

Non-conforming Uses and Structures Response Paper

This document summarizes DPD’s staff proposal regarding nonconforming uses and structures in the shoreline environment as it was presented to the Citizens Advisory Committee (CAC) members. In addition, it summarizes the views expressed by CAC members regarding the proposals, and DPD staff’s response to the CAC’s comments in italics. A description of the original proposal presented to the CAC can be found in the document entitled Non-conforming Uses and Structures Policy Paper, dated February 2009.

1. Non-conforming Structures. DPD proposed the following provisions to address non-conforming structures:

- Continue to allow maintenance and repair of existing non-conforming structures where no expansion, or replacement is proposed (i.e. no sunset provisions);
- Encourage conformance with regulations, particularly for overwater structures and high impact activities, when replacement or substantial redevelopment occurs;
- Allow reasonable use of property in all cases.

CAC Comments in Favor	CAC Comments Opposed	General Comments
<ul style="list-style-type: none"> • Many nonconforming structures are being grandfathered into the new code. A lot is already being allowed under these proposals that wouldn't be allowed in a less built environment. • Not providing setbacks and buffers could also lead to legal issues. • DPD should be applauded for proposals that steer away from hurting water dependent jobs, while still seeking to improve ecological function. It is the aggregate of all these structures that currently exist that may prevent salmon from being around for our grandchildren. 	<ul style="list-style-type: none"> • DPD should provide incentives for the removal of creosote piles by allowing the repair and replacement of a non-conforming structure if all piles are removed. • People who redevelop their use or structure should be required to come into conformity, but if one maintains what is currently there, and at the same time improves the ecological function, he or she should be able to keep it as is. • DPD is setting up a negative incentive for improving structures over the water, other than piers, by requiring conformity for existing non-conforming structures. • People will “limp along” when it comes to replacement under these proposals. Are we better off trying to move people into partial conformity by pulling pilings and/or creating public access/view corridors, or should we just watch these existing buildings sit unrenovated for another 100 years? • These proposals should be based on incentives and not be so prescriptive. Most people want to do the right thing 	<ul style="list-style-type: none"> • DPD should try to estimate the amount of non-conformity that exists today, and how much there would be under these proposals.

	<p>without being penalized by having to have a smaller structure. There should be a more positive and proactive approach to these proposals that focuses on what the City wants to achieve, rather than just dictating what a shoreline property owner cannot do.</p> <ul style="list-style-type: none"> • Almost the entire US/UMX area will become non-conforming under these new proposals, because nothing there currently has vegetated buffers and many of the buildings are not 35' from the bulkheads. • Making these structures non-conforming makes it harder to maintain and replace them, and is counter-productive to other City initiatives to preserve industrial jobs. 	
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DPD is clarifying the development standards of the Urban Stable/Mixed Use shoreline environments to reduce the number of non-conforming structures that will exist as a result of the updated regulations.

For non-conforming structures in other shoreline environments, DPD continues to propose that an increase in conformity occurs during redevelopment of a site.

2. Non-conforming Uses - DPD proposed the following for non-conforming uses:

- Continue to allow maintenance of existing non-conforming uses where no expansion, redevelopment, or replacement is proposed (i.e. no sunset provisions);
- On dry land outside of a structure setback area, allow replacement of non-conforming uses with other non-conforming uses as long as it doesn't increase non-conformity;
- On submerged land and within a structure setback area, continue to prohibit replacement of non-conforming uses with other non-conforming uses.

Comments in Favor	Comments Opposed	General Comments
	<ul style="list-style-type: none"> • The cost of replacing pilings for big overwater structures is so high, it is only going to happen if there is enough economic value created in the use of the structure above. This won't happen for many of the existing buildings if they are limited to water dependent uses. • DPD's proposals for this and other elements of the SMP update are incrementally leading to a situation where many current conforming shoreline uses will become non-conforming. This includes DPD's proposal to turn marinas on the Duwamish (a water dependent use) into non-conforming structures. • DPD's proposals from October relating to allowable uses in the UM environment will mean that just about 	<ul style="list-style-type: none"> • DPD should try to estimate the amount of non-conformity that exists today, and how much there would be under these proposals.

	<p>everything on dry land at Fisherman’s Terminal will become non-conforming. There are various uses that are not allowed under these proposals that are not strictly water dependent or water related, but still affect the maritime industry. The code should have flexibility to allow for these uses.</p>	
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Most of the comments regarding non-conforming uses focused on which uses would be considered non-conforming rather than on the standards that would be applied to non-conforming uses. DPD has clarified the proposal regarding what uses will be allowed in the UI and UM environments as part of the Commercial and Industrial Response Paper and will be evaluating the supply of land versus the demand for water dependent uses before creating new proposals regarding uses allowed in these two environments.

DPD is also exploring the idea that certain non-water-dependent uses could be allowed in areas where water-dependent businesses are not in high demand such as the western shores of Lake Union when they provide ecological restoration in order to meet another goals of the Shoreline Master Program.

3. General Comments:

There should be creative avenues (similar to the design review process) that allow departures from strict code definitions, in order to accomplish clearly laid out policy objectives.

It is critical to keep water dependent businesses on the water. At the same time, we have to increase ecological function.

Fisherman’s Terminal needs to be protected as a historic district.

DPD should exclude sea-level rise from “acts of nature” that allow one to replace a non-conforming use.

DPD has done a great job at trying to get back environmental integrity in this trashed environment.

Public Comment

Many shoreline residents care about the environment, but may feel forced into undertaking developments that negatively impacts the environment where the code does not provide flexibility to meet environment goals and allow the development they envision. DPD should try to avoid inflexible regulations that may create an adverse incentive to go around the spirit of what the Committee and DPD are trying to accomplish.