses in the newly expanded Conservancy zone. **This is a direct conflict with the adopted CMP.**

¹ CMP means 2003 Mastrer Plan or its successor.

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- 2) Page 18. New regulations appear to remove small project waivers which the University relies on for ongoing minor earthworks, landscaping and maintenance projects in environmentally critical areas associated with Union Bay Natural area.
- 3) Page 18. A new shoreline mitigation bank is proposed that would include habitat mitigation requirements for shoreline projects. This may conflict with proposed University development which is already mitigated under the CMP.
- 4) Page 32, Director's Report. Urban Shoreline Environment Table. Many likely uses become prohibited on waterfront lots. **This is a direct conflict with the adopted CMP.** For instance, provision of the space for the Agua Verde restaurant and the associated kayak rentals was imposed by the City of Seattle and are part of the public benefits package for the realignment of 15th Ave NW. The City required public use of the shoreline and the University has worked hard to provide it. Nearby residents and users city-wide rely on this access to the waterfront. In an urban environment, access to the waterfront is critical as is continued flexibility on how those existing structures are utilized.
 - a) Line C.2 - Eating and drinking establishments are now conditional uses on waterfront lots. This would impact the continued operation of the Agua Verde restaurant.
 - b) Line C.10 – Sales and service general. Most uses on waterfront lots become conditional uses. Would be problematic to retain and occupy a number of tenants spaces located in the UC.
 - c) Line E.2 – Child care centers become a prohibited use in any of those buildings located on waterfront lots along Boat Street.
 - d) Line E.6 – Hospitals become prohibited uses on any waterfront lot. This would directly impact the Medical Center.
 - e) Line E.9 – Major institutions are only allowed to be water dependent uses on all of the UC properties located on Boat Street and beyond. This would impact a number of existing buildings which the University of Washington needs to maintain flexibility to move programs within their existing approved CMP.
- 5) Page 39, Director's Report. Conservancy Shoreline Environment Table. Line E.9 – All major institution uses in the conservancy management zone become **special uses** rather than allowed uses, and only on upland lots. Most MIO uses associated with the University of Washington becomes prohibited on waterfront lots in the CM Zone, unless they are located within an existing building within a historic district.
- 6) Page 41, Director's Report. Table of Conservancy Preservation Uses. Conservancy preservation zoning would **be extended to all wetlands associated with the Union Bay natural area** and any other wetlands which are connected to a conservancy management or conservancy protection zone. Institutions are not allowed uses on waterfront lots in any of those zones. The only allowed uses in those zones would be restoration and enhancement.

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Restoration and enhancement uses do not include research or teaching. **This area is a former City Landfill. Wetland research done by the University has been critical in the preservation and enhancement of these areas. This proposed code is in direct conflict with the adopted CMP.**

PROPOSED ORDINANCE

- 7) Section 23.60.002-B3. Change to the text removes the mandate to provide maximum public access and use to the shorelines. This change in priority is reflected in changes in the Conservancy zone which actually discourage public use of the shoreline through active development such as trails and boardwalks. **This is a direct conflict with the adopted CMP goals.**
- 8) Section 23.60.016. Regulations Supplemental. **Suggested Change:** As noted above, this section should specify that the adopted CMP controls.
- 9) Section 23.60.020-C3ab imposes a new standard for exemptions from seasonal events. This would limit the ability of the University to obtain shoreline exemptions for flooding or other emergency seasonal events.
- 10) Section 23.60.020-C17 provides an exemption for hazardous substance remedial action. This section sets a needlessly narrow exemption for performing hazardous substance remedial action that may not take into account the requirements for ongoing grading and maintenance of the fill in Union Bay natural area and potentially conflicts with the University's obligations to maintain the cap on the landfill in the Union Bay Natural Area.
- 11) Section 23.60.030 – Criteria for obtaining substantial development permits. New language at sub B gives the Director broader authority to deny permits, raising potential conflicts with the adopted CMP.
- 12) Section 23.60.040 – Criteria for determination of reasonable. The term “feasible” is applied in many critical sections of the revisions and should be replaced with “practicable.” The standard of “to the extent feasible” is one of the most stringent. The concept typically does not allow for considerations of cost or practicality. The “practicable” standard is more flexible and retains the realistic potential for incorporating additional factors, including public costs and benefits considerations, consistent with the WAC definition (173-26-020(13)). Such considerations were included in the adopted CMP. This new standard would potentially conflict with the adopted CMP.
- 13) Section 23.60.069 – Procedure for shoreline design review. This section includes a new requirement that any development by public agency or on public property that has not been reviewed by the design commission must be reviewed for design quality by appropriate

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experts. The CMP and projects planned within an adopted Master Plan should be clearly exempted from this provision. The University already has a thorough campus design review process.

- 14) Section 23.60.090 – Identification of principal and accessory uses. This new section prohibits all new uses over water that are not explicitly called out as being allowed as a principal accessory use or allowed by special or shoreline conditional use. This section should be amended to include shoreline public access bridges, such as those in the Union Bay natural area.
- 15) Section 23.60.122 – Nonconforming uses. Sub B.2. This section includes a new requirement that a *conforming* structure which contains non-conforming uses, may not be substantially improved or rebuilt. Sub C goes on to disallow substantial improvement or reconstruction of conforming structures or development containing non conforming uses when they are destroyed by the normal deterioration of structures constructed in or over water. This section could have the effect of amortizing nonconforming uses by disallowing maintenance and repair of building constructed over water or in the water. This would affect a number of University of Washington assets located in the Shoreline. It could even impact nonconforming piers, moorage, and public access appurtenances located in the conservancy management or conservancy preservation zone. This is a significant portion of the Campus shoreline and these structures are needed to meet the mission of the University. The State of Washington has no intention to allow these nonconforming structures to be abandoned. **This is a direct conflict with the adopted CMP.**
- 16) Section 23.60.124 – Nonconforming structures. Sub B addresses structures located over water or within the required shoreline setback and precludes those structures from being substantially improved unless it is to improve access for the elderly and disabled or to provide regulated public access. As with above, this **is a direct conflict with the adopted CMP.**
- 17) Entire nonconformity Section 23.60.124 excludes the normal deterioration of structures constructed in or over water as an act of nature that would allow their reconstruction. Where this could have the greatest impact is in areas of University of Washington properties that are protected by in water structures, pier, docks and potentially bulkheads or other shoreline retaining structures. **This is a direct conflict with the adopted CMP.**
- 18) Section 23.60.156 – Standards for Environmentally Critical Areas in the Shoreline District. Sub E: small project waivers (work less than 750 square feet) are not allowed in shoreline setback areas. This could cause additional permit reviews and timelines for small projects which have minimal impacts to the shoreline area.

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- 19) Section 23.60.160 – Standards for Priority Habitat Protection. Sub A provides that creek mouths and areas within 100 feet of creek mouths in Lake Washington are *priority fresh water habitat*. Sub A.3 provides that no structures, including piers, bulkheads, bridges, fill, floats, jetties, utility crossings can be located within priority fresh water habitat unless the applicant demonstrates that no reasonable alternative or alignment or located exists. This could limit the ability of the University to put in certain improvements and uses such as research and teaching in the Union Bay natural area. **This is a direct conflict with the adopted CMP.**
- 20) Section 23.60.162 – Standards for Parking Requirements. Sub A requires that parking in the shoreline be as specified in Chapter 23.54. The University of Washington CMP is not subject to the provisions of SMC 23.54. Parking quantity and location should be governed exclusively by the provisions of the Transportation Master Plan included in the CMP.
- 21) Section 23.60.164 – Standards for Regulated Public Access. Sub C.5 includes several new requirements which impose landscaping and screening standards on public access areas. CMP has its own standards for landscaping which should supersede the standards listed in this section. **This is a direct conflict with the adopted CMP.**
- 22) Section 23.60.166 – Standards for Developments in Public Rights-of-Way. This section includes new standards which require only floating structures be allowed in submerged public rights-of-way. Sub B.6 provides a specific requirement that an open channel view unobstructed by vessels or structures for access to and from the water for public navigation shall be maintained. There are a number of street ends located along the southwest campus. Some of these street ends are developed and may become nonconforming by the imposition of this new view standard. **This is a direct conflict with the adopted CMP.**
- 23) Section 23.60.186c – New standards for piers and floats accessory to nonresidential development. This section includes a new standard that precludes piers and floats solely for the purpose of public access. **This is a direct conflict with the adopted CMP.**
- 24) Section 23.60.188 – Standards for Shoreline Stabilization. This section prohibits new hard engineering stabilization solutions. This may make it very difficult for the University to protect existing developments with new bulkheads or retaining walls. **This is a direct conflict with the adopted CMP.**
- 25) Section 23.60.200 – Standards for Marinas, Commercial and Recreational. New standards in this section may render the commercial marinas owned by the University of Washington along Boat Street nonconforming. Sub B includes standards for the new operation of those marinas and best management practices, many of which may render the marina business practices nonconforming. This may include additional liability for the University as property owner if these practices are not adhered to.

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- 26) Section 23.60.220 – Environments Established. Sub B specifies all submerged lands “shall be designated as shoreline environments that preserve them for ecological functions or public or recreational purposes”. This conflicts with those submerged lands owned by the University of Washington which are already developed with uses that include commercial and institution uses. **This is a direct conflict with the adopted CMP.**
- 27) Section 23.60.224 – Uses in a CM Environment. Sub D prohibits all office and institutional uses except when located in an existing building within a designated historic district. Sub E requires that institutional uses are prohibited on waterfront lots and allowed on upland lots. This would render non-conforming any waterfront developed property in the Conservancy Management Zone owned by the University of Washington. Sub G of the same section prohibits educational research uses. **This is a direct conflict with the adopted CMP.**
- 28) Section 23.60.226 – Shoreline Modification in the CM Environment. Precludes breakwaters, jetties and groins except for ecological restoration and enhancement. This would render any bulkhead in the Conservancy Management Zone nonconforming. **This is a direct conflict with the adopted CMP.**
- 29) Section 23.60.232-A imposes a 15 foot setback from ordinary high water and precludes development within the setback. And in that case, only to provide access to parks and open spaces or water dependent or water related uses. **This is a direct conflict with the adopted CMP.**
- a) One impact would be to any portion of the athletic fields that are located in the Conservancy environment. **This is a direct conflict with the adopted CMP.**
 - b) Sub C of the same section imposes a 50 foot setback for all development except for access, viewpoints and pathways accessory to parks and open space uses. **This is a direct conflict with the adopted CMP.**
 - c) This would result in the Conibeare Crew House becoming completely nonconforming to the new Conservancy zone standards. This would include the parking area, the building itself, and adjacent green space and landscaping. Other developments which would become nonconforming include the boathouse, the indoor practice facility, the baseball fields and stands, the soccer fields and stands, the canoe house, the waterfront activity center, 63E (shown on page 115 of the CMP, which is an expansion site) and the CHDDED Unit and CHDD clinic buildings. **This is a direct conflict with the adopted CMP.**
- 30) Section 23.60.252 – Uses in the CP Environment. Table A makes all institutional uses nonconforming (except historic structures or historic districts). This would make the

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Conibear Crew House a nonconforming use. Sub C of the same section provides that scientific, historic, and cultural resources uses are prohibited. This would interfere with the University of Washington's core mission to provide education or perform research in Conservancy zoned areas. **This is a direct conflict with the adopted CMP.**

31) Section 23.60.254 – Shoreline Modification in the CP Environment. Sub F of that section only allows fill as a special use, which is a separate type 2 decision, when “*it is part of ecological, mitigation, restoration, or enhancement or beach nourishment.*” Sub 3 of subsection F finds that fill is prohibited in all other circumstances. It is not clear if this would allow maintenance of the landfill cap in the Union Bay natural area. **This is a direct conflict with the adopted CMP.**

a) Sub I provides that stabilization on waterfront lots when it is a bulkhead or a riprap is only allowed through conditional use. **This is a direct conflict with the adopted CMP.**

32) Section 23.60.258 – Shoreline Setbacks in the CP Environment. Sub A limits development within 15 feet of the ordinary high water mark. Sub B requires that there be a 35-foot setback from ordinary high water as required for dependent uses. Sub C provides the shoreline setback of 50 feet from ordinary high water required for uses that are not water dependent. All of these setbacks would preclude uses and development planned for in the CMP. **This is a direct conflict with the adopted CMP.**

33) Section 23.60.382 – Uses in the UC Environment. Sub A, table section E9, only allows water dependent uses on waterfront lots. This would render many uses located in to the south of San Juan Road as nonconforming, including any buildings south or waterward of San Juan Road or Boat Street and a small parking lot located at the east end of San Juan Road. It would also require additional public access under Subsection B 3 and B 4. **This is a direct conflict with the adopted CMP.**

34) Section 23.60.384 – Shoreline Modifications in the UC Environment. Subsection B – breakwaters, jetties, groins, and weirs, including Sub 1 and 2, only allows those structures to support a shoreline conditional use. This could undermine the ability of the University to maintain property on the waterfront that is not currently occupied with shoreline conditional uses. Subsection e prohibits fill in all circumstances except habitat mitigation, restoration or enhancement. This could preclude redevelopment of some waterfront sites in the UC environment. Subsection 8 only allows hard shoreline stabilization as a special use. Given the layout of these lots (not large, limited depth from street to OHW) natural beach protection may not be practical. **This is a direct conflict with the adopted CMP.**

35) Section 23.60.390 – Sub A provides a setback of 15 feet from ordinary high water. Only uses which are over water components of water depended or water related uses or shoreline public access would be allowed in that area. This would interfere with the ability of the

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University to maintain and use existing developments located on waterfront lots in the UC environment. **This is a direct conflict with the adopted CMP.**

- a) Sub B provides that all non-water dependent or water related uses be set back 35 feet from ordinary high water. Many of the lots located along the portion of Boat Street are not very deep from street lot line to OHW. This setback could preclude redevelopment of many of those lots. **This is a direct conflict with the adopted CMP.**
- b) Sub E provides a vegetation and impervious surface management or restoration are regulated pursuant to the UC environment. This could conflict with the University of Washington's development standards for landscaping and public access in section 5 of the CMP. **This is a direct conflict with the adopted CMP.**



May 31, 2011

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

Subject: City of Seattle Draft Shoreline Management Plan

Dear Ms. Glowacki:

Please see the attached comments table to the City of Seattle Draft Shoreline Master Plan. Following your review of the Washington DNR's comments, we would like to meet with you and your staff to discuss some specific issues which have been raised for our agency following our review of your draft plan. If you have any questions regarding the comments table between now and when we are able to meet, don't hesitate to contact me.

As you know, WA DNR manages over 2.6 million acres of State-owned aquatic lands for the benefit of all the citizens of the state of Washington. Please recognize that any projects which occur on State-owned aquatic lands will be required to secure a use authorization from the WA DNR. As the manager of aquatic lands, WA DNR will be involved in the decision making process and have final approval for projects located on these lands.

At this time, the WA DNR is excited to see the progress the City of Seattle is making in the shoreline planning efforts and encourages continued collaboration.

Sincerely,

Hugo Flores
Environmental Planner-Aquatics Division

Enclosures:

- (1) WA DNR Comments May 2011
- (1) WA DNR Technical Memorandum: Aquatic Vegetation: Potential Impacts of Covered Activities and Buffer Recommendations
- (1) Business Card
- (1) FS-10-01
- (1) Boundaries of State-owned Aquatic Lands



May 31, 2011

| Text Location | Text | WA DNR comment | WA DNR objective on state-owned aquatic lands |
|---|---|---|--|
| General Comment | Shorelines of Statewide Significance. | <p>There does not appear to be a discussion within this plan on shorelines of statewide significance. A detail of the intention of the City of Seattle for how to ensure the following is needed:</p> <ul style="list-style-type: none"> (1) Recognize and protect the statewide interest over local interest; (2) Preserve the natural character of the shoreline; (3) Result in long term over short term benefit; (4) Protect the resources and ecology of the shoreline; (5) Increase public access to publicly owned areas of the shorelines; (6) Increase recreational opportunities for the public in the shoreline; (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary." <p>Map these areas in an appendix.</p> | |
| General Comment | Mitigation on State-owned aquatic lands | <p>The City of Seattle should be aware of WAC 332-30-107 for mitigation activities on state-owned aquatic lands which may be inconsistent with the City of Seattle's mitigation program proposed.</p> <p>The City's definition of mitigation should be brought forward into the text of the draft SMP from the definitions section.</p> | <p>WAC 332-30-107 Aquatic Land Planning</p> <p>6. Mitigation. Shoreline master program planning and additional planning processes described in subsection (5) of this section will be the preferred means for identifying and mitigating adverse impacts on resources and uses of statewide value. In the absence of such planning directed to these values and uses, the department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) will mitigate unacceptable adverse impacts on a case-by-case basis by the following methods in order of preference:</p> <ul style="list-style-type: none"> (a) Alternatives will be sought which avoid all adverse impacts. (b) When avoidance is not practical, alternatives shall be sought which cause insignificant adverse impacts. (c) Replace, preferably on-site, impacted resources and uses of statewide value. It must be demonstrated that these are capable of being replaced. (d) Payment for lost value, in lieu of replacement, may be accepted from the aquatic land user in limited cases where an authorized use reduces the economic value of offsite resources, for example, bacterial pollution of nearby shellfish beds. |
| Proposal Summary January 2011; Page 12 | Waterfront Shoreline Property defined in the Shoreline Market Study | <p>The first bullet within this discussion suggests an allowance for 20% of a waterfront shoreline property to be used for identified uses.</p> <p>DNR Comment: Explicitly define 'waterfront shoreline property.' Explain if these properties would include ports and harbor areas.</p> <p>DNR Comment: What is the 20% figure based upon? Where was it derived?</p> <p>Under the second bullet under 'additional proposed changes.'</p> <p>Explicitly define 'institutional uses overwater.' Does this include pre-existing non-conforming uses?</p> | |

| Text Location | Text | WA DNR comment | WA DNR objective on state-owned aquatic lands |
|-----------------|------------------------|---|---|
| | | Under the third bullet under ‘additional proposed changes.’ The discussion states that ‘recreational use and industrial use of the water will be prevented.’ DNR comment: Provide an explanation of how this will be accomplished within the context of the goal of no net loss. | |
| General Comment | Harbor Areas | There does not appear to be a discussion within this plan on harbor areas within the City of Seattle’s jurisdiction. A detail of the nexus between this shoreline management plan and the harbor areas management plans needs to be included. Map these areas in an appendix. | |
| General Comment | Bank Armoring | It is surprising to not find any reference to the extraordinary publication, <i>Green Shorelines- Bulkhead alternatives for a healthier Lake Washington</i> , within the City of Seattle’s shoreline management plan considering that the guide was co-published by the City of Seattle. WA DNR suggests that an in depth examination of the guide occurs and the information within the guide is carried over into the shoreline management plan for policy and regulation. | |
| General Comment | Concept of No Net Loss | It is unclear to the WA DNR how the City of Seattle is approaching and is going to achieve no net loss. It is unclear where there is any discussion of the goal of no net loss of ecological function other than within the Director’s Report & Proposal Summary. Somewhere within this plan, the City of Seattle needs a detailed discussion of its goals and objectives to meet no net loss of ecological function. | |
| General Comment | Aquatic Vegetation | The WA DNR is especially concerned with protective measures, foremost avoidance then minimization, to native submerged aquatic vegetation both in the marine and freshwater environments. It is unclear from the proposed plan if the City of Seattle intends to provide protections to native submerged aquatic vegetation. Details for WA DNR protections are highlighted within this comment summary in the section on light transmitting features. Please review these protections which will be site specifically applied to all authorized uses of state-owned aquatic lands. WA DNR is available to assist the City of Seattle upon request. | |
| General Comment | Natal River Concept | The Duwamish River is a ‘natal river.’ The concept being that juvenile salmonids out-migrate from this waterway. The WA DNR has been paying closer attention to protections in these natal rivers & their estuaries as well as the adjacent 5 mile perimeter of the river estuaries. Due to the extensive development, industry and degradation of this waterway it is difficult to ascertain the degree to which avoidance and minimization would actually be effective in achieving no net loss within this area, even with extensive restoration and clean-up however; it is important to recognize the ecological significance of this area and plan appropriately for the endangered and threatened species of the area. | |
| General Comment | Sensitive Habitat | WA DNR is especially concerned with activities in aquatic habitats which will be authorized and regulated by the City of Seattle in the areas of Lake Washington, Alki Beach, West Point and Magnolia Bluffs. These areas have been identified by the WA DNR as habitat of significance for endangered and threatened species. WA DNR would like to collaborate with the City of Seattle to ensure optimal implementation of planning efforts for these areas of concern. | |
| General Comment | Boat Launches/Ramps | WA DNR would like to see boat launches and ramps addressed for policy and regulation within this shoreline management plan. | New or renovated ramps and launches must be an elevated design of sufficient height off the substrate within the nearshore area to minimize the obstruction of currents, alteration of sediment transport, and eliminate the accumulation of drift logs and debris under the ramps or be level with the beach slope within the nearshore area. In instances where the substrate is suitable for forage fish spawning, the structure must also span the spawning area. |
| General Comment | Zoning | It is unclear from this planning document how the City of Seattle is going to address zoning issues in conjunction with new shoreline designations. WA DNR suggests a discussion somewhere within the text of the document which details how this being | |

| Text Location | Text | WA DNR comment | WA DNR objective on state-owned aquatic lands |
|---------------------------------|---|---|---|
| | | incorporated into the planning efforts of the City. | |
| General Comment | Street Ends | WA DNR would like to discuss with the City of Seattle the specific requirements of how street ends are utilized in accordance with RCW 79.120.010 and the DNR's guidance to ensure public access | |
| General Comment | Floating Homes | It appears that there would be a removal of the floating homes in the northeast corner of Lake Union. Where is the basis for the removal or rezoning on state-owned aquatic lands? | |
| General Comment | Exemptions | WA DNR has not been consistently receiving notifications for shoreline permit exemptions. This is becoming an ever increasing issue for the WA DNR as state-owned aquatic land lessees are going through the exemption process with the City and the permitting process with WDFW and the Corps, then approach the WA DNR with permits in hand and at no point was there a discussion with the land owner (WA DNR). WA DNR would like to collaborate with the City of Seattle on efficient ways to minimize these issues for city planners, project proponents and lessees of state-owned aquatic lands. | |
| Chapter 4 Page 9 Line 16 | C. Exemptions. exempt from obtaining a Shoreline Substantial Development Permit from the Director. b. Replacement of a structure or development | WA DNR objects to this exemption. The City of Seattle should evaluate the necessity of structures in their shorelines before agreeing and exempting an automatic replacement. If replacement of a structure "is the common method of repair for the type of structure or development," additional scrutiny should be given to the frequency of impacts associated with in or over water work. The City of Seattle should additionally require replacements to be designed with the highest environmental standards to ensure longevity of the development with the least environmental impact. Exemption for replacements would not assure this and therefore WA DNR finds objection. | |
| Chapter 4 Page 9 Line 23 | C. Exemptions. exempt from obtaining a Shoreline Substantial Development Permit from the Director. 2. Construction of the "normal protective bulkhead" common to single-family residences. | WA DNR objects to this exemption. The City of Seattle should require project proponents to exhaust all soft armoring solutions (as detailed in the City of Seattle's <i>Green Shorelines- Bulkhead alternatives for a healthier Lake Washington</i>), prior to any hard armoring on the shoreline. An exemption for this activity allows armored shorelines to remain armored and does not address the long term cumulative impacts of this activity. This should not be exempted rather it should be thoroughly scrutinized through a conditional use permit process. | |
| Chapter 4 Page 10 Line 16 | e. Beach nourishment, or non-structural or soft engineering is proposed | WA DNR objects to this exemption. The City of Seattle should not exempt this activity but should require a conditional use permit which is consistent with the WA Dept of Fish & Wildlife HPA permit, the U.S. Army Corps of Engineers Nationwide Permits 3, 13 & 27 (whichever is applicable) as well as a WA DNR use authorization, if the project extends onto state-owned aquatic lands. WA DNR is concerned with projects which are permitted as beach nourishment or restoration but actually act to fill or hard armor. | |
| Chapter 4 Page 12 Line 1 | C. Exemptions. exempt from obtaining a Shoreline Substantial Development Permit from the Director. 5. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids, such as channel markers and anchor buoys; | WA DNR objects to this exemption. The City of Seattle should not exempt this activity but should require a conditional use permit which is consistent with the WA Dept of Fish & Wildlife HPA Permit, the U.S. Army Corps of Engineers Nationwide Permits 1, 9, 10(whichever is applicable) as well as the WA DNR Mooring Registration Program, if the mooring is placed onto state-owned aquatic lands. | |
| Chapter 4 Page 12-13 | C. Exemptions. exempt from obtaining a Shoreline | WA DNR objects to this exemption. The City of Seattle should not exempt this activity but should require a conditional use permit which is consistent with not only | |

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| All of #7 | Substantial Development Permit from the Director. Construction of a pier accessory to residential structures | the WA Dept of Fish & Wildlife HPA , the U.S. Army Corps of Engineers Regional General Permits 3 & 6(whichever is applicable) as well a WA DNR use authorization, if the project extends onto state-owned aquatic lands. | |
| Chapter 4 Page 15 All of #16 | C. Exemptions. exempt from obtaining a Shoreline Substantial Development Permit from the Director. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage | WA DNR objects to this exemption. The City of Seattle should not exempt this activity but should require a conditional use permit which is consistent & permitted by the WA Dept of Fish & Wildlife, the U.S. Army Corps of Engineers Nationwide Permits 4, 27 & 30(whichever is applicable) as well as a WA DNR use authorization, if the project extends onto state-owned aquatic lands. | |
| Chapter 4 23.60.027 Ecological restoration and mitigation program Page18-19 | 2. Determine the costs of actions that either provide mitigation or contribute to restoration of ecological functions. B. The Director may authorize payment for mitigation impacts into a dedicated fund to be used for ecological mitigation in the Shoreline District, in lieu of requiring physical mitigation. The Director may also authorize payment for habitat units required by this Chapter into a fund to be used for restoration of ecological functions. | WA DNR is often concerned with mitigation programs with financial options to project proponents. Although WA DNR recognizes that providing a financial option for mitigation can be one of the best ways to streamline restoration efforts by a local jurisdiction, it also has the potential for project proponents to buy their way out of the mitigation sequence of avoid, minimize then compensate. The City of Seattle must ensure that the project proponents are truly first avoiding then minimizing and lastly financially compensating for impacts and not allowing project proponents to skip directly to 'how much will it cost to get this project financially compensated for?' WA DNR would like the City of Seattle to address these concerns within their restoration plan in the SMP. | |
| Chapter 4 Page 29-30 | 23.60.062 Procedures for determining consistency with the chapter and for obtaining exemptions from Shoreline Substantial Development Permit requirements and for determining consistency with the chapter. | WA DNR requests that the agency be included for concurrence to an exemption for any substantial development permit if the project is proposed on state-owned aquatic lands. | 2. If the development, shoreline modification or use requires a Section 10 Permit under the Federal Rivers and Harbors Act of 1899, a use authorization from the WA DNR, a Section 404 permit under the Federal Water Pollution Control Act of 1972, or a Hydraulic Project Approval permit under the State Hydraulic Code of 1943 a Letter of Exemption as specified in WAC 173-27-050 and the determination of consistency shall be sent to Ecology |
| Chapter 4 Page 54 Lines 14-16 | 23.60.122 Nonconforming uses 1. Reconfiguration of a nonconforming moorage under sub set d. if the moorage includes covered moorage: | An additional requirement should be added in a bullet to include allowance for light transmission through existing covered moorage. New covered moorage and boat houses are not be allowed on state-owned aquatic land. Where WA DNR determines that existing covered moorage, covered watercraft lifts and boathouses are impacting or occur within important habitats for covered species and their prey, the structures must either be removed by the end of the life of the structure or moved out of the nearshore and littoral areas. In areas not identified as predicted habitat for covered species or their prey, the structures must be replaced or renovated with structures that maximize light transmission within a period defined in the authorizing agreement. Where covered moorage and covered watercraft lifts are allowed to continue, the replacement structures must be 100 percent translucent or transparent roofing materials that are rated by the manufacturer as having 90 percent or better light transmittance. No side walls or barrier curtains are allowed. | 3) Covered moorage roofing materials must be 100 percent translucent or transparent materials that are rated by the manufacturer as having 90 percent or better light transmittance. |
| Chapter 4 Page 61 Line 9 | with beneficial natural shoreline processes such as | Include biological and ecological function | B. All shoreline development, shoreline modifications and uses shall be located, designed, constructed and managed first to avoid and second to minimize adverse impacts or interference with beneficial natural shoreline processes such as biological and ecological, water circulation, littoral drift, sand movement, erosion and accretion. |
| Chapter 4 Page 63 Line 22 | J. Durable, non-toxic components are the preferred materials for in-water and over-water structures. Wooden components that will be in contact with standing water or floodwaters shall not | WA DNR suggests that the City of Seattle write this regulation with more detail. Under what circumstances would treated wood be deemed necessary? The current language leaves it open to project proponents, everyone will say that the treated wood is necessary for all projects. The City of Seattle must define when treated wood is necessary and when it is not. | The following language is the standard for use authorizations on state-owned aquatic lands. No creosote, chromate copper arsenate, or pentachlorophenol treated wood, or other comparably toxic compounds may be used as part of the decking, pilings, or other components of any in-water structures such as docks, wharves, piers, marinas, rafts, floats, shipyards and terminals. Treated wood may only |

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| | <p>contain polycyclic aromatic hydrocarbons, pentachlorophenol, creosote, chromate copper arsenate (CCA), arsenic, or comparably toxic substances. If treated wood is necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.</p> | <p>Additionally, “durable, non-toxic components are the preferred materials for in-water and over-water structures,” is not a regulation. The word ‘preferred’ implies that there is a choice. Replace the words “are the preferred” with “shall be used for in-water....”</p> | <p>be used for above water structural framing and may not be used as decking, pilings or for any other uses. During maintenance, existing treated wood must be replaced with alternative materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents metals, hydrocarbons and other toxins from leaching out.</p> |
| <p>Chapter 4 Page 64</p> | | <p>Tires and unencapsulated floatation are well documented as sources of degradation in aquatic environments. Upon request, WA DNR staff will provide the City of Seattle literature summaries on these topics.</p> <p>Additional regulations should be included in or near this page to include for specifications on the prohibition of the use of tires and unencapsulated floatation.</p> | <p>The following language is the standard for use authorizations on state-owned aquatic lands.</p> <p>Tires are prohibited as part of above and below water structures or where tires could potentially come in contact with the water (e.g., floatation, fenders, hinges). Existing tires used for floatation must be replaced with inert or encapsulated materials such as plastic or encased foam, during maintenance or repair of the structure.</p> <p>All foam material whether used for floatation or for any other purpose must be encapsulated within a shell that prevents breakup or loss of the foam material into the water and is not readily subject to damage by ultraviolet radiation or abrasion. During maintenance, existing un-encapsulated foam material must be removed or replaced.</p> |
| <p>Chapter 4 Page 64 Line 14</p> | <p>L. Light transmitting features are required to be installed for all replaced covered moorage, piers and floats, over-water boat repair facilities and similar structures to the maximum extent feasible.</p> | <p>‘Light transmitting features’ is not clearly defined in this regulation and should be. Based on the goals and objectives of the City of Seattle, the regulation should ensure that light is available for migrating salmonids and aquatic vegetation in both fresh and marine environments.</p> <p>The U.S. Army Corps of Engineers programmatically permits all of the listed activities detailed within this regulation. Suggested review includes Regional General Permit 3 & 6.</p> | <p>The following language is the standard for use authorizations on state-owned aquatic lands.</p> <p>Covered moorage roofing materials must be 100 percent translucent or transparent materials that are rated by the manufacturer as having 90 percent or better light transmittance.</p> <p>Enclosed structures, such as boat houses and covered moorage, must be removed where they impact important habitats for ESA species.</p> <p>Artificial night lighting must be minimized by focusing the light on the dock surface, and using shades that minimize illumination of the surrounding environment.</p> <p>All new activities and structures must avoid existing, native aquatic vegetation attached to or rooted in the substrate.</p> <p>New and expanded docks, wharves, piers, marinas, rafts, floats, shipyards and terminals must be at least a specified buffer distance from existing native aquatic vegetation attached to or rooted in substrate. The buffer distance for structures docks, piers, wharves, rafts and floats not associated with motorized watercraft is either 8 meters (25 feet) from the edge of the structure or the maximum distance shade will be cast by the structure, whichever is larger. To avoid prop dredging and prop scour associated with motorized watercraft. For docks, piers, wharves, rafts and floats associated with motorized watercraft, the horizontal buffer distance for structures associated with watercraft is 8 meters (25 feet) from the outside of the vessel whenever there is a vertical buffer of 2 meters (7 feet) of water above the vegetative canopy at the lowest low water within the diameter of the turning circle. When the vertical buffer is less than 2 meters (7 feet) within the diameter of the turning circle, the horizontal buffer distance will be either 8 meters (25 feet) from the outside of the vessel, the maximum distance shade will be cast by the structure, or the diameter of the turning circle, whichever is greater. For this measure the turning circle is defined as 3.5 times the length of the longest vessel to use the structure.</p> <p>Existing docks, piers, rafts and floats that are not located at the appropriate buffer distance from existing native aquatic vegetation attached to or rooted in substrate must be moved, or renovated so that they allow at least 30 percent of ambient light to reach the vegetative canopy. The value of 30 percent was chosen because it is the minimum light value required by vegetation protected by WA</p> |

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| | | | <p>DNR. Timeframes for relocation and renovation will be based on the expected lifespan of the materials used in the structure. Ambient light is measured as the amount of light between the wavelengths of 400 to 700 nanometers, the photosynthetically active range.</p> <p>The portions of piers, elevated docks, and gangways that are over the nearshore/littoral area must have unobstructed grating over at least 50 percent of the surface area. Floating docks 1.5 meters (5 feet) or greater in width, must have unobstructed grating over at least 50 percent of the surface. Floating docks less than 1.5 meters (5 feet) in width must have unobstructed grating over at least 30 percent of the surface. All grating material must have at least 60 percent functional open space. Grating requirements can also be met if the combination of grated surface area and grating open space are equal to or better than the above standards.</p> <p>Gangways must incorporate 100 percent grating with 60 percent functional open space.</p> <p>Private recreational docks must meet or exceed the minimum standards established by the appropriate regulatory authorities for residential overwater structures.</p> <p>Skirting is prohibited. When existing structures undergo maintenance or repair the replaced portions must meet these standards.</p> |
| Chapter 4 Page 67 Lines 4-5 | R. Navigation channels shall be kept free of hazardous or obstructing development or uses. | Map these areas | |
| Chapter 4 Page 69 | 23.60.156 Standards for environmentally critical areas in the Shoreline District | Map identified environmentally critical areas | |
| Chapter 4 Page 87 | 23.60.166 Standards for developments in public rights-of-way | WA DNR requests the City of Seattle have project proponents contact WA DNR first prior to submitting permits to ensure that the state-owned aquatic land is available for leasing. | Any proposed activity occurring within public rights of way located on state-owned aquatic lands must be authorized by the WA DNR prior to obtaining City of Seattle shoreline permits. For further information for authorization on state-owned aquatic land see: Aquatic Land Leasing and Other Uses |
| Chapter 4 Page 92 Page 93 Line 12-16 | 23.60.174 Standards for artificial reefs E. | WA DNR requests the City of Seattle have project proponents contact WA DNR first prior to submitting permits to ensure that the state-owned aquatic land is available for leasing. | Any proposed artificial reef project located on state-owned aquatic lands must be authorized by the WA DNR prior to obtaining City of Seattle shoreline permits. For further information for authorization on state-owned aquatic land see: Aquatic Land Leasing and Other Uses WA DNR follows specific guidance on requests for artificial reefs and underwater dive parks. If these projects are sited on state-owned aquatic lands, it will be imperative that the project proponent contact DNR prior to initiating the permitting process to ensure that the project would be allowed on state-owned aquatic lands. |
| Chapter 4 Page 94 Line 12 | B. The applicant is required to demonstrate that: | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. | The following language is the standard for use authorizations on state-owned aquatic lands. New fixed breakwaters will not be authorized on state-owned aquatic lands. If breakwaters are critical to safety or protection of a facility, floating breakwaters or wave boards may be authorized, if placed in a manner that does not block the predominant longshore current or fish passage. Existing solid breakwaters must be retrofitted over time to incorporate gaps either through or under the structure that allow for longshore transport of sediments, fish passage and water circulation. . |
| Chapter 4 Page 95 | 23.60.182 Standards for dredging | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. | The following language is the standard for use authorizations on state-owned aquatic lands. Dredging, including sand and gravel mining, is not allowed on state-owned aquatic lands except where required for navigation for trade and commerce, flood control, or maintenance of water intakes. For clarification purposes, WA DNR will not allow dredging for sediment maintenance of private recreational docks and piers if on state-owned aquatic lands. |

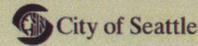
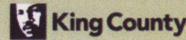
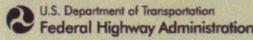
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| Chapter 4 Page 98 Line 7 | J. Open-water disposal of dredged material is allowed at designated disposal sites. | A use authorization is required by the WA DNR for disposal of dredged materials onto state-owned aquatic lands. | |
| Chapter 4 Page 99 | 23.60.184 Standards for fill. | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. | The following language is the standard for use authorizations on state-owned aquatic lands. New fill, or additional placement of fill, will not be allowed on state-owned aquatic lands except when authorized for remediation of contaminated sediments, habitat creation or restoration projects. Washed gravel or shell may be applied as a substrate amendment for authorized shellfish aquaculture activities on a site by site basis where the authorizing agreement defines the bathymetric, seasonal and quantitative limits of the application. Gravel or shell may not be placed on forage fish spawning habitat or native aquatic vegetation. |
| Chapter 4 Page 104 | 23.60.187 Standards for piers and floats and overwater structures | Refer to WA DNR comments on light penetrating features on comment page 4. | |
| Chapter 4 Page 109 | c) To a point where the depth of the water at the end of the pier reaches 8 feet below OHW in freshwater or below mean lower low water in tidal waters. 2) No pier shall extend waterward more than 100 feet from OHW mark, except where the water depth is less than 6 feet below OHW 100 feet from shore, the maximum pier length shall be to a point where the water depth at the end of the pier is 6 feet below OHW. | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. WA DNR acknowledges the City of Seattle's standards for piers and floats addresses by horizontal and vertical siting criteria. WA DNR's standard only addresses vertical siting criteria. Both would address impacts from scour. City of Seattle appears to be ensuring that overwater structures will not be longer than needed. | The following language is the standard for use authorizations on state-owned aquatic lands. Floating or suspended watercraft lifts must be located greater than 2.7 meters (9 feet) waterward from ordinary high water. For covered watercraft lifts, the lowest edge of the canopy must be at least 2.5 meters (8 feet) above the ordinary high water elevation with the canopy oriented in a north-south direction to the maximum extent practicable. While joint use watercraft lifts are encouraged, Only one canopy will be authorized for each lift. To prevent prop scour, boat mooring areas for new docks, marinas, shipyards and terminals, mooring buoys, rafts and floats must be located where the water will be deeper than 2 meters (7 feet) at the lowest low water, or where it can be shown that prop scour will not adversely impact aquatic vegetation or increase suspended sediment loads. |
| Chapter 4 Page 110 | 9. The bottom of all structures over water except floats or floating piers shall be at least 1.5 feet above ordinary height water | This standard is consistent with WA DNR. | New overwater structures must be located in water sufficiently deep to prevent the structure from grounding at the lowest low water, or stoppers must be installed to prevent grounding, keeping the bottom of the structure at least 1.5 feet (0.5 meters) above the level of the substrate. |
| Chapter 4 Page 110 | 12. Piers and floats shall be fully grated with the maximum light permeability feasible. | This is confusing. Within the 'City of Seattle Proposal Summary' (January 2011) it states on Page 16 that pier grating will be required to have at least 60 % light permeability but that is not what is within the actual text of the Draft SMP. The Draft SMP text should reflect what is in the proposal summary. This standard, as written, is incredibly weak and inadequate. An open space standard for functional grating must be set in order to achieve the goal of light permeability. This standard leaves it up to the project proponent and contractors to detail to the City of Seattle what is feasible. The City of Seattle should consult with state and federal agencies to determine what appropriate standards are based on the best available science. | The portions of piers, elevated docks, and gangways that are over the nearshore/littoral area must have unobstructed grating over at least 50 percent of the surface area. Floating docks 1.5 meters (5 feet) or greater in width, must have unobstructed grating over at least 50 percent of the surface. Floating docks less than 1.5 meters (5 feet) in width must have unobstructed grating over at least 30 percent of the surface. All grating material must have at least 60 percent functional open space. Grating requirements can also be met if the combination of grated surface area and grating open space are equal to or better than the above standards. Gangways must incorporate 100 percent grating with 60 percent functional open space. |
| Chapter 4 Page 110 | 13. Wood treated with pentachlorophenol, creosote, chromate copper arsenate (CCA), arsenic, or comparably toxic compounds is prohibited for decking or piling. | This standard is consistent with WA DNR. Would the City of Seattle allow treated wood pilings to be encased or wrapped in a manner which prevents metals, hydrocarbons and other toxins from leaching out? This should be addressed here. | No creosote, chromate copper arsenate, or pentachlorophenol treated wood, or other comparably toxic compounds may be used as part of the decking, pilings, or other components of any in-water structures such as docks, wharves, piers, marinas, rafts, floats, shipyards and terminals. Treated wood may only be used for above water structural framing and may not be used as decking, pilings or for any other uses. During maintenance, existing treated wood must be replaced with alternative materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents metals, hydrocarbons and other toxins from leaching out. |
| Chapter 4 Page 112 | 23.60.188 Standards for shoreline stabilization | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. | The following language is the standard for use authorizations on state-owned aquatic lands. New bulkheading or hard bank armoring is not allowed on state-owned aquatic land except under extraordinary circumstances such as the protection of bridges, roads, and other infrastructure; or in instances of sanctioned habitat creation or restoration. New structures proposed in nearshore and |

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| | | | littoral areas must be designed and located in a manner that eliminates the need for bank armoring. Existing bank armoring on state-owned lands must be replaced with softer (less intrusive) shoreline protection systems. Bulkheads which cannot be replaced with softer shoreline armoring systems due to design or infrastructure protection issues may be considered for replacement, provided that the bulkhead occupies the same footprint, or smaller, than the existing one. |
| Chapter 4 Page 127 | 23.60.194 Standards for aquaculture | Include map of the current activities permitted activities in an appendix. | |
| Chapter 4 Page 127 | C. Aquaculture facilities shall not cultivate nonnative species. | The species allowed by the Seattle of City should be detailed. | |
| Chapter 4 Page 128 | 23.60.199 Standards for intakes and outfalls | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. | The following language is the standard for use authorizations on state-owned aquatic lands. New and reconfigured outfalls must be located to avoid impacts to existing native aquatic vegetation attached to or rooted in substrate. The diffuser or discharge point(s) for new or expanded outfalls must be located offshore and at a buffer distance beyond the nearshore/littoral area, to avoid impacts to those areas. This buffer distance shall be calculated as the extent of the mixing zone (including both the acute and chronic mixing zones) as defined in the current National Pollutant Discharge Elimination System (NPDES) permit for the leasehold. Leaseholds without a current NPDES permit must requisition a mixing zone analysis for the outfall from a qualified party and the analysis must follow protocols approved by Washington DNR science staff. The outfall pipe must be subsurface within the nearshore. |
| Chapter 4 Page 129 | 23.60.200 Standards for marinas, commercial and recreational | <p>The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed.</p> <p>Siting and standard design criteria will also apply for projects on state-owned aquatic lands.</p> <p>Transient moorage from Section 23.60.926 should be included within this section so it is clear as to what the City of Seattle will be regulating. The way this is written has the reader flipping to the definitions section looking for the definition.</p> | <p>New complex facilities or expansions of complex facilities must be located in areas that have a flushing rate of at least 30 percent per 24 hours. In areas where flushing rates have not been documented, the proponent will be required to perform studies to document the rate.</p> <p>Maximize water flow within complex facilities (marinas, shipyards and terminals), to reduce effects on water quality. Measures to achieve this include but are not limited to:</p> <ul style="list-style-type: none"> • Locating facility openings in a manner that promotes flushing (e.g., at opposite ends), to prevent water stagnation and to prevent or reduce the need for dredging. • Orienting docks with currents or prevailing winds to prevent trapping surface debris and oily residue. • Maintain dredged basins in a manner that prevents internal deeper pockets that can act as unflushed holding basins. Generally, depth should increase with distance from shore. <p>Work on overwater structures and associated vessels that could introduce toxins into the water is prohibited, unless protective measures are enacted to prevent discharge to the water. Specific conservation measures are as follows:</p> <ul style="list-style-type: none"> • In-water repair and refinishing of boats is limited to decks and superstructures. • In-water hull scraping, or any process that removes paint from the boat hull underwater, is prohibited. • Refinishing work conducted from boats and temporary floats is prohibited, unless permitted by an industrial National Pollution Discharge Elimination System (NPDES) permit. • Dust, drip, and spill control measures, such as tarps placed to contain spills, are mandatory to ensure there is no discharge to waterways. <p>Marinas, shipyards and terminals must incorporate and post best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas (Washington Department of Ecology 1998). As those guidelines are updated or new regulatory standards are established by the Washington Department of Ecology or any future agency charged with water quality regulation, the most current guidance or standard will apply.</p> <p>Docks and marinas with moorage for more than 10 boats must have a written plan that identifies</p> |

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| | | | sewage management options for vessels that have holding tanks or portable toilets and available upland restroom facilities. At least one pumpout station and one dump station must be available for every 300 boats over 16 feet in length. Onshore sewage treatment must have a capacity of at least 300 gallons for every 20 boats that have a holding tank or portable toilet, or at least 2,000 gallons for more than 100 boats with a holding tank or portable toilet. These standards are based on current guidelines from the Washington Department of Ecology (1998); as those guidelines are updated or new regulatory standards are established by the Washington Department of Ecology or any future agency charged with water quality regulation, the most current guidance or standard will apply. |
| Chapter 4 Page 133 Lines 23-27 | In Lake Washington and the Puget Sound overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 30 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less. In Lake Union and Portage Bay overwater projections, boat lifts, and areas used for vessel moorage shall be located a minimum distance of 15 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less. | This is a higher depth standard that required by WA DNR. WA DNR would defer to the City of Seattle's standard. WA DNR would like to inquire where these standards came from. What was the rationale or best available science which framed this regulation? If this is based on science, it would be appropriate to cite where it came from? | |
| Chapter 4 Page 137 | 23.60.202 Standards for floating homes and floating home moorages | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. Floating homes, floating home moorage and floating home sites from Section 23.60.912 should be included within this section so it is clear as to what the City of Seattle will be regulating. The way this is written has the reader flipping to the definitions section looking for the definition. | Washington DNR will not authorize new, expanded, or additional nonwater-dependent uses or water-oriented uses except in the exceptional circumstances defined under WAC 332-30-137 and when compatible with water-dependent uses existing in or planned for the area. Existing nonwater-dependent and water-oriented uses may be re-authorized, maintained, and improved, as long as the footprint is not expanded. Nonwater-dependent uses are defined as a use that can operate in a location other than on the waterfront. See RCW 79.105.060(11) and WAC 332-30-106(43). Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility. Water-oriented uses are uses that were historically dependent on a waterfront location, but can be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, and house boats. See RCW 79.105.060(25) and WAC 332-30-106(77). |
| General Comment | Floating Homes | WA DNR would like to discuss with the City of Seattle how regulations for floating homes may have implications on state-owned aquatic lands to ensure there is no conflict in management approaches. | |
| Chapter 4 Page 152 | 23.60.204 Standards for house barges | The City of Seattle should be aware of the standards for these activities on state-owned aquatic lands which may be inconsistent with shoreline permit regulation proposed. House barges from Section 23.60.916 should be included within this section so it is clear as to what the City of Seattle will be regulating. The way this is written has the reader flipping to the definitions section looking for the definition. | WA DNR views floating homes and house barges as the same activity. Washington DNR will not authorize new, expanded, or additional nonwater-dependent uses or water-oriented uses except in the exceptional circumstances defined under WAC 332-30-137 and when compatible with water-dependent uses existing in or planned for the area. Existing nonwater-dependent and water-oriented uses may be re-authorized, maintained, and improved, as long as the footprint is not expanded. Nonwater-dependent uses are defined as a use that can operate in a location other than on the waterfront. See RCW 79.105.060(11) and WAC 332-30-106(43). Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility. Water-oriented uses are uses that were historically dependent on a waterfront location, but can be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, and house boats. See RCW 79.105.060(25) and WAC 332-30-106(77). |
| Chapter 4 Page 167 | Subchapter IV Shoreline Environments | The purpose of this section is to define what activities will be allowed in each designation. We suggest taking this entire section and creating a matrix or a table so the reader can clearly see what activities are and are not allowed in each designation. | |

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| | | | |
| | | The average public person will not be able to understand the allowed uses in the current format. | |

Alaskan Way Viaduct & Seawall Replacement Program



March 21, 2011

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

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

Dear Ms. Glowacki:

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

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

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

Sincerely,



Allison Hanson

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

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

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

**TABLE 1.
GENERAL COMMENTS ON THE DRAFT SMP UPDATE**

| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|------------------|---|---|---|
| 1 | 23.60.020 | SMC 23.60.020 describes elements within the Shoreline District that are exempt from requiring a Shoreline Substantial Development Permit (SSDP). WSDOT believes that activities such as installation of guardrail and signs will be exempt when meeting the other overall requirements in this section. | Please allow for de minimus (guardrail, signs, etc) permanent structures to be included specifically within the exemption language or provide a response to WSDOT that clarifies that these types of structures can qualify for exemptions. |
| 2 | 23.60.020.A.3 | SMC 23.60.020.A.3 currently reads as though a development, shoreline modification, or use could require a conditional use permit even if the activities do not require an SSDP (or exemption). Does that mean that any activities that are not development (such as a use) or subject to the Shoreline Management Act (SMA) could still require a conditional use permit? | Please clarify intent of SMC 23.60.020.A.3. |
| 3 | 23.60.020.A.4 | SMC 23.60.020.A.4 currently reads as though a development or shoreline modification could require a shoreline variance, even if the activities do not require an SSDP (or exemption). Does that mean that any activities that are not development (such as a use) or subject to the SMA could still require a shoreline variance? | Please clarify intent of SMC 23.60.020.A.4. |
| 4 | 23.60.020.B.4 | SMC 23.60.020.B.4 states that conditions may be added to the SSDP exemption to ensure consistency of the project with the SMA and SMC 23.60. | Please provide more detail on the types of conditions the Director may attach to the approval of an exemption. |
| 5 | 23.60.027 | SMC 23.60.027 describes an ecological restoration and mitigation program to be developed and implemented by the DPD Director. | Please clarify timing for implementing the program, process for implementing the program, and responsibilities of applicants. |
| 6 | 23.60.032.D | SMC 23.60.032.D states that a special use may be approved if the Director finds that the applicant has demonstrated that use meets certain requirements, including that the use can mitigate all adverse effects to ecological functions. | Please clarify whether this provision could be satisfied by off-site compensatory mitigation or payment in lieu (as provided in SMC 23.60.027). |

**TABLE 1.
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| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|------------------|---|---|---|
| 7 | 23.60.040.A | There is an extra word after “approximate.” | Please delete extra “a,” which currently follows “approximate.” |
| 8 | 23.60.062.A | Section 23.60.062.A states that a Letter of Exemption or “other documentation satisfactory to DPD is required for all development the Director determines is exempt.” What “other documentation satisfactory to DPD” is being referred to here? | Please clarify or define “other documentation satisfactory to DPD.” |
| 9 | 23.60.067.C.1.b and 23.60.067.C.2.b | Utility lines require special use permits in the Urban Harborfront environment. SMC 23.60.067.C.1.b and 23.60.067.C.2.b imply that a decision on an Optional Plan Shoreline Permit for utility lines shall be made by the Director as an SSDP. The way the draft SMP reads is that general standards are set that apply throughout the shoreline environments and additional or more stringent standards can be applied in individual shoreline environments. | It is assumed that Optional Plan Shoreline Permit could apply in the Urban Harborfront environment. Utility lines are a special use in the Urban Harborfront environment. Please clarify if these are permitted as a special use permit or an SSDP. |
| 10 | 23.60.076.B | The section refers to revisions of issued SSDPs. If the applicant is granted an SSDP under the existing code, but seeks to revise the issued SSDP within the scope and intent of the original permit once the new code has been implemented, will the applicant be grandfathered under the existing code? | Please clarify whether revisions to an issued SSDP would be subject to the code it was originally granted or if new code standards would apply. |
| 11 | SMC 23.60.152 | This is the first time that “land disturbing activities” are included under development as a separate type of development. Land disturbing activities seem to fall under the definition of “development” and “shoreline modification.” | Recommend deleting “land disturbing activities” since it is defined under the umbrella of development and shoreline modifications. |
| 12 | 23.60.072.A | Construction requiring an SSDP shall not commence until 21 days from the date of receipt of Director’s final decision granting the SSDP. How is “receipt” defined? | Please clarify the meaning of the term “receipt.” Is this the date of “issuance” of the Director’s final decision? If so, suggest using the term “issuance.” |

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| 13 | 23.60.152.M | SMC 23.60.152.M states that a spill prevention and response plan may be required by the Director. WSDOT requires that a Spill Prevention Control and Countermeasures plan that follows WSDOT Standard Specifications be submitted by the contractor prior to the start of construction, not prior to permit issuance. | Recommend that DPD include language to note that a permit may be conditioned to require a spill prevention and response plan. If DPD requires mandatory measures to be incorporated into a spill prevention and response plan, this could also be a condition of the permit. |
| 14 | 23.60.152.T | This section should add a statement that any “discharge” will also need to meet state water quality standards WAC 173-201A. | Please include clarifying statement. |
| 15 | 23.60.154.A | SMC 23.60.154.A mentions archaeological “significance.” How is “significance” being defined? Does this mean eligible for the National Register of Historic Places? | Please revise for more specificity. It is important to have this clarified and tied to pre-existing criteria of “significance” to ensure consistency with existing federal and state laws and regulations. |
| 16 | 23.60.154.B | SMC 23.60.154.B states that the City is given “approval” over archaeological reporting. WSDOT understands that there is currently no individual on City of Seattle staff that meets Secretary of Interior (SOI) Standards for archaeology and is qualified to review the technical document adequately. How will the City of Seattle review a technical document requiring SOI qualifications without qualified individuals currently on City of Seattle staff? | Please clarify how the archaeological reporting will be reviewed and approved by the City of Seattle. |

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| 17 | 23.60.154.B | SMC 23.60.154.B references “a site inspection and a draft written report.” This requirement does not fit within the current structure of reporting for archaeology. This is further confused by the phrase “a final report that includes any recommendations from affected tribes and the State Office of Archaeology and Historic Preservation.” It is not clear what is being required. In addition, such reports seldom include the recommendations of tribes and other agencies. | Please revise this section for clarity and ensure consistency with existing federal and state laws and regulations. |
| 18 | 23.60.154.B | “The State Office of Archaeology and Historic Preservation” should be “Washington State Department of Archaeology and Historic Preservation.” | Please revise per comment. |
| 19 | 23.60.154.B | SMC 23.60.154.B currently requires Department of Archaeology and Historic Preservation/State Historic Preservation Officer (DAHP/SHPO) involvement, but it is not necessarily tied to Section 106 of the National Historic Preservation Act (NHPA) or Executive Order 05-05. Unless this is tied to Section 106 of the NHPA or Executive Order 05-05, DAHP/SHPO is not likely to provide comment, as it is outside of their purview as an agency. | Please revise this section for clarity and ensure that the process is consistent with existing federal and state laws and regulations. |
| 20 | 23.60.154.B | Given that “the Director” is likely to not meet SOI standards for archaeology, this section should be more specific as to how the permit will be conditioned. | Please revise for clarity. |
| 21 | 23.60.154.C | 23.60.154.C references “a site inspection and a draft written report.” This requirement does not fit within the current structure of reporting for archaeology. | Please revise this section for clarity and ensure consistency with existing federal and state laws and regulations. |
| 22 | 23.60.154.C | 23.60.154.C references “all possible valuable archaeological data.” This language is not clear and can include a large range of possibilities. | In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA. |

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|------------------|---|--|--|
| 23 | 23.60.154.C | 23.60.154.C references “how to handle the data properly.” This language is not clear. | In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA. |
| 24 | 23.60.154.D | 23.60.154.D references “identified historical or archaeological resources” and needs to be clarified. It is not just that these are present, but that they are significant. | In order to ensure consistency with existing laws and regulations, please revise text to use pre-existing criteria of significance as required by Section 106 of the NHPA. |
| 25 | 23.60.154.D | SMC 23.60.154.D states “maximum protection,” which is vague and not consistent with federal and state regulations. For archaeology, data recovery rather than preservation in place may be the most appropriate treatment, and this is not necessarily captured by a phrase like “maximum protection.” | Please clarify to stress that the characteristics that make the resource significant should not be altered. |
| 26 | 23.60.154.E | SMC 23.60.154.E states: “retrieve or preserve artifacts or data.” Is the intention to “preserve in place” or “curate?” | Suggest revising for clarity. |
| 27 | 23.60.156.D.2 | SMC 23.60.156.D.2 states that any development that is exempt under Section 25.09.245 from other standards and requirements shall mitigate adverse impacts. It is assumed that this means any development regulated under the SMA. | Recommend revising to “Any development within the Shoreline District that is exempt...” |
| 28 | 23.60.158.A | This section states that mitigation shall prevent no net loss of ecological functions. How will this criterion be assessed? | Please clarify the criteria that will be used to assess the prevention of no net loss of ecological functions and achievement of ecologic functions. |

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| 29 | 23.60.158.B | SMC 23.60.158.B states that mitigation under this section is not intended to duplicate similar regulations under state and federal permits and that the permit condition most protective of the ecologic functions shall be enforced. If another agency issues the most protective conditions, how will City enforce those conditions? | Please clarify – is the intent that the City will be enforcing state and federal permit requirements? |
| 30 | 23.60.162.C.4.c | This section states that loading zones are allowed to be located over water on existing structures if the applicant demonstrates that there would be no increase in overwater coverage. This will make it difficult to improve capacity at Colman Dock. Since Colman Dock is a water-dependent essential public facility (highway of statewide significance), Washington State Ferries proposes that this provision be struck out, or allow increased overwater coverage with mitigation. The condition also contradicts 23.60.162.C.4.a and 23.60.162.C.4.b. | Recommend deleting 23.60.162.C.4.c. |
| 31 | 23.60.212.B.2 | The WSDOT Alaskan Way Viaduct and Seawall Replacement Program proposes to expand a section of the eastern side of Alaskan Way S. within the Shoreline District approximately 10 feet to the east to accommodate ferry traffic during construction. It is likely the temporary roadway widening will be returned to the pre-project condition following construction; however, in coordination with the City of Seattle, the temporary roadway widening may remain in effect to support the City of Seattle Central Waterfront construction and likely exceed the 4-year timeframe described in this section. What is the rationale for the 4-year limit? | Consider adding language that will allow extension of the temporary relocation or expansion beyond 4 years. |

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| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|------------------|---|---|---|
| 32 | 23.66.212.C.3 | SMC 23.66.212.C.3 requires that new streets and the expansion or relocation of existing streets shall be located and designed to minimize adverse effects on unique or fragile shoreline features, including minimizing the amount of impervious surface. In areas that are completely impervious, this requirement does not seem to apply—even if the applicant were to replace existing impervious surface with new impervious surface. | Please clarify whether this requirement would apply if the applicant were to replace existing impervious surface with new impervious surface. |
| 33 | 23.60.446.A.1 | Add “as measured from Alaskan Way” after locations, which was rescinded from the original SMP. | Suggest adding “as measured from Alaskan Way” after locations. |

**TABLE 2.
COMMENTS ON THE DRAFT SMP UPDATE FOR DPD COORDINATION
ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION**

| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|-----------|--------------------------------------|---|---|
| 1 | 23.60.016.B | <p>Including shoreline modification in SMC 23.60.016.B implies that a shoreline modification is a use. Per WAC 173-26-231, local governments “are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses...Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use.”</p> <p>The draft SMP defines shoreline modifications as “those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element.” That definition is more consistent with “development” than “use.”</p> | Delete “shoreline modification” from SMC 23.60.016.B. |
| 2 | 23.60.016.C | <p>Shoreline “uses,” as defined in the draft SMP and WAC 173-26-241, as “a purpose for which land or a building is designed, intended, or for which it is occupied or maintained, let or leased.” Whereas “development” means a “use consisting of the construction or exterior alteration of structures” and other physical modifications to the land.</p> <p>Within the draft SMP, “uses” and “development standards” are also categorized separately in each shoreline environment (separate “parts” in each shoreline environment), which further substantiates that “uses” are not development and should not be regulated under development standards unless associated with a specific development proposal.</p> | Delete “or use” from SMC 23.60.016.C. |
| 3 | 23.60.020.A.2 | A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not belong in this section. | Delete “or use” from SMC 23.60.020.A.2. |

TABLE 2.
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ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION

| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|-----------|--------------------------------------|--|---|
| 4 | 23.60.020.A.5 | A “use,” as defined in the draft SMP, is not something that can be “repaired.” In addition, 23.60.020.C.1.a does not include “use” in the definition of normal maintenance. | Delete “or use” from 23.60.020.A.5. |
| 5 | 23.60.029 | This entire section implies that a use, in and of itself, will require an SSDP. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not require an SSDP. | Delete “or use” from SMC 23.60.029 or clarify that uses that are being reviewed as part of a development proposal will need to meet the criteria established in SMC 23.60.029. |
| 6 | 23.60.030.A.4 | This section implies that a use, in and of itself, will require an SSDP, special use authorization, shoreline conditional use permit, and shoreline variance permit. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it will not meet the definition of substantial development and does not require an SSDP. In addition, please clarify if a use in and of itself would require a special use authorization, shoreline conditional use permit, or shoreline variance permit. | Delete “or use” from SMC 23.60.030.A.4 or clarify that uses that are being reviewed as part of a development proposal will need to meet the criteria established in SMC 23.60.030.A.4. In addition, please clarify if subject permits are required for a use, even if no development is proposed. |
| 7 | 23.60.030.B | This section implies that a use, in and of itself, will be denied a permit if it is a prohibited use or if it is not a prohibited use and cannot be conditioned to meet the applicable standards. | Delete “or use” from SMC 23.60.030.B or clarify if a use, in and of itself, would require a permit (or be denied). |
| 8 | 23.60.034.A.1 and 23.60.034.A.2 | This section implies that a use, in and of itself, will require a shoreline conditional use permit. Including shoreline modification in SMC 23.60.034.A.1 and SMC 23.60.034.A.2 implies that a shoreline modification is a use. Per Comment 1 of this memorandum, a shoreline modification is not a use; a shoreline modification best meets the definition of “development.” | Delete “shoreline modification” from SMC 23.60.034.A.1 and SMC 23.60.034.A.2. |

**TABLE 2.
COMMENTS ON THE DRAFT SMP UPDATE FOR DPD COORDINATION
ALASKAN WAY VIADUCT REPLACEMENT PROGRAM – DEVELOPMENT, SHORELINE MODIFICATION, AND USES CLARIFICATION**

| Comment # | Seattle Municipal Code (SMC) Section | Comments | Requested Action |
|------------------|---|--|--|
| 9 | 23.60.062 | This section implies that a use, in and of itself, may be exempt from an SSDP. A “use” is not a substantial development, as defined in SMC 23.60.020.A.1. Therefore, it would not require an exemption from the SSDP. | Delete all references to “use” from SMC 23.60.062. |
| 10 | Part 3 – Development Standards | Similar to Comment 2 in this table, shoreline “uses” are not development and therefore should not be regulated under development standards unless associated with a specific development proposal. | Delete “use” from Part 3 – Development Standards or clarify that uses that are being reviewed as part of a development proposal will need to meet the standards established in Part 3 – Development Standards. |
| 11 | 23.60.940 | Shoreline modifications and utility lines are defined under “use.” Shoreline modifications and utility lines meet the definition of development. Shoreline modification and utility lines could be considered a “use” if part of a development proposal. | Delete “shoreline modifications and utility lines” from definition of use. |



King County

Wastewater Treatment Division

Department of Natural Resources and Parks

King Street Center
201 South Jackson Street, Fifth Floor
Seattle, WA 98104-3855

May 27, 2011

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

Dear Ms. Glowacki:

Thank you for providing King County Wastewater Treatment Division (WTD) the opportunity to review and comment on the City of Seattle Draft Shoreline Master Program Update (draft SMP). Upon reviewing the draft SMP, WTD is pleased to see that there are several important changes that that should result in better protections for shorelines while continuing to accommodate growth and development in a highly urbanized area. Some of these revisions are:

- Vegetation and Impervious Surface Management: a new section addresses vegetation management by prohibiting vegetation removal in shoreline setbacks and requiring native vegetation that is removed or results in an increase in impervious surface to meet the no-net-loss of ecological function requirements;
- Regulating environmentally critical areas (ECA's) through the SMP review: hopefully this will reduce redundant reviews and provide more consistency in mitigation requirements;
- Implementation of a new ecological restoration and mitigation program: proposed Section 23.60.027 identifies specific impacts from shoreline development and determines the types of mitigation that will be sufficient; this will serve as a good guidance tool for project proponents who are unfamiliar with mitigation requirements and will incorporate best available science standards to help restore ecological functions of shorelines;
- Establishing criteria for determining what is considered "reasonable" when developing mitigation measures, environmental impacts, or alternatives development: proposed Section 23.60.040 will provide clearer guidance for project proponents during early phases of planning and may result in a more streamlined permitting process;
- Establishing criteria for determining what is considered "feasible or infeasible" if a project proponent is proposing a new development or if mitigation is required. Proposed Section 23.60.039 will provide clearer guidance for project proponents during early phases of planning; and

- Creating an Optional Plan Shoreline Permit review process (Section 23.60.067): this may allow applicants to consolidate the Plan Shoreline Permit review with the Shoreline permit, which may provide more timely reviews for projects.

WTD is pleased to see revised language in the code that provides better clarity in the development regulations and improves permitting certainty during early phases of project planning for wastewater facilities. Guidance documents generated under the Growth Management Act recognize the importance of public utilities and recommends that local jurisdictions incorporate language in municipal codes that will reasonably allow the siting of these facilities. WTD believes the draft SMP has accomplished this goal. We do, however, have several comments and questions below that we feel need better clarification:

- *Section 23.60.092, Temporary development and uses:* This section of the code addresses temporary uses within shorelines. Although the code addresses uses up to six months, there is no language for projects that may require temporary uses for longer than six months. WTD has several major upcoming projects that may require temporary uses, such as equipment staging, for longer than six months but because this is not addressed in the code, we are uncertain how these projects would be regulated. As mentioned above, permitting certainty is very important when planning major projects; because of this, we request that language be inserted in this section that allows (with conditions, if necessary), temporary uses such as equipment staging longer than six months within shoreline areas. In some cases, environmental conditions within the shoreline could be greatly improved over existing by requiring mitigation measures that would increase shoreline habitat function and potentially improve public access once construction is complete at the site.
- *Section 23.60.154, Standards for archaeological and historic resources:* It appears that this is a new regulation. The responsible agency with jurisdiction for protecting archaeological resources is the Washington State Department of Archaeology and Historic Preservation (AHP) unless a federal permit is required and the project is reviewed under the Section 106 process. This new section of the Seattle Municipal Code now requires that the City review and approve any site inspections and reports generated for the AHP prior to the issuance of a permit from the City. Because the state is responsible for protecting archaeological resources, it appears redundant to have the City also require the same reports and inspections.

In addition, WTD could find no timelines for reviewing AHPs, and we are very concerned how this could affect permitting timelines. Review times could be

Margaret Glowacki
May 27, 2011
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delayed if the city does not have staff with expertise in archaeological resources or reviewing AHP reports which could lead to increased project delays.

WTD wishes to thank you again for the opportunity to provide comments on your draft SMP. Please don't hesitate to contact me with any questions that you have regarding the comments contained in this letter. I would be more than happy to discuss any of the issues in greater detail. You may contact me at (206) 684-1480 or pam.erstad@kingcounty.gov.

Sincerely,



Pamela Erstad
Regulatory Lead

Cc: Bill Wilbert, Supervisor, Environmental and Community Services
Greg Bush, Section Manager, Environmental and Community Services