

Pacific Fishermen shipyard and Electric - Comments - SMP Feb. 8th Release Draft

Draft SMP Section	Draft Language with Highlight	Comments	Suggested Edit
23.60.002 (B)	Protect and restore the ((ecosystems))ecological functions of the shoreline areas.....	This whole section is inconsistent with WAC and RCW. Language is overly broad, redundant to other sections and prescriptive language	Revise
DPD Response: see port comment #1			
23.60.020 B	<p>a. "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a lawfully established state comparable to its original condition, including but not limited to its size shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction , except where repair causes substantial adverse effects to shoreline resources of environment.</p> <p>b. Replacement of a structure or development ((may be authorized as))is repair ((where)) if such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance, and the replacement does not cause adverse effects to shoreline resources or environment;</p>	<p>Reasonable period is not defined and implies a potential loss by property owner of the right to maintain a structure if the City decides that repair was not done in a reasonable period. That would be a <i>taking of a property right</i>. Common method of repair is undefined. This is overly broad and puts the City in the position of determining methods of repair without having any relevance to ecological effect. Use of the term sustantial adverse effects to shoreline with out any qualifying limitations is unclear. Are these new effects or temporary effects or greater than the previous effects or is this talking about any and all negative effects? Why is SMP concerned with external appearance? The relevant WAC and RCWs address the ability to see the water not what a structure looks like. This is clearly over reaching on the part of the City.</p>	<p>Serious work on definitions and limiting qualifiers is needed here for clarity. Wording needs to be proactive not retroactive.</p>
<p>DPD - Language is direct from WAC. Given the number of things in the shoreline district it is not reasonable to write specific provisions for each; the WAC gives general standards that will be used in determining whether the action is exempt based on the facts of the case. The terms have been in use for many years.</p>			
23.60.020 C. 4.	results from normal cultivation, ((shall))are not((be)) considered normal and necessary farming or ranching activities.	You are making all of #4. not allowed?	this is unclear.Please explain. What is the intent and why? If you are making farming and ranching illegal in the City, say so and find out if anyone cares.
<p>DPD Response: No, 23.60.020.C describes the activities that are exempt from obtaining a shoreline substantial development permit and comes directly from the SMA and WAC.</p>			
23.60.039 A.	feasible.....infeasibility	<p>There is no limitation in the draft on what is feasible. This means that anything a reviewer views as feasible regardless of physical or economic practicality becomes required. This term is used many places in the draft and we strongly disagree with its use. Many things are feasible (as in possible) but not many are practical both physically and economically. Many things get tried once but are never done again because they are impractical. The wording requires a property owner do what the reviewer determines to be feasible regardless of cost or other factors. Cost is only considered in feasibility if it is public money involved. There is an inherent unfairness in application here of public versus private.</p>	<p>Change feasible to practical in all places in the draft SMP</p>
<p>DPD Response: The term feasible comes from the WAC requirements and is defined by the WAC and includes if the action will achieve the intended purpose and not preclude the projects intended legal use, which can be interpreted to include if the cost is too high the project could not achieve it's intended legal use. Teh City is required to follow the WAC and use it's definitions. I consulted with Ecolgoy staff regarding this issue and were we are required to use feasibility as a standard the City can define what constitutes feasible. Including standards for feasible for replacment of pier decking with grating and bulkhead replacement at industrial sites.</p>			

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23.60.090 A.	A.....1. Boat moorage, off-loading goods from boats, dry-docks , swimming platforms....	This is the only place in all of the draft that says dry-docks are an allowed use. Dry-docks are not identified as allowed in any zone. They should be allowed in UI and UM zones.	Add Dry-docks to UI, and UM zones.
DPD Response: Included definition of boat yard and ship yard, which indentify dry dock as part of this ues. Boat yard and ship yards are regulated as a marine retail sales and service use and are considered a W/D and W/R commercial use and therefore are allowed in the UI and UM shoreline environments.			
23.60.122 A. & B.	more than ((twelve()12(())consecutive months ((in the CN, CP, CR, CM, CW,UR, UH, and US Environments or more than twentyfour (24)	This is not consistent withWAC 117-27-080(9)	WAC. (tweleve month during a two year period) There is also no reason
DPD Response: see port comment #14. Additionally, the purpose of the statute is to not require uses existing prior to 12/4/69 to comply with new standards; it does not protect or discuss such uses if they are subsequently discontinued. So as "nonconforming," if they are discontinued, the statute does not allow them to start up again.			
23.60.122.C.1. a.	replacement must be commence within tweleve (12)months after demolition or destruction	DPD has told me that it takes 12 months to process a shorelines permit. From experience I have seen that it takes someone inside DPD to push shoreline exemption permits thru the process in less time.	Change to 24 months to be consistent with UM, UG or UI environments. There needs to be a definition of action toward replacement . There is also no reason to believe this time limit applies to structures or uses or developments existing prior to December 4, 1969 per RCW 90.58.270.
DPD Response: commence includes applying for a permit and exemptions generally take 2 to 12 weeks to obtain and replacement after a fire is an exempt activity. Additionally, see Port Comment #14			
23.60.150	All development, shoreline modifications....are subject to....	This is retroactive law without limiting qualifiers.	Insert new in front of development.
DPD Response: This is existing code language and is for new development revised to clarify see 23.60.016.			
23.60.152 General Development		This is retroactive law without limiting qualifiers. This implies that all the general development rules apply retroactively up on adoption of code.	Insert new in front of development or rewrite this section completely. Change the word managed to the work maintained . The SMP is not intended to apply to facility operations.
DPD Response: see port comment #15.			
23.60.152 F.	All shoreline developments and uses shall utilize permiable surfacing where practicable to minimize surface water accumulation and runoff.))	This conflicts with NPDES permits that all shipyards are required to have which require impervious surfaces in all areas of our facility. We are not permitted to have any vegetation.	Insert qualifications in the beginning of the SMP that states that this SMP does not overrule existing State or Federal rules such as NPDES Permits.

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<p>DPD Response: 23.60.152.F was deleted; however DPD added "except where other required state or federal permits prohibit such standards" to 23.60.152.H, where permeable surface standards are required.</p>			
<p>23.60.152.K</p>	<p>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 comply with subsection 23.60.152J</p>	<p>This would prohibit the sleeving damaged or rotten piles or reheading.</p>	<p>Add this: Creosote piling may be repaired by sleeving or reheading to increase life if the method reduces chemical preservative exposure to the environment and or reduces disturbance of contaminated mud.</p>
<p>DPD Response: The code requirement was revised to allow sleeving of creosote piles when under a structure or if fewer than 50% of piles are in need of repair.</p>			
<p>23.60.152.L</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>Impractical for decking on docks exposed to vehicals or heavy equipment. Decking of repair structures and floats need solid decking to prevent tools & fasteners from entering State Waters.</p>	<p>Delete as covered by mitigation sequencing. Eliminate retrospective wording.</p>
<p>DPD Response: Revised, to include standards to allow solid grating for WD uses.</p>			
<p>23.60.160 B. 3.</p>	<p>3. No structure, including but not limited to new piers, bulkheads, bridges, fill, floats,shall be located within priority freshwater habitat...into or over saltwater habitat....</p>	<p>The draft prohibition does not allow for repair or upgradingof existing marine required uses which require the prohibited structures. This violates legislative intent as shown in RCW 90.58.100 (2) (a) and RCW 36.70A.020 (5)</p>	<p>This section should be revised to show allowed exceptions</p>
<p>DPD Response: See Port Comment #25</p>			

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23.60.182C & Dfor assuring safe and efficient accommodation of existing navigational uses.	It should be noted that our facility utilizes navigational uses outside of existing maintained channels and sediment is reducing water draft particularly during Lake Washington low water periods to where some vessels are getting close to the bottom accessing our dry docks. This will require maintenance dredging both under our synchro-lift dock so that the platform can be lowered sufficiently and for the area between the currently maintained channel and our dock.	The term existing navigational uses and established navigation channels implies that maintenance dredging could be prohibited. Delete the words existing and established .
DPD Response: WAC requirement 173-26-231-3(f). The situation that is described is a commercial/industrial navigational use and is and would be allowed.			
23.60.187 C.3.	Wood treated with Or comparably toxic compounds is prohibited for decking or piling.	There are situations where treated wood is appropriate. We eliminate it as much as possible replacing wood piling, pile caps and stringers with steel but the wear deck needs to be wood. We prefer to use untreated wood for decking because it is more durable (not as soft) to the mechanical wear of a working dock. The cost of installing a concrete deck and its lack of flex in an earthquake precludes its use.	Allow wood treated to American wood Preserver Association (AWPA) standards for aquatic use.
DPD Response see responsonst to Port #37.			
23.60.188 E.1	Standards for Shoreline Stabalization	Wording is unclear	Revise
DPD Response: See Port Comment 38			
23.60.187 E	Standards for piers and floats and overwater structures subsection E. In applying mitigation sequencing pursuan to Section 23.60.1158, adverse impacts to ecological functions to be addressed include, but are not limited to, shading of habitat and vegetation, adverse impacts to migration corridors, creation of habitat for non-native or abundant predator species.	The wording allows for unlimited retroactive application of mitigation for all previous development. Retrospective regulation if generally not allowed.	Revise to affect prospective activities only.
DPD Response: Mitigation is required for impacts as stated 23.60.158.			

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23.60.188 A.	A. Bulkheads accessory to nonresidential uses may be authorized when: 1.3. The bulkheads are: a. Adjacent to a navigable channel, b. Necessary for waterdependent or waterrelated use, or c. Necessary to prevent extraordinary erosion, but only when natural beach protection is not a practical alternative.	The wording of this subsection creates a list of undefined conditions for the authorization of bulkheads. Navigable channel is undefined as is extraordinary erosion . If navigable channel is defined as an Army Corps authorized and maintained channel then a great deal of bulkheads in Seattle are not on a channel but in many cases some distance from the channel. Our bulkheads are hundreds of feet from the channel because we are on an embayment to one side of the channel	Replace navigable channel with the phrase navigable waters . Delete the word extraordinary . All erosion when it goes on long enough becomes extraordinary. This subsection as written with all the concurrent requirements gives the impression that the City is unwilling to allow bulkheads even for water dependent uses. This violates legislative intent.
<p>DPD Response: WAC requirement 173-26-231-3(a) regarding navigable channel. Navigable channel means navigable water. Regarding "extraordinary erosion" WAC requirement 173-26-231(3)(a) and this is an OR statement therefore shoreline stabilization is allowed for Water-dependent water-related uses. No change proposed. Additionally, added standards for when repair of stabilization is allowed in order to meet WAC requirement.</p>			
23.60.188 D.	In the draft SMP for all freshwater locations where the term OHW is used	Away from tides we need a definition	Define for freshwater.
<p>DPD Response: Freshwater is defined see 23.60.912 and Ordinary High Water (OHW) is defined see 23.60.930.</p>			
Define.23.60.188 D	New hard engineering	The wording taken as a whole seems to not understand that in UI and UM working marine docks bulkheads are used for a reason. All other shoreline structures to support the bank for the purpose of loading/unloading vessels or access to vessels for construction or repair services while in the water would require overwater structures that shade the water. The angle of repose of riprap is not vertical enough to allow vessels close proximity to the dock unless the dock extends over water supported by piles. Bulkheads are not thoughtlessly used structures by industry. They provide a means of putting shoreline immediately next to water deep enough to moor and load vessels.	Revise to allow for legitimate water dependent use of hard engineering. The existing rules do not.
<p>DPD Response: Seattle's shorelines in the industrial areas are 99.9% hard engineered; therefore this provision does not apply. Nevertheless this provision allows for hard engineering if the provisions of 23.60.188 are met and this is a WAC requirement see 173-26-231(3)(a)</p>			

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23.60.200	Standards for marinas, commercial and recreational marinas	Commercial marinas is not defined sufficiently. Shipyards may a times provide temporary moorage (less than all year) to vessels. Crew members may reside on board said vessels for 4 or more days in a seven day period. This happens while the vessel is waiting to be worked on or preparing to leave. Moorage in not the primary business of shipyards but happens ancillary to our business. We should not have to register as a marina if a tug boat crew are living on the boat while it is worked on.	Insert a specific exemption from registration for shipyards.
DPD Response: Revised commercial marina definition and revised live-aboard standards see 23.60.200.G			
23.60.216	Standards for utility lines E. Pipelines , except gravity sewers and ...shall have shutoff facilities	Gravity sewers should be required to have shutoff facilities where they cross throught the shoreline. Broken pipes need to be shut off to facilitate repair. This is just basic good engineering and should be required.	Delete exemption for gravity sewers.
DPD Response: Shut-off valves are most commonly used for pressure pipe applicatoins (e.g., water pipes, sewer force mains) to isolate pipe section that are broken or have a leak. Shut-off valves are necessary for pressure pipes, b/c breaks on a pressure pipe can lead to significant damage to the environment or property. Shut-off valves are not typically used for gravity pipe applications, b/c they are not under pressure and therefore the risk of environmental or property damage in case of a leak or break is much lower. In addition, shut-off valves in a gravity pipe are more prone to "locking up" if they are not exercised on a regular basis.; therefore, they are not as effective for gravity fed pipes.			
23.60.220	9. Urban Industrial (UI) Environment	The definition does not specifically allow for shipyards which repair/service and build vessels. The definition is primarily aimed at cargo facilities and unspecified industrial uses.	Please include shipyards and drydocks as a specifically allowed use in UI .
DPD Response: See response to comment regarding subsection 23.60.090 A.			
23.60.480	Subchapter XIII(V): The Urban Industrial Environment Table A Uses in the UI Environment	The use table does not specifically allow dry docks and shipyards which repair/service and build vessels. Are you eliminating shipyards and vessel repair as an allowed use in UI????	Specifically allow dry docks and shipyards in the UI environment
DPD Response: DPD Response: See response to comment regarding subsection 23.60.090 A.			
23.60.484	Shoreline modifications in the UI Environment	Bulkheads are not allowed in C. 1.,2., or 3. Bulkheads are a essential part of UI and UM Enviroment for water dependent uses as previously explained in our comment on 23.60.188D	Please include bulkheads as a special use in the UI environment
DPD Response: Bulkheads are considered hard shoreline stabilization and are allowed as a special use see Section 23.60.172 Table A. 9b. Also, shoreline modification section has been revised and now include a table see sections 23.60.172 through 23.60.190.			
23.60.486	Heighth in the UI Environment	For structures existing prior to December 4, 1969 are grandfathered in size shape location and use on the shoreline or overwater per RCW 90.58.270	This should be at the beginning of the draft SMP as a universal qualifier of the SMP.
DPD Response: This is the same as every developmentstandard - standards are applied when they are established and for a use established prior to the RCW date, they are grandfathered as a matter of law, which means that if they are different from the standards, they are nonconforming - that is what grandfathering means.			
23.60.900	Definitions	Have a section that is just word or abreviation definition in alphabetical order as one section. Make another section as a definition of Environmental zones in alphabtical order. The draft defined WAC but did not define RCW.	See our definitions document for additional definitions and corrections to definitions.

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DPD Response: Revised to include abbreviations section and included some of the suggested definitions			
23.60.916	Definition of " Habitat unit " means a measurement of ecological function within a specific geographic area of the Seattle's shorelines.	The definition defines nothing. There is no description of how it is defined or even what is being defined.	Tightly define in terms of Shading in sq feet times per cent shade, lineal feet of Bulkhead, square feet of Riprap, cubic yards of dredged material with different values for degree of contamination of the material dredged and specific values for different types of piles. This would create a " value list " of ecological effect of developments.
23.60.916 continued			The values would be negative for putting in the development and positive for taking out a development. The owner must be able to bank, sell or buy habitat units from other owners as well as to or from the City. A "habitate unit price book or value book would promote consistency and dependability in reviews of projects and developments. The City already has a pre- application site visit and a permit completion inspection. The only addition activity would be an addition to an existing land database or property title of positive and negative habitat units that belong to the property owner of record.