

**Pacific Fishermen Shipyard and Electric
Response to SMP Draft #2**

SUBJECT	PROPOSED CODE IN DRAFT #2	EFFECT ON US AND SUGGESTED CHANGES
<p>Definition of Habitat Unit</p>	<p>23.60.916 Definitions -- "H" "Habitat unit" means a metric used to measure the ecological function of a geographic area. Habitat units are based on the combined quality of the existing habitat features, such as shallow water habitat and shoreline vegetation, of a geographic area. 23.60.064 Procedures for obtaining Shoreline Substantial Development Permits, shoreline special use authorizations, shoreline conditional use permits and shoreline variance permits C. In addition to other requirements provided in this chapter, the Director may attach to the permit or authorization any conditions necessary to carry out the spirit and purpose of and assure compliance with this chapter and</p>	<p><i>We see a "Draft" Directors Rule in the supporting documents having to do with Habitat Units . As we have stated before, a directors rule for something this major in the code is totally unacceptable and constitutes a method of circumventing public review. Scoping meetings do not constitute public review.</i> <i>We Cannot stress enough the need of foregoing implementation of any <u>Director's Rule</u> with regards to mitigation .</i> <i>The Fire Department changes their rules regularly with <u>Directors Rules</u> . This year they have admitted that a previous <u>Director's Rule was incorrect and unnecessary</u> . That error cost us over \$50,0000. That is money we had to borrow in order to maintain our permits to stay in business. Please do not create a similar Director's Rule situation that does not have proper inputs and controls our businesses need to survive .</i> Habitat Unit is not defined. No dollar value is attached to it. There is no designation of what fund mitigation fees are paid into. The State has such a fund. Mitigation has to do with a loss of ecological function. A fund to improve ecological function has nothing to do with improving the view or building a unnatural beach on the central waterfront that was nothing but a mud flat in the recorded past. A fund to remove coal tar from gas works park is an ecological improvement not much else in Seattle would be. Please finish the code under a complete and detailed mitigation section. Don't scatter mitigation throughout the document. We strongly disagree with the \$6.24 (24 HU) charge for Overhead Cover. There is no scientific justification for this in the Ship Canal.</p>

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<p>Definition of "Quay"</p>	<p>23.60.933 Definitions – “Q” “Quay” means a landing place on a coast or river bank or harbor at which vessels are loaded and unloaded, Most often context I have seen quay used in referred</p>	<p>Delete following Most often context I have seen quay used in referred</p>
<p>Mitigation</p>	<p>23.60.027 Ecological Mitigation and Measuring Program</p> <p>1. Use best available science to determine values for ecological functions measured in habitat units; and</p> <p>2. Determine the costs of habitat units and restoration and enhancement actions.</p> <p>C. If SEPA or mitigation sequencing under Chapter 23.60 requires compensating for impacts to ecological functions from proposed land and or water disturbing activity, those impacts shall be determined using the methods developed in the program. In lieu of required physical actions, the Director may authorize payment into a fund that is used for restoration and enhancement of ecological functions in the Shoreline District.</p> <p>D. If regulations in Chapter 23.60 other than mitigation sequencing require providing habitat units, in lieu of physical actions</p>	<p>There are no known locations where a restoration and enhancement of ecological function can be done in the City of Seattle. The following should be changed to read: In lieu of required physical actions, the Director may authorize payment into a fund that is used for restoration and enhancement of ecological functions in any State approved program such as purchase of credits from a state certified mitigation bank in accordance with Chapter 90.86 RCW 84 (Wetlands Mitigation Banking) in the Shoreline District. See additional comments in definition of Habitat Unit listed below.</p>
<p>Bonds</p>	<p>23.60.020.C.13 A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to The City of Seattle to ensure that the site will be restored to preexisting conditions; and RCW 90.58.020. Such conditions may include changes in the location, design, and operating characteristics of the development or use. Performance bonds not to exceed a term of five years may be required to ensure compliance with the conditions.</p>	<p>The City DPD requires the filing of a financial responsibility form with any permit request. There is no reason to do a bond if DPD wrote the exploration permit properly. This presumes guilt until proven innocent. Delete. A five year bond that is only lifted at the pleasure of DPD and <u>no definition of what constitutes proper performance</u> is not acceptable.</p>

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<p>Mitigation Sequencing</p>	<p style="color: red;">Section 23.60.158 Standards for mitigation sequencing A. 1. Mitigation is required for the loss of ecological functions resulting from:</p> <p style="color: red;">a. new or replacement development, shoreline modifications or uses, b. maintaining, repairing or altering existing development, shoreline modification, or uses that creates new adverse impacts to ecological functions, or c. substantially improving, replacing or rebuilding nonconforming uses or structures.</p> <p style="color: red;">3. Mitigation shall achieve the equivalent ecologic functions, as determined by the Director.</p>	<p>This whole section needs very careful rewording. This section states that maintaining or repairing any structure will have new deleterious effects to the environment and does not define what new adverse impact to ecological function would be caused and how much mitigation the act of maintenance or repair requires. This is really unclear and will <u>not be</u> interpreted by any two reviewers the same. Unless the structure is increasing in net size or disturbing soil, repair and maintenance should not create any new adverse impact to ecological function. The wording indicates to the reviewer that repair and maintenance activity will create new adverse impacts.</p> <p>.....All mitigation and sequencing should be consolidated in one section along with habitat unit definitions and costs. . .</p> <p>How is the Director going to determine "equivalent ecologic functions" if no two biologists know what that means. Is there any science to back it up? This section needs a lot of work before this goes to the Mayor.</p>
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<p>Mitigation and Monitoring Plan</p>	<p>23.60.158.E E. Mitigation and Monitoring Plan: 1. A Mitigation and Monitoring plan shall be submitted for review and approval to meet the standards set out in subsection 23.60.158.C. The mitigation plan shall include the following information as determined by the Director for the type of project proposed:</p> <p>3. If off-site mitigation is implemented by the applicant, the applicant shall demonstrate to the Director that the mitigation site will be protected in perpetuity. This may be accomplished through various means including but not limited to dedication of a permanent easement to the City or approved non-profit entity; participation in a publicly sponsored restoration or enhancement program or purchase of credits from a state certified mitigation bank in accordance with Chapter 90.86 RCW 84 (Wetlands Mitigation Banking). Any restrictions, conditions, or easements which are tied to the parcel through off-site mitigation shall be recorded on a revised Notice on Title.</p>	<p>Why would a business do anything other than purchase of credits from a state certified mitigation bank in accordance with Chapter 90.86 RCW 84 (Wetlands Mitigation Banking)?</p> <p>The monitoring program as described will have to be designed by a professional, monitored by a professional and has no sure end date. A DPD reviewer that may or may not understand the program has the final say and would have to review the results and would charge a fee to do so in addition to the fees charged by the professionals who designed and monitored the program. The owner of the property is not be permitted to do any of this. This is a law to make work for ecologists and biologists. Based on previous experience with DPD permits businesses will choose to not do any mitigation program that is controlled by DPD because it would be an bottomless hole in the water to pour money into with no clear end point and no appeal.</p>
<p>Setbacks</p>	<p>23.60.490 Shoreline setbacks in the UI Environment...B. A shoreline setback of 15 feet from the OHW mark is required....C. All development allowed in the shoreline setback shall comply with mitigation sequencing in Section 23.60.158. and in applying mitigation sequencing shall:</p> <ol style="list-style-type: none"> 1. avoid reducing vegetation height, volume, density or 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. 6. prioritize meeting the requirements of Step E through planting native vegetation as close to OHW as possible. 	<p>One of our buildings is 13 feet from the water and therefore noncompliant according to the proposed setback. DOE in our last meeting said that drawing the setback line around existing buildings was something they would approve to prevent making existing buildings nonconforming.</p> <p>....</p> <p>In C. we suggest the following insertions C. All new development allowed in the shoreline setback shall comply with mitigation sequencing in Section 23.60.158. and in applying mitigation sequencing shall <u>to the extent practical for the allowed use:</u></p> <p>Otherwise the code can be miss-interpreted to mean that most structures on the industrial shoreline would be prohibited. We have seen this already in the current code with how accessory use offices were prohibited by a reviewer.</p> <p>..</p> <p>Note that "6" assumes that there are places to plant native vegetation. In the UI - industrial zone there almost never is and in</p>

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Sockeye	<p>23.60.160 Standards for priority habitat protection . Priority freshwater habitat.</p> <p>1. The following are designated as priority freshwater habitat:</p> <p>a. Sockeye salmon spawning habitat.</p>	<p>Designating a State planted sockeye run which <u>nature was never able to support</u> as a priority habitat protection places the City in the position of trying to maintain a past State error that nature probably cannot maintain. If this is the City's definition of the "best available science" then we are in trouble. The only real nutrients in the Lake Washington system are from lawn fertilizer since METRO diverted all the sewer outfalls o their sewage plants. Of course there are the few sewers that the City plumbing inspectors allowed to be connected to storm drains.</p>
Dredging	<p>23.60.182 Standards for dredging... C. Dredging for the purpose of establishing, expanding, relocating or reconfiguring navigation channels and basins is allowed if the applicant demonstrates dredging is necessary for assuring safe and efficient accommodation of existing navigational uses.</p>	<p>Add as follows to permit <u>maintenance dredging</u> for existing uses such as dry docks.</p> <p>We suggest the following addition: for assuring safe and efficient accommodation of existing navigational <u>and existing water dependent</u> uses.</p>
Standards for shoreline stabilization	<p>23.60.188 Standards for shoreline stabilization</p> <p>New hard engineering.</p> <p>Installation and maintenance of hard engineering will result in no net loss of ecological function and will not result in adverse impacts to adjacent properties. ..</p> <p>E. Geologically hazardous areas Shoreline stabilization in geologically hazardous areas are required to:</p> <p>1. Demonstrate that no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures; and</p>	<p>D.</p> <p>e.</p> <p>All engineered shoreline stabilization is considered to be deleterious to the shoreline as compared to nature and is covered under mitigation. Since it is already covered with mitigation for any net loss then It would appear that the only reason to put line "e" in here is to make hard engineering a violation of the code since it says that there can be not net loss of ecological function. <u>It does not say that mitigation can be used.</u> At least that is how a reviewer can read it. I realize that this was only <u>intended</u> for private residences but we have to be explicit in wording as to what is intended..</p> <p>...</p> <p>All of Seattle is a geologically hazardous area. This subject is not addressed elsewhere. This wording can be used by a reviewers to require rebuilding or relocation of structures other than residential in all environmental zones. Look at it from the point of view of a newly hired reviewer that has no real understanding of the writer's original intent. Explicit wording is best.</p>

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<p>Vegetation and impervious surface management</p>	<p>23.60.190 Standards for vegetation and impervious surface management A. Application and plans 1. An application and a plan are required for all actions allowed under this Section 23.60.190, unless specifically provided otherwise in this Section 23.60.190. 2. Applications shall be made on the form approved by the Director. 3. Plans prepared under this Section 23.60.190. shall be consistent with the standards promulgated by the Director and with best management practices. 4. Plans prepared under this Section 23.60.190 shall be prepared by a qualified professional with training and experience related to the type of ecological environment where the work will occur.</p>	<p>This section mandates that a "a qualified professional with training and experience related to the type of ecological environment where the work will occur" be hired by the property developer. Is it DPDs intent to outsource decisions about what needs to be done to private "qualified professionals" and just rubber stamp their decisions? That is how DPD does construction by requiring licensed engineers do the design. Since the State does not currently license" professionals in this capacity <u>you need to define a way to put them on a list of "qualified professionals" that DPD and DOE approve for the protection of the property developer</u> so we don't end up having spent a lot of money and find out DPD does not recognize the individual as qualified simply because the reviewer disagrees with the "professional". ..</p>
<p>Standards for marinas, commercial and recreational</p>	<p>23.60.200 Standards for marinas, commercial and recreational 3. Non-commercial slip-side vessel maintenance is limited to: a. Interior vessel repair and cleaning, replacement of running gear and other cleaning and repair activities excluding hull scraping, which is prohibited. b. 25% of the exterior of the boat. The Director may establish appropriate best management practices based on Department of Ecology's Resource Manual For Pollution</p>	<p>We suggest making the following addition. .. b. 25% of the exterior <u>house of the vessel above the deck per calendar year.</u> This would clarify the 25% being discussed and specifies that they must use the deck to contain debris from paint chipping as opposed to chipping the deck clear to the edge which would loose paint chips in the water.</p>

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<p>Height in the UI Environment</p>	<p>23.60.486 Height in the UI Environment A. Maximum Height. The maximum height is 35 feet, except as modified by subsections 23.60.872.B through D..... and 2. Other structures accessory to a water-dependent or water-related use, including but not limited to accessory office, accessory warehouse and accessory manufacturing facilities may be authorized by the Director up to 55 feet in the Ship Canal and up to 80 feet in the Duwamish and Elliott Bay if: a. The accessory structure requires additional height because of its intended use; or b. Granting additional height for the accessory structure would result in a significant amount of additional usable area for the principal water-dependent use and/or additional area for ecological restoration and enhancement; and c. No more than 20 percent of the lot area is covered by portions of the structure that exceed the maximum height established in Section 23.60.486; d. The remaining 80 percent of the lot is preserved through a covenant for water-dependent and water-related uses if uses that are not water-dependent or water-related occupy the structure; and e. The views of a substantial number of upland residences would not be substantially blocked by the increased height.</p>	<p>These proposed rules would create a hardship for our company by limiting future (vertical) growth. These proposed rules would create a hardship for our company by limiting future (vertical) growth. The height limitation would restrict us to a total of 35 feet structure (building) height. We are in a IG1, U65 land use zone which allows us 65'. The City Council has seen fit to surround us with an <u>Urban Village</u> which permits 6 story buildings. What sense does a 35' limit make in a UI zone on private land with no view corridor requirement? The proposed 35' limit would make one of our buildings noncompliant. The proposed code only permits the director to allow a maximum height of 55 feet on the Ship Canal. That should be increase to the allowed height of the underlying zone in the UI and UM environments for water dependent uses. In addition the Director and City Council should not be limited to a maximum height stated in the code. Construction of a vessel assembly building for vessel construction require a height equal to the height of the vessel (less masts) plus the bridge crane required to lift the construction modules plus the height of the rigging. Vessels are not getting any smaller. The lot coverage limitations do not make sense in the UI zone. As a shipyard and water required use we have only 2.5 acres in the UI environment. Of this 1.23 acres is covered with buildings, 0.78 acres is process work areas leaving us 0.49 acres for access loading / unloading space and outdoor storage. We have to maximizing the efficient use of our land.</p>
<p>Shoreline setbacks in the UI Environment</p>	<p>23.60.490 Shoreline setbacks in the UI Environment C. All development allowed in the shoreline setback shall comply with mitigation sequencing in Section 23.60.158. and in applying mitigation sequencing shall:</p>	<p>We suggest the insertion of the following: and in applying mitigation sequencing shall <u>to the extent applicable and practical for the allowed use:</u> <hr/> Unless we give the reviewer words to hang their hat on they will always just say no and demand what is economically not justifiable or physically impractical. The word feasible comes to mind.</p>

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<p>Definition of "Feasible"</p>	<p>"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:4. The action does not impose disproportionate cost to the nature of the project irrespective of the applicant's personal financial status.</p>	<p>Disproportionate cost needs to be defined. I would think that 2% if the total project cost would be a reasonable amount. It needs to be defined or 3 different reviewers will have 6 different definitions and that would mean unequal enforcement and no way to predict project cost before review. This has to be defined or private business development will dry up more than it already is.</p>
<p>Definition of Sales and Service</p>	<p>Table A for Section 23.60.482 Uses in the UI Environment C. COMMERCIAL USES C.1. Commercial uses C.3. Eating and drinking establishments C.4. Food processing and craft work uses C.5. Offices C.6. Sales and services, general C.7. Sales and services, heavy C.8. Other commercial uses 23.60.936 Definitions -- "S" "Sales and service, marine" means a commercial use and means one of the following uses: -- Sale or rental of large boats; -- Marine service station; -- Major or minor vessel repair;</p>	<p>Note that C6 and C7 in table A, Section 23.60.482 does not match the definition. The definition wording in the definition needs to be the same in C7. in Section 23.60.482 Table A of the UI Environment. The same problem is in Table A, C.8. in the UM environment. .. Note that Sales and services, general is not defined in the definitions. Maybe define it as: <u>other commercial activity.</u> That would give some room for the reviewer to wiggle.</p>

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<p>Criteria for Variance Permits</p>	<p>23.60.036 Criteria for shoreline variance permitsB. 3. An applicant may apply for a variance from other characteristics of uses or shoreline modifications by complying with the applicable variance standards of this chapter and also demonstrating that there is no reasonable use of the property without the variance, regardless of whether the project is water ward of the OHW mark or in a wetland.</p>	<p>To prove that there is no reasonable use of the property without the variance is an extreme standard. This would eliminate the possibility of any non water dependant or water required use of a property regardless of economic conditions. This will result in some property owners not being able to pay their taxes and leaving the government stuck with the property. Unless changed this eliminates the Directors' ability to grant a variance that does not conflict with other allowed uses and is in the public interest. It should say <u>no reasonable economic use in the public interest of the property without a variance</u>. The allow the Director some latitude.</p>
<p>Accessory Uses</p>	<p>23.60.090 Identification of principal and accessory uses C. An accessory use that is prohibited as a principal use in a particular shoreline environment can be allowed on dry land if incidental to, and necessary for, the operation of the principal use.</p>	<p>An appropriate accessory use has nothing to do with whether it is over water or on dry land and prevents the director granting a valid variance on property that has little or no dry land area.</p>
<p>Major Vessel Repair outside of a permitted shipyard</p>	<p>23.60.310. H. Major vessel repair is prohibited, except it is allowed as a shoreline conditional use for repair of historic ships designated as a landmark pursuant to Chapter 25.12, Landmark Preservation, or listed on the National Register of Historic Places;</p>	<p>Our shipyard welding permits from the Seattle Fire Department allow us to obtain temporary welding permits at any location on the waterfront that the Fire Department Approves. This prohibition conflicts with our Fire Department shipyard welding permits. This should read <u>Major vessel repair is prohibited, except as it is allowed by a Fire Department Shipyard Temporary Hot Work Permit</u> or as a shoreline conditional use for repair of historic ships.... This would allow shipyards to continue to perform out of yard repairs as we do now under our existing permits and BMPs.</p>