

Public Access and Views Response Paper

This document contains proposals presented to the Citizens Advisory Committee (CAC) members, a summary of the views expressed by CAC members, and DPD’s responses to these comments. The original proposals presented by DPD to the CAC can be found in the documents entitled “Public Access Policy Paper” and “Views Policy Paper,” dated January 14, 2009.

Of the various proposals put forward by DPD in these policy papers, CAC comments focused on public access easements on private property, security and liability issues, comprehensive public access planning, and enforcement of public access/view standards.

1. Public access easements on private land

The existing Land Use Code requires public access easements as a use provision for non-water-dependent and non-water-related uses on waterfront parcels in most environment designations. Specific requirements vary, but these are generally 10’ pathways from the street to the water. DPD proposed continuing to require easements with the same dimensions, with the following updates:

- Add new development standards that would improve safety, visibility, and aesthetics of easements;
- Where water-dependent and water-related uses were formerly exempt from the public access requirement, water-related uses would no longer be exempt. This proposal is for compliance with new state requirements;
- Certain Lake Union parcels did not have to provide public access if they were adjacent to street ends. DPD proposed that minimum lot width would be a more appropriate criterion than proximity to street ends.

	CAC statements of support	CAC concerns	CAC general comments
	<ul style="list-style-type: none"> • Heavy use of small public access sites in industrial areas supports their existence and maintenance. • The Public Trust Doctrine and Washington’s Shoreline Management Act both require public access to the water, through private uses in some cases. 	<ul style="list-style-type: none"> • Requiring public access and view corridors sounds like DPD is taking private property without paying for it – eliminates owner’s ability to use property to its “highest and best use.” • The City should generate more tax revenue and buy any land it wants to open for public access. 	<ul style="list-style-type: none"> • City already owns 140+ street ends, including many that are leased to private property owners. There’s an opportunity to open public access at the currently leased street ends. • There’s insufficient consideration of public access from the water – broader thinking about public access could create exciting recreational opportunities, including water-based trails. • Restoration and public access are related – healthy shorelines improve the quality of public access experience.

DPD continues to propose that non-preferred shoreline uses should provide public access amenities in most scenarios – these easements are one of the fundamental reasons we can allow non-water-related/non-water-dependent uses on waterfront parcels.

However, based on concerns expressed by CAC members, DPD retracts its earlier proposal to require public access for water-related uses in the Urban Industrial and Urban Maritime shoreline environments. Additionally, we propose to remove existing public access requirements for any allowed industrial uses in the UM and UI environments. Water-related uses and non-water-dependent industrial uses can play an important role in supporting the marine industrial cluster, and required easements may reduce the viability of these uses. Public access is more appropriately provided on public land in the UM/UI environments, both because these environments have low densities of residents and visitors, and because of potential use conflicts and safety concerns on private property. WAC 173-26 states that public access should not be required “Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment...”

Preservation and restoration of ecological function designed to be compatible with maritime and industrial uses remains a high priority, standards for ecological shoreline management for non-water-dependent/non-water-related uses will be applied accordingly.

2. Public access and security/liability

The Committee spent much of their discussion on issues relating to security and liability in the context of public access.

CAC statements of support	CAC concerns	CAC general comments
<ul style="list-style-type: none"> • Property owners should have to provide public access, and should be liable for safety and security. 	<ul style="list-style-type: none"> • Where public access is provided adjacent to a maritime industrial facility, there are potential security threats if visitors can observe/photograph activities. Federal law requires some shipyards to have security plans – complicated by public access. • Property owners should not have to take on all liability – City should absolve them from certain situations. • Burke-Gilman has presented problems for some BINMIC industrial users – adjacent property owners are having difficulty finding insurance. 	<ul style="list-style-type: none"> • City can’t “absolve” property owners from liability, as it would open the City up to lawsuits.

Regarding liability comments please note: Under the Recreational Use Law, RCW 4.24.200 and 4.24.210 owners who allow members of the public to use their lands or waters for outdoor recreation without charging a fee are not liable for unintentional injuries to others. RCW 4.24.210 (1). They may be liable for injury caused by a "known dangerous artificial latent [not obvious] condition for which warning signs have not been conspicuously posted." RCW 4.24.210 (4). Recreation "includes but is not limited to" a wide variety of activities, including "viewing or enjoying historical, architectural, scenic, or scientific sites." RCW 24.4.210 (1).

See response for issue #1, above. Removing public access requirements for water-related and all industrial uses in the UI and UM environments should alleviate many of the Committee's concerns relating to security and liability.

Public access will continue to be provided (and potentially expanded) on public property including street ends. The City will evaluate conflicts relating to federal security issues on a case-by-case basis, but screening and security will otherwise be the responsibility of the property owner.

3. Public access planning

DPD proposed undertaking comprehensive public access plans for Seattle's shoreline areas. This type of planning effort is encouraged in the state SMP requirements, and could support payment-in-lieu programs and other coordinated public access improvements. While a city-wide access plan may not be within the scope of our SMP regulatory update, we propose to include support for this planning process as a policy goal.

CAC statements of support	CAC concerns	CAC general comments
<ul style="list-style-type: none"> • It's important to understand the demand for public access and what kinds of uses are in greatest demand – this information should define criteria and development standards. • DPD should develop comprehensive Public Access Plan for shorelines, and should defer or relax onsite access requirements for improvements contributing to the larger access plan 	<ul style="list-style-type: none"> • Payment-in-lieu is a great option to increase flexibility in industrial zones; however, clear and well-developed formula is needed. 	<ul style="list-style-type: none"> • Port of Seattle has a Seaport Shoreline Plan that was developed in part to communicate proposals for new public access areas on Port property. • Public access should connect to transit goals via bike/walk trails, encouraging people to get out of cars.

DPD heard clear support for a Shoreline Public Access Plan from diverse interests represented in the Citizens Advisory Committee.

This planning effort would build on the SMP shoreline public access inventory, the Parks Dept. comprehensive plan, and other recent planning/visioning reports listed in the

Public Access Policy Paper. It would analyze where key demand for shoreline access occurs as well as areas with shortages. Further, it would look at quality and type of access provided in different parts of Seattle, and take into account growth projections for different neighborhoods. Finally, it would identify strategies for funding improvements, possibly including payment-in-lieu programs.

4. Enforcement

DPD suggested various measures to improve enforcement of view corridor and public access requirements. The SMP public access inventory looked only at access points on public land, but an inventory of required public access on private property would be a key tool for future enforcement.

	CAC statements of support	CAC concerns	CAC general comments
	<ul style="list-style-type: none"> • Required access on central waterfront piers has eroded over time – need better enforcement. 	<ul style="list-style-type: none"> • Views are a big concern in Seattle. Development is blocking visual connections to the water, and DPD needs to make more efforts to preserve view corridors, including regulation of ornaments and signage. 	

DPD continues to propose improved enforcement of existing regulations as an important part of improving public access to shorelines. In addition to our initial proposals, we will work with DPD inspectors to see whether view corridor violations are a significant problem and identify better enforcement strategies.