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December 22, 2011

VIA EMAIL &
U.S. Mail

Ms. Diane Sugimura
Ms. Margaret Glowacki
City of Seattle
Department of Planning & Development
700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124

Re: Comments on Second Draft 2011 Shoreline Master Plan

Dear Ms. Sugimura and Ms. Glowacki:

We respectfully submit the following comments on the draft Shoreline Management Plan code revisions. The comments on submitted on behalf of Fremont Dock Company and Nautical Landing. We respectfully incorporate by reference our prior general comments submitted with our prior comment letter dated May 31, 2011.

As a preliminary matter, we once again want to express our appreciation for the time Ms. Glowacki and the rest of the DPD staff have invested in the preparation of the draft SMP and in meeting with my clients and other concerned stakeholders. The second revised draft reflected many substantive changes and revisions which, we believe, improved the overall structure of the proposed code.

We would appreciate DPD publishing a response to comments for this second draft as well as notifying stakeholders of the proposed schedule for finalizing the proposal for review by the Mayor's office and subsequently City Council.

GENERAL COMMENTS

1. **The Revised Draft SMP Continues to Present an Overly Burdensome Regulatory Structure which may Damage the very Maritime Industries it is intended to Preserve and Protect.**

The draft SMP is a very complex and intricate piece of legislation. We remain concerned that the complexity of the second draft SMP will only add to the permitting cost and delay for both small and large properties and projects.

The Shoreline Management Act is intended to help the maritime industry prosper and protect private property rights while encouraging the use and development of shoreline. The draft SMP as currently proposed, however, creates the risk of burdensome and intrusive permitting requirements, expansive yet unquantifiable restoration requirements, and reduced value and vibrancy of shoreline properties.

The added complexity and limitation on the use of shoreline properties, whether perceived or actual, will discourage redevelopment and improvement of the shoreline environment – the very projects that would be needed to improve existing habitat and ecological function may not be proposed, let alone built. The implication of "no net loss" as interpreted and implemented in the current draft SMP will likely result in "no net economic or ecological gain" and sharply reduced incentive to undertake substantial projects within the shoreline environment.

Simplifying the code should be DPD's highest priority. We again request that the draft SMP simply and clearly establish a "safe harbor" for existing buildings and structures. Rather than pages of code describing the instances in which existing structures can be or may, if numerous conditions are satisfied, be substantially improved, rebuilt or maintained, the draft SMP could simply establish the enactment date as the "baseline condition." All structures within the Shoreline Zone upon passage of the SMP would be deemed in compliance – including buildings, piers, wharves, bulkheads or shoreline armoring – not "non-conforming." Thereafter, any substantial improvement, renovation, repair or maintenance for such "baseline structures" -- so long as the footprint is not expanded -- would be subject to a simple, "fast-track" shoreline permit process.

If "no net loss" is the standard, then all existing structures should be allowed to continue because they are part of the "baseline condition." Requiring mitigation for existing structures converts "no net loss" into mandatory ecological restoration. That is not the purpose or intent of the Shoreline Management Act.

2. UC, UM and UG Setbacks

The shoreline in the UC, UG and UM environment is highly altered or "degraded" from its pre-urbanization condition. The "no net loss" requirement is not a mandate to return developed shoreline to its "prehistoric" state. Rather, "no net loss" is intended to preserve current conditions. The imposition of buffers and new set back requirements, especially in highly altered shoreline environments such as the ship canal, amounts to enhancement of current ecological function and is contrary to the Shoreline Management Act policies and requirements. The second draft did not alter these "ecological enhancing" requirements.

In the UG environment, the draft SMP establishes a 15 foot buffer shoreward from the ordinary high water mark ("OHW") and an additional 20 foot set back from that 15 foot buffer. The Ship Canal is a man-made waterway with highly engineered shorelines necessary for the continued navigation of commercial and recreational vessels. Mandating increased buffers on the theory that riparian upland is needed to support near shore salmon habitat in a man-made canal is not a "no net loss" proposition. To the contrary, the increased buffers along a man-made canal imposes an environmental "enhancement" requirement above existing baseline which beyond the requirements of the SMA.

The additional 20 foot buffer is not warranted, nor authorized under the SMA, in the UG environment in and along the Ship Canal. FDC's Quadrant Lake Union Center ("QLUC") is the only UG property on the north side of the Ship Canal. The property FDC owns is entirely upland because it is separated from the ship canal waters by land owned by the Army Corps of Engineers. On and adjacent to the Army Corps of Engineer's property is the Burke Gilman trail easement which is approximately 18 feet wide and runs along the waterside length of the QLUC. Pursuant to the trail easement proposed by the City, buildings cannot be located within the area of the Burke Gilman trail without the City's prior review and approval. As such, there is already existing limitation on the building area in the UG environment along the ship canal...the Burke Gilman Trail.

Moreover, the City's easement <u>requires</u> the Burke Gilman to be located along the ship canal. The draft SMP, on the contrary, prohibits a use such as the Burke Gilman Trail within the proposed 15 foot set-back and upon passage would deem the Burke Gilman Trail a "non-conforming use."

The setback requirements in the UG environment should be eliminated or at most limited to the 15 foot buffer with park or open space uses allowed outright within the buffers.

SECTION SPECIFIC COMMENTS

SECTION 23.60.001: DEFINITION OF THE SEATTLE SHORELINE MANAGEMENT CODE.

- The section states that the Seattle Shoreline Master Program is composed of the following: Seattle Shoreline Master Program Regulations; The Shoreline Goals and Policies in the Seattle Comprehensive Plan; and the Shoreline Restoration and Enhancement Plan required by WAC 173-26-201(2)(f). The section does not however identify regulatory hierarchy of the component parts. For example, in the event of a conflict, which of the component parts is controlling?
- This section should be revised to establish the hierarchy and resolve the issue of which component is controlling in the event of a conflict between the component parts.

SECTION 23.60.027: SHORELINE HABITAT UNIT AND MITIGATION PROGRAM

- We understand that the Shoreline Habitat Unit and Mitigation Program established by this section is to be promulgated by a Director's rule. We further understand that the Director's rule has not been made available for public review and comment in conjunction with the SMP review and comment process.
- We believe that the Director's rule, if available, should be published for review and comment concurrent with the draft SMP revisions.
- Stakeholders may have further comments on the SMP itself depending on the structure and details of the Director's rule.
- If the Director's rule is not to be made available for public review and comment prior to the finalization of the SMP revisions for City Council review and approval, then the final review of the SMP by City Council should be delayed to provide a short time for additional comment based on the scope and impact of the Director's rule.

SECTION 23.60.032: CRITERIA FOR SPECIAL USE APPROVALS.

- Subsection D. should be revised to read as follows:

  The proposed use can achieve no net loss of ecological functions except when the applicant demonstrates by ~~clean and convincing~~ a preponderance of the evidence that some net loss is required to allow reasonable economically viable use of the property.

- These revisions are necessary to link the "reasonable" use of the property to a relative standard – economic viability. In the absence of "economic viability" for the reasonable use, the standard could become perverted by the imposition of "reasonable" uses (e.g. nature preserve) which are simply unreasonable, speculative and eliminate the economic value of the property.

- The revision in the evidentiary standard is similarly needed to prevent the hurdle from becoming unachievable. Clear and convincing evidence is a stringent legal standard which is likely unachievable in many instances. The "preponderance of evidence" standard is reasonable, objective and appropriately balances the goals and objectives of the SMP.

SECTION 23.60.034: CRITERIA FOR SHORELINE CONDITIONAL USE APPROVALS.

- Subsection B.4. should be revised to read as follows:

  The proposed use can achieve no net loss of ecological functions except when the applicant demonstrates by ~~clean and convincing~~ a preponderance of the evidence that some net loss is required to allow reasonable economically viable use of the property.

- See rational and explanation set forth above.

SECTION 23.60.036: CRITERIA FOR SHORELINE VARIENCE PERMITS.

- Subsection B.5. should be revised to read as follows:

  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 economically viable use of the property without the variance.

- The additional language is needed to tether the variance standards to a standard which allows for the continued economically productive use of the property. In

the absence of a rational "economically viable" use, the standard for a variance may be insurmountable – i.e. there may always be some other use (no matter how wildly speculative or unproductive) that would be available in lieu of granting a variance.

SECTION 23.60.122: NON-CONFORMING USES

- Subsection A.2. should be revised to increase the time period for re-establishment of the non-conforming use to 24 months. The 12 month time period is decidedly too short in the current economic conditions and may prove to be similarly inadequate in future economic conditions. Twenty-four (24) months is a reasonable time frame for a commercial space to be empty or otherwise in transition from one use to another.
- Subsection C.2.b. is vague and ambiguous regarding the determination of whether the replacement structure is reconfigured to reduce ecological impacts. First, there is no evidentiary standard associated with the determination. Second, the sub-section does not identify who is to make such determination and what criteria are to be used to evaluate the replacement non-conforming structure.
    - The sub-section should be revised to simply provide that the non-conforming structure can be re-built to the same footprint as existed immediately prior to the casualty loss because that prior structure is already included in the ecological baseline. Replacement to the pre-existing footprint would not result in a net loss to ecological function.
- Subsection D.1.b. should be revised to link the unsuitability of the property to "economically viable" uses. Revise as follows:

  The existing development is unsuited for a reasonably economically viable use allowed in the environment.
- Subsection D.1.c. should be revised to link the relocation of the use to dry land portion of the property to "economic viability". Revise as follows:

  In addition, for structures located over water, no reasonable economic alternative exists for locating the use on the dry land portion of the lot, outside the setback, the maximum extent feasible.
- Subsection D.2. places substantial burdens on the replacement of existing non-conforming use with another non-conforming use by imposition of mandatory habitat credit payments where it is already required that the new use is no more impactful on ecological function than the prior use. Be definition the replacement use will not result in any further reduction of the existing ecological function. As such, the SMA does not authorize exaction of monetary payments. If the Director

determines under D.1. that the replacement non-conforming use is no more detrimental to ecologic function, then the replacement non-conforming use should be allowed without the payment of habitat credits. This is consistent with maintenance of the status quo ecological function versus mandating "enhancement" to that ecological function.

- Only in the instance of the replacement non-conforming use being detrimental to ecological function should habitat credit payments be exacted. Section D.2. should be revised as follows:

  If the Director determines by a preponderance of the evidence that a replacement nonconforming use in a structure over water and/or in the required setback results in a net decrease in ecologic function, then the replacement non-conforming use shall be allowed if the applicant provides twenty-four habitat units…~~may be changed, the Director shall require the applicant…~~

- In addition, it is unclear the standard by which the amount of habitat credit units to be exacted (i.e. 24, 2 and 10) was determined for this draft. What was the standard for those calculations?

SECTION 23.60.124: NON CONFORMING STRUCTURES

- Subsection B. should be revised to delete "*…and outside the shoreline setback and residential setback…*" because these non-conforming structures are existing and already included in the ecological function baseline. As such, replacement or substantial improvement of such structures to their pre-existing footprint does not result in net loss of ecological function.

- Subsection C should be revised to clarify that only those substantial improvements, replacements and expansions that increase non-conformity or create new non-conformity are subject to Subsections 23.60.124.D.1 and 2 and 23.60.122.E. Section C should be revised to read as follows:

  C. Over water and/or within the required shoreline setback and/or residential shoreline setback. A nonconforming structure or development that is over water, within the required shoreline setback, or residential shoreline setback, may be maintained, repaired and structurally altered consistent with Section 23.60.124.D; ~~but is prohibited from being~~and may be:

  1. substantially improved;

  2. replaced; or,

  3. expanded

~~*in any manner that*~~ *where there is no increase~~s~~ in the extent of non-conformity or the creation of ~~es~~ additional non-conformity. In the event such substantial improvement, replacement or expansion increases the extent of non-conformity or creates additional non-conformity, then such substantial improvement, replacement or expansion shall be prohibited except as provided in ~~except as provided in~~ Subsections 23.60.124.D.1 and 2 and 23.60.122.E, and as otherwise required by law if necessary to improve access for the elderly or disabled or to provide regulated public access.*

- Subsection H. should be deleted. The section already provides that replacement, substantial improvement or expansion of existing non-conforming structures which result in a net loss of ecological function must comply with the mitigation requirements. If there is no net loss of ecological function, then the substantial improvement, replacement or expansion should be allowed. The SMA does not provide the City with the authority to mandate a betterment of the ecological baseline function where there is NO NET LOSS of such baseline function due to the project. Subsection H seeks to impose a betterment requirement even where there is no net loss of ecological function.
- Subsection I.2. should be revised to increase the time period for commencement of replacement from 12 months to 24 months. The additional time is necessary to provide for instances where insurance coverage for the replacement costs may be in dispute and need to be litigated or resolved through arbitration or mediation.

SECTION 23.60.152: GENERAL DEVELOPMENT STANDARDS

- The general developments standards articulated and the associated standards of addressing any adverse impact may contravene or conflict with SEPA mitigation standards. The general development standards should be revised to incorporate the SEPA standard of substantial adverse environmental impact.
- Subsection D. should be revised to read as follows to clarify the area in which the requirements apply: *"…and managed in a manner that minimizes adverse impacts to surrounding land and water uses located in the Shoreline Zone and is compatible with the affected area in the Shoreline Zone.*
- Subsection I. should be revised to add the following new sentence to make clear that design and location to minimize saolmonid predator habitat cannot be used as a basis to require reduction in the allowed over-water footprint: *Application of this provision shall not require reduction of the allowed or permitted overwater coverage or development footprint.*

- Subsection K. should be revised to specifically provide that "splicing" of creosote pilings is an allowed and accepted repair procedure.
- Proscribing "sleeving" as the only specifically enumerated and approved repair method is overly restrictive especially for pilings under an overwater building. "Sleeving" may, in fact, be impossible under existing overwater buildings and some piers and docks. Yet the draft SMP provides no relief from the requirement to "sleeve" in such instances.
- Intensive in-water construction work, such as "sleeving," is limited to certain "fish windows" during the year and as such mandated "sleeving" will unnecessarily increase the time and cost of such repair work.
- Splicing is an acceptable, affordable and effective repair alternative that can be performed at any time during the year and beneath existing structures and buildings.
- "Splicing" also does not result in "net loss" to ecological function. The existing creosote pilings are already included in the ecological function baseline. Splicing the top portion of the piling would not increase any existing impacts. Splicing is consistent with "no net less" of existing ecological function. Requiring "sleeving" actually imposes an ecological "enhancement" requirement of existing conditions. Such a mandate is not the purpose or intent of the SMA.

SECTION 23.60.162: STANDARDS FOR PARKING REQUIREMENTS

- Subsection C should be revised to allow existing over-water parking to be restriped, reconfigured or relocated in or on overwater structures. For properties with little to no dry land, the ability to reconfigure and restripe their existing parking overtime is critical to their continued economic survival and flexibility.
- Subsections D and F should be deleted because they may conflict with other development requirements (e.g. landscape code, stormwater management code). Moreover, for overwater structures it simply may not be possible to achieve the screen requirements.

SECTION 23.60.186: STANDARDS FOR MOORING BUOYS, MOORING PILES, AND FLOATING DOLPHINS

- Subsection C. The addition of "cost" consideration in the use of non-toxic materials is a welcome revision. The definition of "feasible" includes a consideration of monetary impact. In some instances in the Code when the

"feasibility" standard is referenced, this "cost" language was added in other instances it was not added. As such, there is a chance for an "ambiguity" argument. It may be appropriate to just reference the feasibility standard and to delete the language: "…when determining feasibility cost can be considered" to avoid interpretation and construction questions. This is a global comment when referencing the "feasibility" standard.

SECTION 23.60.187: STANDARDS FOR PIERS, FLOATS & OVERWATER STRUCTURES

- The introductory language of the subsection C.1. is confusing. Which uses are permitted or prohibited? We suggest that the introduction be revised to read:

  1. Piers and floats are allowed ~~and prohibited as follows~~:

- Subsection C.1. should be further revised to establish that piers and floats are outright allowed accessory uses without requiring that the applicant "demonstrate" that they are "necessary" for moorage, boat repair, or loading or off-loading goods or materials to and from vessels.
- Subsection C.2. should be revised to allow covered moorage, subject to mitigation if there is a net loss of ecological function.
- Overwater work sheds should not be prohibited nor relegated to the UI and UM environments. For example, work sheds should be allowed in the UC environment for water dependent uses (e.g. Lake Union Dry Dock).
- Subsection D. concerning slip-side vessel maintenance should be clarified to state that the 25% relates to "at any one time" and not an outright limitation to 25% of the total size.

SECTION 23.60.200: STANDARDS APPLICABLE TO MARINAS

- Section B.3.b. should be revised to clarify that the 25% requirement is applicable "at any one time" and not as an overall limitation on boat maintenance.
- The Section B.4. requirement of "dry land" restrooms may be impossible for marinas with little or no dry land area to meet. This section should be revised to allow for other locations dependent on the configuration of the marina.
- Section B.7. language concerning "unflushed holding basins" should be deleted. The term is not defined and is more appropriately regulated under dredging standards.

- Subsection B.8. should be deleted in its entirety because of the impact on operations of existing marinas and the risk of inconsistent enforcement. Moreover, Lake Union water levels are artificially regulated such that compliance will be affected by conditions which are out of the control of the marina operators.
- Subsections D.1. and 2. Should be deleted. Compliance with these design requirements may be impossible in many instances or may create the risk of substantial damage to property and vessels.
- Subsection E. should be deleted in its entirety. Public Access should not be mandated on private properties as a condition to marina operation or permitting. The SMA intends that public access requirements be met on public property.

SECTION 23.60.204: STANDARDS APPLICABLE TO HOUSE BARGES

- This section should be deleted in its entirety.
- These new provisions governing "house barges" appear to infringe upon and violate federal maritime jurisdiction because they specifically apply to U.S. Coast Guard licensed vessels. Please explain the legal authority to prohibit a licensed vessel from navigating or otherwise using the waters of the United States.
- Sub-Section A "prohibits" any new House Barges. The section is vague and ambiguous. Does the City intend to prohibit House Barges in any area of the Shoreline Environments? Does the City mean that House Barges are prohibited from navigating the waters of the United States within the Shoreline Environment?
- Existing house barges with permits that date to June 1990 are allowed. Please explain the significance of June 1990. Does the City intend that house barges that were constructed post-1990 are also prohibited? Are they a non-conforming use?
- House barges should be treated no differently that live-aboard vessels because there is no functional difference between a live-aboard vessel and a house barge.
- We reviewed and concur in the comments regarding live-aboard vessels and house barges.

SECTION 23.60.215: STANADARDS FOR USES ON VESSELS

- Please explain the legal authority that allows the City to regulate "dwelling uses" on licensed vessels navigating on the waters of the United States.

- It appears that these standards violate federal maritime law and exceed the statutory authority of the Shoreline Management Act.
- What uses are "customary" for a moored vessel? What uses are not customary such that they are prohibited? How is "customary" determined and by whom? The director? The DPD compliance inspector?
- This section should be deleted in its entirety.

SECTION 23.60.216: STANDARDS FOR VESSEL MOORAGE

- Please explain the legal authority under the Shoreline Management Act that allows the City to regulate uses on vessels.
- A typical boat owner is not going to review the City's zoning code to determine standards for operation of their boat or vessel. Moreover, the provision calls for the development of best management practices to be developed and promulgated by Director's rule. It is even more unlikely that a boat-owner would delve deep into the City's laws, rules, and regulations to locate "Director's rules" to determine if there were specific operational limitations on their vessel while moored in the City boundaries of Seattle.
- The proposed SMP already requires marinas to implement BMPs and include specific provisions in moorage agreements to address the operational issues set forth in this proposed sub-section.
- This section should be deleted in its entirety.

SECTION 23.60.310 USES IN CONSERVANCY WATERWAY ENVIRONMENT

- Any limitation on the moorage of vessels in the CW should be constrained to moorage that unreasonably obstructs navigation and commerce which are the intended and dedicated purposes of the waterways.
- Similarly, boat moorage should, at a minimum, be a "conditional" use in all areas except Lake Union where boat moorage should be an "allowed" use. Boat moorage as an "allowed use" is consistent with and enhances the stated purpose of the CW environment in 23.60.220.C.5.: "to preserve the City waterways for navigation and commerce…Since the waterways are public ways for water transport…navigational access to adjacent properties, access to and from land for the loading and unloading of watercraft and temporary moorage."
- As currently drafted, the sale of large boats is prohibited in the CW environment, yet rental of large boats is allowed as a special use. There does

not appear to be a functional difference between the occupancy of the CW for by boats for sale or for rent. In both instances the boats will be present in the CW environment and moored while awaiting sale or rental. As set forth above, the limitation on moorage should be deleted and listed as an "allowed" use in the CW environment in Lake Union – which should allow for the sale or rental of large boats.

Urban Commercial Environment

SECTION 23.60.382: USE CHART

- No uses are enumerated for submerged lots. Once again we request that in order to simplify the provisions, a third column should be added for submerged lots. Maximum flexibility in uses should be afforded submerged lots.

SECTIONS 23.60.382.B. AND D: USE LIMITATIONS

- Limitations and conditions on the following uses should be eliminated to encourage vibrant, mixed use developments in the UC environment especially in the Lake Union area:
    - Office;
    - Eating and drinking establishments;
    - Entertainment;
    - General Sales and Services; and
    - Small and Large Boat Sales, Rentals and boat parts and accessories.
- Habitat Unit payments for uses in existing structures should be deleted. The replacement of a use in an existing structure does degrade ecological function. The existing structure is already included in the baseline condition. Moreover, in the Lake Union area, a multitude of non-water related and non-water dependent uses should be allowed to foster a vibrant shoreline area that maximizes enjoyment of the Lake Union environment.
- Prohibition of office uses over water should be eliminated or at least clarified to apply only to office as a primary use. Overwater office as an accessory use to any other allowed, conditional or special use should be an allowed use.

SECTION 23.60.384: USES ALLOWED OVERWATER IN THE UC ENVIRONMENT

- It appears that there is a numbering error. We believe this Section should be 23.60.283.
- As a preliminary matter, we appreciate the addition of a section specifically addressing uses over water for lots with less than 35' of dry land or, in many instances, little or no dry land.
- Please clarify and confirm under which circumstances small and large boat sales are allowed. We believe that small and large boat sales should be included as an "allowed" use in subsection A. Was it intended that "Commercial uses" encompasses small and large boat sales? If not, then the section should be revised to specifically include small and large boat sales as an allowed use.
- "Office" use should also be included in Subsection B. As set forth above, allowing office uses for these existing overwater structures does not impose any loss of ecological function and most importantly provides valuable flexibility in tenanting the properties which in turn allows the properties to remain in productive use and accordingly in good repair, condition and appearance.

SECTION 23.60.388: LOT COVERAGE IN THE UC ENVIRONMENT

- The first sentence of Section A should be revised to read as follows: "On waterfront lots, the following requirements apply *to new structures or structures that do not meet the requirements of Section 23.60.124*."
- This revision is necessary to eliminate potential ambiguity and conflict between this section and the provisions regarding the repair and replacement of non-conforming structures.
- In addition, subsections C.1. should include an exception for small lots with less than 35 feet of dry land to allow development of at least 80% of the <u>submerged</u> area of the lot. With such limited dry land area for development, the additional submerged lot coverage should be allowed.

SECTION 23.60.392 PUBLIC ACCESS IN THE UC ENVIRONMENT

- The exemption to public access on private property provided in Paragraph 2 should be revised to delete the requirement that the front lot line be less than 100 feet. If the property is located adjacent to an existing street or waterway that provides public access, the public access requirements of the SMA are satisfied.

The SMA provides that the provision of public access should be principally provided via public lands – not private property. The landowners adjacent to already existing public access to the shoreline should not be required to forfeit further private property rights to expand that public access.

- If DPD is unwilling to eliminate the 100 linear foot limitation, then the limitation should be increased to 200 feet.

SECTION 23.60.392: PUBLIC ACCESS IN THE UC ENVIRONMENT

- Public access on private property should not be required. The public safety and liability implications and exposure are absolutely untenable for marina owners.
- If DPD retains public access requirements, then a complete exemption from public access requirements should be made for lots with little or no dry land or wholly submerged lots. Requiring public access to such lots would likely entail requiring public access to the privately owned structures themselves and not the "shoreline."

Urban General Environment

SECTION 23.60.406: HEIGHT IN THE UG ENVIIRONMENT

- Section 2.d. should be revised to read as follows to ensure that the view issue is limited to residences located within the Shoreline zone:

  "e. *The views of a substantial number of upland residences within in the Shoreline Zone would not be substantially blocked by the increased height."*

- Section C.2. should be revised to read as follows to ensure that the view issue is limited to residences located within the Shoreline zone:

  "The width of the feature does not obstruct the view of the shoreline of a substantial number of residences on areas within the Shoreline Zone adjoining such shorelines."

SECTION 23.60.410: SHORELINE SETBACKS IN THE UG ENVIRONMENT

- Section should be revised as follows to clarify that the standard applies to new structures and those existing structures which do not meet the requirements for non-conforming structures:

"A. A shoreline setback of 35 feet from the OHW mark is required *for new structures and non-conforming structures that do not meet the requirements of Section 23.60.124*…"

- The Section should also allow development, including buildings and other structures, in the area greater than 15 feet from the OHW mark along the Lake Union Ship Canal because it is an engineered waterway that will remain a highly modified artificial shoreline environment.
- Requiring more than a 15 foot setback will not provide for continuous, connected habitat because the shallow and near-shore habitats will, as a matter of federal navigational requirements, remain in their current armored and engineered condition. The requirement of a 35 foot setback in such an environment does not enhance or increase ecological function – the entirety of the canal is and must be maintained as an engineered shoreline.
- In Section A.2. b., would the Burke Gilman Trail be included in the current language allowing viewpoints and spur pathways? If not, then the Section should be revised to include pedestrian walkways and bike paths including without limitation the Burke-Gilman Trail. Absent this revision, it appears that the Burke-Gilman Trail, established by the City via an easement, would be a non-conforming use. This seems to run contrary to the SMA goal of enhanced public access.

SECTION 23.60.412: VIEW CORRIDORS

- Please provide the map referenced to determine which upland properties are required to have view corridors.

SECTION 23.60.414: PUBLIC ACCESS

- Delete public access requirement for marinas.

Urban Maritime Environment

SECTION 23.60.502: USES IN THE UM ENVIRONMENT

- Section C.2. should be revised to allow non-water dependent or water-related uses to occupy no more than 65% of the dry land area of the lot. The limitation of 20% is overly restrictive and does not provide adequate operational

flexibility to support the dwindling number of water-dependent and water-related uses in and around Lake Union.

- Similarly, Section C.3. should be revised to allow the individual non-water dependent or water-related uses to occupy up to 25% of the dry land are area of the lot.
- Section D. is confusing in that it states that recreational marinas are an allowed use but then applies specific conditions that that allowed use. No other allowed uses are subject to any such specifically enumerated conditions.
    - The section should be revised to either: (a) delete all of the conditions to recreational marinas to qualify as an allowed use; or (b) delete at a minimum the condition set forth in Section D.4. to allow for recreational marinas that provide deeper draft for the increasing trend of larger recreational vessels.

SECTION 23.60.514 REGULATED PUBLIC ACCESS IN THE UM ENVIRONMENT

- Section A.1. should be revised to read as follows to account for those marina properties that are located adjacent to existing street or other public access points in the UM environment because the public access requirements of the SMA are satisfied:

> "1. Marinas, except as exempted in Section 23.60.200.E. *or located adjacent to an existing street or waterway that provides public access*."

DEFINITIONS

SECTION 23.60.963: Definitions "S"

- The definition of "Substantial improvement" and "substantially improved" is overly restrictive. 60% of the market value of the non-conforming portion of the building in any 5 year period represents a numerical majority but may be indicative of a "substantial improvement" especially in light of the markedly increased cost of in-water construction and construction within the shoreline.
- A more realistic definition for waterfront and over-water non-conforming structures would be 75% of the market value of the non-conforming portion in any 3 year period.

CONCLUSION

We appreciate the opportunity to provide these comments and look forward to a continued dialogue on development of the revised SMP. Robust stakeholder input and communication with full and ample participation by industry, property owners and maritime business should be continued as the SMP is further revised and ultimately presented to the Mayor and City Council for review, approval and enactment.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

John J. Houlihan, Jr.

cc: Suzanne M. Burke, Fremont Dock Company
Kevin Wold, Nautical Landing