



December 23, 2011

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Sent by email to: [margaret.glowacki@seattle.gov](mailto:margaret.glowacki@seattle.gov) and hand delivery

**RE: Comments on the Seattle Shoreline Master Program October 2011 Draft**

Dear Ms. Glowacki:

Thank you for the opportunity to comment on the Seattle Shoreline Master Program (SMP). *Futurewise* is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. *People For Puget Sound* is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

The development of the Seattle SMP has been long and arduous. We appreciate the tremendous amount of time that staff has put into this important effort.

Seattle staff decided to issue a 2<sup>nd</sup> draft SMP because of the large amount of public interest in the SMP process. We submitted a detailed comment letter on May 31, 2011 addressing the 1<sup>st</sup> draft. This December letter addresses the issues that we continue to be concerned about (i.e., items that have not been changed in the 2<sup>nd</sup> draft and about which we continue to have concerns). As a note, it was difficult to review draft 2 changes because the tracked changes were in the same color as the 1<sup>st</sup> draft.

***Shoreline Master Program Updates are necessary to protect and help recover Puget Sound and other Shorelines***

The Shoreline Management Act was adopted by the legislature in 1971 and approved by the state's voters to protect the state's shorelines. Unfortunately, it has not fully succeeded. The scientific evidence is that we still harming our shorelines resources. For example,

Nearshore impacts occur despite our existing policy and regulatory framework. According to the 2007 State of the Sound report, development actions across the Puget Sound region have caused eelgrass, forage fish, salmon, rockfish, marine birds and orca populations to decline (PSAT 2007). Ten species are listed as threatened or endangered

by the state or federal government and an additional 33 marine species are identified as species of concern, meaning their populations also are at risk. Declines in these species' populations are directly related to the destruction, degradation, and fragmentation of the habitats on which they rely. Much of this damage occurred prior to the development of our existing regulatory framework, but significant ecosystem impairments have also occurred since the advent of the major regulatory initiatives in the 1970s.<sup>1</sup>

So we see that our shorelines, including Puget Sound, continued to be in peril. But scientists tell us we can do better.

Regulations can reduce and sometimes prevent impairments to nearshore habitats and habitat-forming processes. By imposing standards for the location, density, size, design, and operation of roads, housing, businesses, and industries, regulations can protect valuable habitats from destruction and minimize effects of development on sediment supply and transport, erosion and accretion, surface and groundwater flows, primary production, food webs, habitat-species interactions, and other processes.<sup>2</sup>

One of the reasons we continue to adversely impact shoreline ecological functions is that shoreline master programs (SMPs), policies and regulations for the management of our shorelines, are out of date. They failed to incorporate policies and regulations to address the evolving scientific understandings of our impact on shoreline ecological functions and how we can prevent those impacts. For most SMPs in Washington State, the current required update is the first comprehensive update. It is important that we get this update right: That we fully incorporate the current scientific data on what we need to do to protect Puget Sound. Otherwise, the damage to Puget Sound will continue.

### ***We Strongly Support the SMP Update***

We support the comprehensive update of the Seattle SMP. As we document above, the update is needed to protect and recover Puget Sound. Other shorelines, including lakes, rivers, and streams are similarly important.

While there are changes we recommend in this letter, the SMP does include significant improvements over the current SMP which we appreciate and support. While there will be pressure to weaken these elements, we urge you to retain them. There are also some areas that we recommend be strengthened to meet the requirements of the Shoreline Management Act (SMA), the Shoreline Master Program Guidelines (SMP Guidelines), and community needs.<sup>3</sup> In our May 31 letter we attached three of Futurewise's guidance documents that we hope can inform the update effort.

Before discussing our specific comments, we would like to discuss our general observations on the responses to our comments that were provided by staff. Having reviewed many SMPs over the last

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<sup>1</sup> Margaret Clancy, M., Ilon Logan, Jeremy Lowe, Jim Johannessen, Andrea MacLennan, F. Brie Van Cleve, Jeff Dillon, Besty Lyons, Randy Carman, Paul Cereghino, Bob Barnard, Curtis Tanner, Doug Myers, Robin Clark, Jaques White, Charles A. Simenstad, Miriam Gilmer, & Nancy Chin, *Management Measures for Protecting the Puget Sound Nearshore* p. 8-2 (Puget Sound Nearshore Ecosystem Restoration Project Report No. 2009-01, Washington Department of Fish and Wildlife, Olympia, Washington: 2009). Accessed on Dec. 19, 2011 at: [http://www.pugetsoundnearshore.org/technical\\_reports.htm](http://www.pugetsoundnearshore.org/technical_reports.htm). This report had external peer review. *Id.* at p. \*ix. Cited pages and Chapter MM8 enclosed with the paper original of this letter.

<sup>2</sup> *Id.*

<sup>3</sup> While the SMP Guidelines are called "Guidelines," they are actually binding rules that provide standards that SMPs must meet although local governments have flexibility to address local circumstances. WAC 173-26-171(3)(a).

three years, we have found a common pattern in staff responses to our comments that we also observed for this SMP update. Responses often attempt to “explain away” an issue by referring to other standards that are unrelated, or indirectly related, or are general statements of protection. As an example, if our comment says that a use doesn’t meet a specific requirement in the SMP Guidelines, the response would refer our issue to the no-net-loss or mitigation sequencing standards, and the use limits section. Such a response does not address the comment and the specific requirements in the guidelines to address the impacts of common shorelines uses, – such an approach would mean that only one regulation is needed dealing with no-net-loss and mitigation sequencing. However, relying just on these provisions, as valuable as they are, means that the specific impacts of a use or activity are not addressed in the SMP for the Seattle environment. This means either that the impact will not be addressed for a development proposal or the response to the impact will have to be developed for each permit. We believe it is more efficient to address these impacts in the updated SMP.

### ***Uses That Damage the Environment Must be Prohibited or Include Adequate Protections***

A number of our comments in this letter are based on incorporating the SMA preference of water-dependency in both use limits and the vegetation management system. The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraph 4 - the implementation paragraph – is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines. Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]:

In the implementation of this policy *the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline.*

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

Shoreline master programs shall implement the following principles:

- (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state’s shoreline areas. ....
- (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state’s shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that water dependent and water related uses must minimize the damage and compensate for their impacts. Conversely, uses that don’t need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy. Such uses must be prohibited or carefully controlled with adequate requirements. They cannot be treated the same as

preferred uses are treated, otherwise there is no effect to the preference and, more importantly, additional damage will occur to Puget Sound and our rivers, streams, and lakes.

Since many ecological functions come from native intact vegetation, degrading that vegetation (including further damaging already degraded vegetation) causes damage to the environment.<sup>4</sup> Uses and development that meet a science-based buffer go far in preventing damage. If such a buffer is not applied, the development will harm the environment - so there must be a good reason to allow it. This is why the SMA establishes the preference for water-dependency, and establishes the shoreline variance and conditional use permit processes - they ensure there is a hardship or other good reason for not meeting a buffer (or other regulation). And of course, like all development, the SMA and SMP Guidelines require that the impacts be compensated for.

*This makes water-dependency criteria a critical factor in accomplishing mitigation sequencing for two reasons.* First, if a development has no need to be near the water, it should not be allowed in shoreline jurisdiction, unless limited to specific instances. For example, commercial and industrial developments have SMP Guideline requirements that carefully get at these limited instances. Hardship conditions, such as for a variance in situations of existing development, would also be such an instance. And the SMA and the SMP Guidelines give a priority to single family residences that control pollution and prevent damage. In general, allowed uses should be limited to water-oriented uses and single family residences.

Second, for any development that is allowed in shoreline jurisdiction, if a development has no need to be in the water or providing access to the water, it should be outside an intact, science-based buffer, where it will cause the least amount of damage. Development within a science-based intact buffer that is not water-dependent or water-related development would cause damage, is the opposite of the SMA policy, and is non-preferred. It must be prohibited or somehow carefully limited, as the Guidelines require. Thus, water-dependent and water-related uses need to be in the buffer and are preferred. But water-enjoyment and non-water-oriented development can meet the buffer requirements while still maintaining their function. They must prevent harm to the environment, and the primary means of doing this is to meet the buffer. Of course degraded buffers, whether small or science-based, cannot work to mitigate development impacts. As an extreme example, even a completely concreted shoreland area that is converted from a use with low human presence to intense human presence will have new impacts, because the human presence will drive off or disturb sea life.

*We are concerned about the allowance of non-water dependent uses*

Because of the high level of competition for Seattle's very valuable, but limited, shorelines; shorelines need to be reserved for water-dependent uses, such as ports, shipyards, fish and shellfish processing plants, and marinas. These businesses, both historically and currently, play important roles in the economies of Seattle and Washington State and provide valuable family wage jobs. Our organizations support this.

We oppose, however, the allowance of certain non-water dependent uses to be allowed on waterfront lots. The uses allowed will be limited to 20 percent of the lot area and will be for uses that were identified in the DPD report to support water-dependant businesses such as machine shops, material suppliers and repair services. However, according to WAC 173-26-241(2)(a)(iii) these uses, which are non-water-dependent and will cause damage, should be kept out of the valuable shorezone (which

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<sup>4</sup> EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Program, *Protecting Nearshore Habitat and Functions in Puget Sound* pp. II-37 - II-40 and pp. III-33 - III-35 (October 2007, Revised June 2010). Accessed on December 9, 2011 at: <http://wdfw.wa.gov/publications/pub.php?id=00047> and on the CAO on CD enclosed with the paper original of this letter in Data CD 1 in the "Fish & Wildlife Habitat\Marine & Saltwater Habitats" directory with the filename: "wdfw00047.pdf."

should be dedicated to the SMA allowed uses) and located instead in the nearby industrial and commercial areas.

*We are concerned about using small and/or degraded buffers*

Our previously provided guidance documents dealing with both buffers and no-net-loss both provide a detailed discussion of the impacts of development, including many incorrect assumptions that some development has no impacts. At least one of these is apparent in the Seattle buffer system. There is one assumption that a 15, or 35, or 50 foot buffer, regardless of whether it is intact, will prevent impacts of new development as if it is a science-based buffer. Another assumption is that by meeting the small setback width (again regardless of whether it is intact), unlimited new development outside that width will have no impacts. Responses to our comments refer to mitigation sequencing, but vague references to mitigation sequencing do not address the fundamental issue that small buffers by default start with allowing impacts. This is at the core of other comments we have regarding compensatory mitigation below. Using small buffers cannot protect the vegetative functions and shoreline waters from the impacts of whatever non-water-dependent development is allowed.

*We are concerned about the lack of the use of the term “compensatory mitigation”*

While we appreciate that the mitigation sequencing section (23.60.158) was edited to add the concept of “compensation” to the steps and is improved overall, the term “mitigation” alone continues to be used throughout the SMP when it clearly is directly referring to compensation. As you are aware, the terms mitigation and mitigation sequencing encompass a broad range of actions that are focused on avoidance, minimization (multiple sequence steps are forms of minimization), and compensation. We have noticed that the use of the term mitigation is often used to describe compensatory mitigation exclusively. We recommend that in these cases the term “compensation” be accurately used to clearly indicate that some form of enhancement/replacement work is expected. The terms minimization and avoidance are used freely – the term compensation also needs to be used so that readers clearly understand that enhancement or other improvements are needed in exchange for the impacts. We have observed a very common misconception in the <sup>5</sup>practical application of “mitigation” that seems to skip the step of compensatory mitigation, so correct usage of terms is important. It is especially common for road and street projects. One specific example from the mitigation sequencing section illustrates the issue that exists throughout the SMP, for which we provide recommended edits in stikeout/underline format: Section 23.60.158(A)(1) should be changed to either state “Compensatory mitigation is required for the loss of ecological functions resulting from: ...” or “Mitigation is required for the loss of ecological functions-development impacts resulting from: ...” If there is a loss, compensatory mitigation is required. Alternatively, mitigation for development impacts is the correct relationship.

Throughout our previous letter we recommend that compensatory mitigation needs to be specifically described. However the responses to our comments consistently imply that referring to mitigation sequencing is adequate, as if that automatically eliminates the impacts. As we have noted in our letter, and as our guidance documents describe, vague references to mitigation sequencing and no-net-loss do not accomplish the numerous SMP guideline requirements that “policies and regulations be designed to accomplish no-net-loss.”<sup>6</sup> They are not supposed to simply repeat the SMP Guideline’s no-net-loss and mitigation sequencing statements. They are supposed to localize those requirements for the City of Seattle’s shoreline environment, address the “common impacts” of the development activity, and identify the common mitigation measures that will avoid, minimize and, and compensate for the impacts. If the “common impacts” are not addressed, they become cumulative impacts, and the

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<sup>5</sup> WAC 173-26-201(3)(d)(iii) addresses cumulative impacts, and specifically states that policies and regulations must address common impacts of development. This is discussed in detail in our guidance document dealing with no-net-loss and cumulative impact analysis.

<sup>6</sup> WAC 173-26-186(8)(b).

jurisdiction must account for and provide compensation for them. If the specificity we recommend is not to be provided in the SMP, at a minimum, a compensatory mitigation plan needs to be required with all exemptions and permits as a default position. The plan described in revised Section 23.60.158(E)(1) could serve this function, but it doesn't actually ask for avoidance, minimization, or compensatory mitigation measures. While accurate terminology usage is needed throughout the SMP, closing these gaps in the mitigation plan provisions can go far in addressing our concerns. We recommend edits (in strikeout and underline format) to the plan requirements, so the plan more directly describes how the project is accomplishing each step of mitigation sequencing:

“e. Identify avoidance and minimization measures to preserve ecological functions and existing habitats, including ~~and~~ opportunities to restore habitats that were degraded prior to the proposed land use activity.”

“g. Proposed measures that will ~~mitigate-compensate for~~ the impacts of the project remaining after applying avoidance and minimization measures, to ensure no net loss of shoreline ecological functions, value, and proposed success criteria;

The mitigation sequencing section is referenced several times throughout the SMP. Since almost all new development will have new or increased impacts, these locations should include reference to compensatory mitigation by adding a new statement or supplementing an existing statement, similar to the following:

“XX. Development shall be designed to avoid and minimize impacts according to the mitigation sequencing requirement in SMC 23.60.158. The development shall provide compensatory mitigation for remaining impacts.”

#### *We are concerned about the allowance for creosote piling replacement*

The 2<sup>nd</sup> draft SMP has added a new allowance (23.60.152K1c) that creosote pilings may be repaired if: “b. fewer than 50% of the existing piles are in need of repair under a structure that is being replaced.” This is a high threshold and should be reduced so that more pilings are replaced with non-toxic alternatives. Given the new Ecology report about the sources of PAHs to Puget Sound (significant threat to ecosystem from creosote-treated wood), this threshold should be reduced to 25%, at a minimum. This 25% standard should also apply to the following item (K3): “Creosote treated piles in need of repair must be replaced if under a structure that is being replaced and ~~2550%~~ or more of the number of piles are proposed to be repaired, if feasible and shall comply with subsection 23.60.152.J.”

#### *Shoreline Alternative Mitigation Plan not described*

We previously commented on the Shoreline Alternative Mitigation Plan (SAMP). It appeared to be a means of establishing an alternative to conventional compensatory mitigation. The response indicates that clarification was added, it is still not clear to us when or whether it is required to be used. Our original concerns may still apply. We would appreciate the opportunity to discuss the system with staff to better understand the intent and implementation of the program.

#### *Vegetation Conservation*

For Seattle, where only a small part of the shoreline is still intact, the above issues have ramifications in the buffer system. The lightly developed and intact areas – mainly the Conservancy environments – need science-based buffers and vegetation management to protect these remaining intact areas. The response to our comments implies that limiting uses is adequate and larger buffers are not needed. As we previously pointed out, whatever non-water-dependent uses are allowed are not supposed to harm the environment. That means a science-based buffer is needed and we recommend 150 feet.<sup>7</sup> Water-dependent uses that are allowed would not be required to meet the buffer requirements.

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<sup>7</sup> Jim Brennan, Hilary Culverwell, Rachel Gregg, & Pete Granger, P.I., Protection of Marine Riparian Functions in Puget Sound, Washington pp. 102 – 103 (Washington Sea Grant, Seattle, WA for Washington Department of

Please include the attached CAO on CD in the record. It provides scientific citations for the wide variety of natural resources providing ecological functions within shoreline jurisdiction. Most particularly it provides a scientific basis for buffers of approximately 150 feet. The small setbacks and vegetation management standards (essentially a traditional buffer) currently allow development within intact areas to clear the vegetation to 50 feet or so from the water (depending on the conservancy environment). While conservancy environments have limits on uses, even park development allows athletic fields to be cleared (let alone the structural development). Thus, extensive intact vegetation areas can be cleared to the setback line. Intact science-based buffers are the first means of avoidance, but the intact areas only have setbacks of 50 foot or less. Staff responses have stated that buffers are only one means of protecting ecological functions, but allowing the very thing that provides the functions (the vegetation) to be eliminated will protection shoreline ecological functions as the SMP Guidelines require.

Almost all development allowed by the draft SMP is allowed very close to or in the water, and will cause damage. Such instances must be limited to hardship situations where alternatives are not available (such as existing developed sites), then mitigation sequencing must be used (especially avoidance and minimization), and then the remaining impacts must be compensated for to result in no net loss of shoreline ecological function. The response to our comments implies that “appropriate uses” are allowed based on lack of ecological function. Hopefully the intent of this is that “appropriate uses” are water-dependent uses or those with a good reason for being allowed (with SMA-based criteria). Existing development may qualify for the hardship situation (and admittedly will be most instances in Seattle), but otherwise there should be a demonstration of the good reason (such as the SMP Guidelines for commercial and industrial uses). But other non-water-dependent uses – including multi-family – are non-preferred and should be prohibited or discouraged unless they provide community benefits and have measures to prevent a loss of shoreline ecological functions. The response also points out that the vegetation and mitigation sequencing provisions apply, but as we have already stated, there is little in the way of specific regulations describing compensatory mitigation and ensuring that the mitigation will work.

The vegetation regulations allow clearing vegetation down to 50/35/15 feet for all development, which will have specific and obvious impacts (even with degraded conditions), but they do not provide specific compensatory mitigation for the impacts. An example of a shoreline that is fully concreted can be illustrative. If the use is changed from rare activity to a heavily used public access, there will be impacts by driving off aquatic fish and wildlife (including birds). Where impacts of development are inherent, even after avoidance and minimization measures, compensation measures need to be described and required. The use of a small buffer system is one of these instances, but it will be shoreline-wide. If the detailed ecological function accounting system is used in all locations, if our recommended edits to the mitigation plan section are used, and if our recommended edits for referencing the mitigation sequencing section are placed in the vegetation management section, then additional compensatory mitigation standards for vegetation may not be needed.

While a comprehensive mitigation plan requirement is a good idea in all SMPs, we still recommend that SMP regulations provide specifics for how different types of development provide compensation for impacts. As an example, how this is done for docks will be different from shore stabilization, or for boating facilities, or for residential uses. As we recommended previously, some types of development still need such attention. Regarding vegetation management and buffers, our previous letter and out guidance document on buffers discuss the different development patterns that should be addressed in a

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Fish and Wildlife: June 15, 2009). Accessed on Dec. 19, 2011 at:  
<http://wdfw.wa.gov/publications/00693/wdfw00693.pdf> and on the CAO on CD enclosed with the paper original of this letter in Data CD 1 in the “Fish & Wildlife Habitat\Marine & Saltwater Habitats” directory with the filename: “wdfw00693.pdf.”

buffer system. We still believe all different situations should be addressed, but would like to discuss with staff the details about how the mitigation planning requirements and the ecological function accounting system can deal with these situations.

The response to our comments indicated that environment changes had been made, but we are having difficulty identifying and understanding these changes. We would like the opportunity to meet with staff to better understand them. We continue to have the following concerns:

- The proposed small buffers need to better match more intact vegetation conditions found in the Conservancy environments. Whatever non-water-dependent uses and development is allowed in intact areas needs to provide a science-based buffer width. In the proposed system, the intact vegetation outside the small setbacks is unprotected - including from additional park development, which can be very intense. As the most extreme example, the 50-foot buffer for the conservancy environment will not protect shoreline ecological functions based on science used to size buffers.<sup>8</sup> Our buffers guidance document recommends buffers of at least 150-feet for such highly functioning locations.

The vague protections referenced by the response to our comments on the small Conservancy buffer widths do not actually protect vegetation outside the small width. The response to our comments also implies that other vague statements of protecting ecological function, and regulations that allow replanting vegetation (23.60.190.E) are adequate for vegetation outside the small buffer - but those have no requirements for protecting vegetation outside the buffer. The inherent assumption of any buffer system is that if vegetation inside the buffer must be protected, then the vegetation outside the buffer does not. Thus a specific statement is needed to protect vegetation outside buffers. This is consistent with the SMA Guidelines which provide that “[s]tandards should be established for ... vegetation conservation ...” in the Urban Conservancy environment.<sup>9</sup>

- Aside from setback widths that are too small for environments with intact vegetation, we are still concerned about allowing non-water-dependent development within the setback. Some improvements have been made on this issue for water-edge development, but the rest of the setback also needs to be protected. As an example, the CW environment only has this limit for the 15 feet closest to the water.

Our previous letter included the comments below. After reviewing the responses to our comments, it is unclear how these issues are covered, as the responses indicate. Some changes have been made, but not necessarily addressing our concerns. Some concerns relating to vegetation in general were attributed to weed control and disregarded. In addition, it may be that between changes we recommend to the mitigation plan requirements, and use of the ecological function accounting system being developed our concerns may be adequately covered. For example, it may be that ratios are covered in the accounting system, even though the responses referred the concern to vague no-net-loss requirements. If those changes are not accepted, it is likely that our concerns continue to remain based on many of the reasons described above in this letter. We would like the opportunity to better understand the vegetation and mitigation systems in further discussions with staff. A curious item to point out is the lack of statements clearly stating that native vegetation either inside or outside the setback must be protected. The vegetation management sections mainly focus on permitting, and describing what is “allowed” to impact vegetation.

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<sup>8</sup> Jim Brennan, Hilary Culverwell, Rachel Gregg, & Pete Granger, P.L., Protection of Marine Riparian Functions in Puget Sound, Washington pp. 102 – 103 (Washington Sea Grant, Seattle, WA for Washington Department of Fish and Wildlife: June 15, 2009).

<sup>9</sup> WAC 173-26-211(5)(e)(ii)(B).



- Paragraph B and C address vegetation management both waterward and landward of the OHWM. Paragraph B includes a provision describing how to apply mitigation sequencing. Paragraph C does not have a similar paragraph, but it should. [It may be that paragraph F is intended to do this, and perhaps should be moved.] The provision (for in-water mitigation sequencing in paragraph B) includes a list of potential impacts that should be supplemented to include “incidental loss of habitat during weed control,” and “differences between mature and replacement vegetation features.”
- Both paragraph B and C should include a provision that “no existing native vegetation may be eliminated unless there is no feasible alternative.” This establishes an avoidance provision throughout shoreline jurisdiction. Note that there currently does not appear to be a statement protecting vegetation, except within the setback area.
- The above two mitigation sequencing provision in paragraphs B and C should also include ratios that capture the greater importance of vegetation in different areas, the failure rate of compensatory mitigation, increased human activity, and losses due to differences between mature and replacement vegetation. It may be that the SAMP includes ratios. Whether it does or not, we recommend incorporating the following ratios.
  - New development above a de minimus level of approximately 100-200 sq. ft. cumulatively, should compensate for impacts by re-establishing a certain percentage of the setback vegetation so it can actually function to buffer and mitigate impacts. Examples we have seen include the Kirkland SMP (75% of the water frontage), and the draft Issaquah SMP (a complex enhancement provision), and the draft Bellevue SMP (60% of area). The remaining non-vegetated areas are to be focused on access and existing use areas.
  - Removal of existing native vegetation outside the setback should be compensated at 2:1.
  - Development inside the setback should compensate for impacts at a ratio of 2:1 for all new use areas, and areas of new impervious surface.
  - Removal of existing native vegetation inside the setback should be compensated at 3:1.
  - Development in the water should compensate for impacts at a ratio of 3:1 for all new use areas – including areas occupied by boats, swim areas, and similar use areas.
- Lastly, paragraph C includes hazard tree removal. This also needs a replacement ratio of 3 new trees when a hazard tree is removed, which is in line with Seattle’s current tree policy.
- Paragraphs D and E both include a pair of provisions, one for replacing vegetation, and one for restoring and improving vegetation. Replacing vegetation is allowed without a permit, and does not include provisions preventing native vegetation from being eliminated and replaced. Such a provision establishes substantial cumulative impacts, unless it is limited to replacement of “non-native” vegetation. We recommend that change. Restoring or improving vegetation also can cause losses of functions. It specifically allows removal of “dead and dying native vegetation.” But since many people equate mature vegetation that looks old with dying vegetation, there is great room for unintended abuse. In addition, mature vegetation is where you find “dead and dying” plants, but it is also the vegetation with the greatest habitat value for insects and small animals, as well as medium and large animals. We recommend eliminating this provision, unless there is at least a 3:1 replacement ratio.
- Our recommended changes to the existing detailed system will ensure that all instances of development impacts will be compensated for by the SMP, and that existing native vegetation will be protected as much as possible.

## ***Environments***

As noted before, the response to our comments indicated that environment changes had been made, but we are having difficulty identifying and understanding these changes. We would like the opportunity to meet with staff to better understand them. Our previous letter included the comments below. After reviewing the responses to our comments, it is unclear how these issues are covered as the responses indicate. The responses refer to the SMP Guidelines allowance for customized systems. But when the environment that would be assigned using the SMP Guidelines are compared to the environment designated in the draft SMP, it becomes apparent that the several proposed protective environments don't fully capture the SMA and SMP Guideline requirements to protect intact areas and limit use intensity. The responses refer to uses being limited to "low intensity" but a word search of the document does not return the use of the term. They also discuss that "shoreline parks" are less intense than "general parks," but the definition includes intensive and structural uses that are essentially the same elements found in a general park, other than sports complexes and event facilities. The definition also includes no distinction for whether there is a water-oriented aspect to the park. And the responses regarding the equivalent of the Urban Conservancy environment refer to meeting the SMP Guideline criteria, but the uses allowed are not "compatible" nor can they prevent the loss of the ecological functions of the intact areas in those environments, as the Guideline requires. Again use intensity is needed to accomplish this. Our guidance document dealing with environments discusses the treatment of intact areas and the use of customized environments. The main point is that customized environments must still somehow capture the intents and objectives of the recommended environments, particularly the protective ones. Similarly, customized environments cannot be used to avoid the environment requirements. In particular, areas that should be designated Natural and Conservancy need to have low-intensity use limits and limits on structural modifications to prevent the large-scale loss of ecological function that comes with developing intact areas. This is regardless of the name of a customized environment.

- The Conservancy Preservation environment is described as very similar the SMP Guidelines Natural environment, which is appropriate. However, the purpose and designation criteria do not capture the Guidelines requirement for "very-low-intensity" development.<sup>10</sup> In addition, several uses in the Conservancy Preservation table allow intense development – especially parks and open space uses, public facilities, research uses, aquaculture, and institutional uses, which are allowed without limitation by use intensity.
- Other Conservancy environments are intended to protect ecological functions, but also allow intense uses that are incompatible with such a purpose.<sup>11</sup> Use intensity is described in our guidance documents dealing with no-net-loss and shoreline environments. We recommend incorporating use-intensity as use categories or in table notes to prohibit the more intense versions of different uses that are allowed in these low intensity environments. Further, the urban conservancy environment also provides that "[u]ses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses."<sup>12</sup> This necessarily limits the uses to low intensity uses.
- The Conservancy Recreation environment's Purpose statement includes recreation. However, like all environments, recreation should follow the SMA policy's implementation statement, which gives priority to "shoreline recreational uses ... facilitating public access to shorelines of

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<sup>10</sup> WAC 173-26-211(5)(a)(i).

<sup>11</sup> WAC 173-26-211(5)(e)(i) provides that "[t]he purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses."

<sup>12</sup> WAC 173-26-211(5)(e)(ii)(a).

the state...” - not just any recreation uses. We recommend limiting the purpose to “water-oriented” recreation.

- Green Lake is designated Conservancy Management for reasons that are not clear. It more closely matches the Conservancy Recreation environment.
- There are areas of the SMP (detailed in our attachment) where we would like to see better resolution of the environment designations. The ship canal has good resolution but the Duwamish River lacks this. Given the importance of the Duwamish for the recovery of the WRIA 9 salmon run, we would like to see parity (especially for the existing park areas and larger habitat restoration areas).
- The center of the Duwamish River (the navigation channel) should be designated as Conservancy Navigation.
- There are areas of intact vegetation on the Puget Sound shoreline of Seattle (see attachment for details). To protect their current ecological functions, these areas should be designated with a protective environment.

### ***Uses and Modifications***

Our previous letter included the comments below. After reviewing the responses to our comments, it is unclear how these issues are covered as the responses indicate. We would like the opportunity to meet with staff to better understand them.

Some of our comments relate to recreation and to low-intensity uses. These subjects were discussed above, as well, such as for shoreline parks. Some of the responses to our comments indicate that an issue is already covered, but we are unclear how. This is one example of how meeting with staff may clarify or address some of our concerns.

Several responses to our comments on commercial, institutional, and industrial development referred to WAC 173-26-241(3)(d)(i) and the similar industrial regulation. The WAC allows non-water-oriented uses in a mixed-use development that includes a water-dependent use and the project provides a specific public benefit. The SMP allows them with a water-oriented use, which could be a restaurant. As an extreme but possible example, a Starbucks in the corner of the building could be used to justify a multi-story building of non-water-oriented uses. To be clear, we do not object to continued use of existing buildings and their non-water-oriented uses, but the regulations need to distinguish these from new development and tear-down/re-build situations. The responses even indicate that restoration by itself is justification to allow non-water-oriented uses over water, which it is not. As an added point, the WACs require restoration for all water-dependent and water-oriented commercial uses any way – the intent is not to use restoration as buy off for non-water-dependent uses. Treating all uses the same, regardless of water-dependency, renders this SMA preference meaningless.

Some responses, both for uses and modifications and for other parts of our previous letter, indicated that water-dependent access was limited, so the above limits were not established. However, the SMP Guidelines address these issues of separation, and the SMP should have similar regulations rather than allowing these uses outright.

- In the Conservancy Preservation environment, intense and structural uses and modifications should be prohibited, including those described in our environments comments. This would include many recreational, boating, and public access structures. Park facilities should be limited to previous trails of limited width within shoreline jurisdiction. Other protective conservancy environments should get similar treatment.

- The use tables include a broad category for Institutional uses. However, there is no equivalent in the SMP Guidelines. In addition, most of the institutional uses are distinctly commercial in nature. Even those that are more government-related have commercial use equivalents. Private clubs are even listed as institutional uses. The problem is that the SMP does not impose any of the SMP Guidelines very specific requirements for commercial uses on institutional uses – specifically those relating to water-dependency. Jurisdictions cannot create new use categories or make new names to avoid the SMP Guideline requirements. To do so would to adversely impact the shoreline environment. We recommend that all institutional uses be subject to regulation that meets the SMP Guidelines requirements for commercial uses. Preferably, they should be folded into the commercial category.
- In some environments, residential uses also include commercial uses (assisted living, congregate care, nursing homes, shelters, etc.) that are similar to many of the institutional uses. Similarly, they should also meet the SMP Guideline requirements for commercial uses.
- In some environments, commercial uses are strictly limited in the use table and notes so that the uses meet the SMP Guideline water-dependency standards. However, in other environments, it is unclear that commercial uses are limited as required in the SMP Guidelines. Some environments have almost no limits on commercial uses, and water-dependency is hardly mentioned. We recommend carefully comparing all environment regulations for commercial uses to the SMP Guidelines for consistency. Some environments may need a descriptive text to explain deviations and to guide permit review so it stays within the reasons for the deviation.
- Similar to commercial uses, industrial or manufacturing uses also have detailed water-dependency requirements in the SMP Guidelines that are not met by some environments.
- Modifications are not consistently handled in the different environments. Some modifications are listed consistently in all environments, while others are only in some environments. This raises the question of their status when they are not addressed, and what development standards apply. We recommend that all the modifications be addressed consistently for all environments.
- Surface water heating and cooling pumps are allowed in many environments. However, such development is fraught with inherent impacts that cannot be understood at the cumulative impacts level. We recommend that they be prohibited at this time, until they can be better understood. If this use is to be included, it must include appropriate precautions. At a minimum, there needs to be a requirement that the facility must be removed if it is later found to be detrimental to ecological functions and fish and wildlife habitat that are affected by heat changes.

### ***Organization of Modifications***

The new draft adds a table that addresses modifications for each environment. We support this change. But consistent with our previous comments, we continue to be concerned that highly altering modifications are allowed in the conservancy environments. Many modifications are specifically intended to alter or obstruct ecological functions. How they can be allowed while “avoiding” or “preventing” damage to ecological functions is a contradiction. They should not be allowed in the most protective environments, and should be a conditional use in other conservancy environments.

The SMP includes a wide variety of general regulations, uses, and modifications, each in its own section. However, we have noticed that some seem to be incorrectly categorized. This is mostly the case for modifications.

- Essential Public Facilities are grouped with general regulations but should be grouped as a use.
- Public access development standards are grouped with general regulations, but should be in modifications. It may be appropriate to place requirements for what uses must provide public access here, but the actual construction standards should be in modifications.
- Construction standards for development in rights-of-way are grouped with general regulations, but should be in modifications.
- Bridges and tunnels are grouped with uses, but should be with modifications. The use would be transportation uses (streets, railway, airports, etc.), or utility uses (mains, plants, etc.), but the bridge or tunnel is not a separate use, but rather a modification for the use.
- Signs are grouped with uses, but they are rarely individual uses (billboards). They should be grouped with modifications.

The reason that correctly grouping development together is important is that the SMP Guidelines applies general standards to each grouping. Modifications are subject to WAC 173-26-231. Paragraph (1) states [with emphasis added]: “Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).”

There are two important consequences.

- (1) Modifications are not limited to only the seven specific groups listed in Paragraph (3), but include other modifications too – most explicitly structures and hardscaping for the use.
- (2) Modifications are subject to the same use limits as the use that they support, including water-dependency and allowance within buffers. Only uses that need to be in or near the water can cause pollution and damage to the environment. All other uses must control pollution and prevent damage to the environment, or else they must be prohibited or have special criteria. Modifications for uses not needing to be in or near the water that are placed in the buffer or setback will cause damage and should not be allowed except for special instances.

Paragraph (2) in the Guidelines includes a page of general requirements that all modifications must meet, generally focused on accomplishing the above paragraph. We recommend that these requirements be incorporated into a general section for all modifications.

The modifications listed in the table almost exclusively focus on water-line development. At a minimum, we recommend that the provisions in WAC 173-26-231(2) be converted into regulations in Section 23.60.172, and supplemented with detailed guidance on how to accomplish them. Our previous comments on transportation and utilities (which were incorporated) can provide an illustration on the kinds of guidance statements that can be developed. The response to our comments states that standards for structures are found in the use regulations, but these regulations do not address the issues in WAC 173-26-231(2). The response also states that hardscape (concrete, stonework, walls, pervious hard surfaces) are covered under impervious surface regulations, but hardscape does not

always result in impervious surfaces, and the impervious surfaces regulations do not cover all the issues in the WAC.

### ***Docks, Piers, and Boating Facilities***

- The dock regulations need to require a compensatory mitigation plan for the impacts that are inherent with them, which could include vegetation enhancement, armoring removal, removal of redundant boating facilities, etc. If our recommended edits to the mitigation plan requirement are accepted, this issue may be adequately addressed.
- One major problem with the dock regulations is that multi-family residential uses are considered to be entitled to a dock. This is explicitly contrary to the SMA policy and the SMP Guidelines for Piers and Docks,<sup>13</sup> which states: “New piers and docks shall be allowed **only for water-dependent uses** or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for **access to watercraft...**” So docks and piers are only allowed for water dependent uses and single-family residences, unless they meet the stricter requirements for Boating Facility uses, as described in the Guidelines. Specifically non-water-dependent uses, such as multi-family residential, cannot have an associated dock, docks for those uses need to be authorized as a boating facility. Changes related to multi-family uses will be needed in several places. We also recommend a regulation stating the above requirement, including the provision that the pier/dock/float is only water-dependent if it is designed for access to watercraft. The response to our comment somehow tries to use the public access requirement as justification for violating the dock requirement. Public access can be provided in many other ways than a dock – including an upland viewpoint. And public access does not mean allowing a residential-use dock.

### ***Mitigation Sequencing***

Many uses and modifications inherently have impacts that cannot be avoided – especially water-based development and subdivisions. We recommend that a new standard be added to these sections stating a compensatory mitigation plan shall be provided with the application. We also recommend being specific in how the mitigation should be provided, similar to the proposed buffer compensatory mitigation provisions. The response to our comments may be adequate, as previously described. But we would always recommend providing detailed guidance in each section for how to do compensatory mitigation.

### ***Trails and Recreation***

We have previously expressed our concerns regarding recreation, water-dependency, and use intensity. It may be that discussions with staff will clarify these issues, but we are unsure. While the responses to our comments help us better understand how recreation is addressed in the SMP, it is still unclear how trails fit into the SMP. They are a form of recreation, but there is no recreation category that is consistent with the SMP guidelines. Many forms of park and recreation development have no water-dependency, and many forms are of high intensity, thus there are forms of recreation that would not meet the SMA or SMP guidelines preferences. Yet the SMP does not make these distinctions. Trails are one example that has no inherent dependence on the water, unless they are providing access to a water dependent activity, and yet they may be acceptable in intact areas. However, like other uses, they should be required to “control pollution” and “prevent damage to the environment” as the SMA Policy requires. Consequently, they should be located outside the buffer, including science-based buffers for intact areas, like other development must do, except for hardship situations. They can then provide

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<sup>13</sup> WAC 173-26-231(3)(b).

spur trails to the water when needed. All impacts still have to be compensated for. Other non-water-dependent recreation uses need similar standards.

A simple standard would address the issue and make them more similar to other linear facilities, such as roads and utilities. We recommend: "Trails and other non-water-dependent recreation facilities shall be located outside the setback, except to provide access to water-based activities, for water crossings, or where other alternative locations are infeasible."

### ***Restoration Planning and Cumulative Impacts***

While the draft SMP is one of the better ones we have reviewed, it would still allow development that would adversely impact shoreline ecological functions. These impacts must be identified in the Cumulative Impact Analysis. Furthermore, these impacts must be compensated for by the City in its Restoration Plan, if not adequately addressed in the regulations. We would instead recommend covering these instances to prevent the impact, or being specific about compensatory mitigation. Our guidance document on no-net-loss, cumulative impacts, and restoration planning addresses this issue in detail.

### ***Additional comments (addressed in more detail in the attachment)***

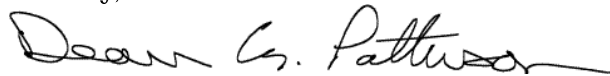
- **Live-a-boards and barge homes.** We are concerned about the impact of these uses in marinas, especially the discharge of grey water and other polluted materials. We recommend that the SMP require 100% control of both grey and black water for both floating barges and live-a-boards. It is unacceptable to continue to allow these uses to pollute the Puget Sound.
- **Overwater parking.** We recommend that the SMP include an incentive for reducing existing overwater parking. Overwater parking has significant adverse impacts and is not a preferred use of the shoreline. We request the opportunity to meet with staff to discuss this matter in detail.
- **Extent of shoreline management regulatory area.** It would be helpful for the reader if the environments as shown on the map could be extended to the center of Puget Sound, etc. Many readers will be unaware that the regulations extend that far.

### ***Previous Enclosure***

Our previous letter included an enclosure with three pages of detailed items. While it appears that the City accepted many of the comments, we would like the opportunity to discuss them in detail with the staff to be sure we understand the responses.

Thank you for considering our comments. If you require additional information please contact at dean@futurewise.org or 509-823-5481 or Heather Trim at htrim@pugetsound.org or (206) 382-7007 X172.

Sincerely,



Dean Patterson, Shoreline Planner  
Futurewise



Heather Trim, Urban Bays & Toxics Program Manager  
People For Puget Sound

Maggie Glowacki  
December 23, 2011  
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Enclosures



## Enclosure

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The following is an uncategorized list of comments on various parts of the SMP. Comments related to commercial, institutional, and industrial uses should keep in mind our overall position that such uses should be first subject to the water-dependency criteria for commercial and industrial uses in the SMP Guidelines.

### Director's report

#### Table 2. Urban Commercial

- A.2. Aquaculture. Proposed upland use should be CU not A.
- C.2, C.3, C 4.a.b. and C.10 – Should not expand these waterfront uses to allow CU 72 (which is allows these uses if they mitigate).
- C.4.a. Food Processing. Proposed upland use should be A2,X4 rather than A. If it is not a water dependent food processing facility it should not be allowed.
- C.11.c Retail sales, major durables. Proposed upland use should be A2,X4 rather than A.

#### Table 3. Urban General Shoreline Environment

- A. Animal husbandry. Should be X for both areas.
- C.7 Medical services. A 78 still is appropriate. But should meet water-dependency criteria too.

#### Table 4. Urban Harborfront shoreline environment

- C.2. Eating and drinking establishments. CU 72 should be removed.
- C. 4. Food processing and craft work uses. CU 72 should be removed.
- C.5. Laboratories, research and development. Proposed upland use of A should be downgraded to A1,CU3.
- C. 11.c. Retail sales, major durables. Proposed upland use should be A2,X4 rather than A.

#### Table 5. Urban Industrial

- G.1 and G.2. – Typo: A4 should be removed for proposed waterfront.
- M.1. Mini-warehouses. A24 – should be 10% not 20% non-water dependent use.

Many pages: For all of the Conservancy uses, aquaculture should be not allowed.

### Shoreline regulations

Throughout the regulations, references are made to citation numbers without the reader knowing what the purpose of the reference is. References should include the subject that is being referenced to put it in context.

23.60.016. C.1. Need to add reference to 25.09 to this section. (Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Area).

23.60.027 - should add language that the program provides “compensatory mitigation”.

23.60.041. A.2.b. Typo: “Additional regulatory requirements apply ~~de~~ DUE to a landward shift in required shoreline setbacks or other regulations of this Chapter 23.60”.

23.60.092 – regarding temporary uses. Modify: “does not remove or harm native vegetation; and”.

23.60.152(H) – The protection should also prevent “harm” similar to the comment above.

23.60.152(G) – The reference to a policy has no meaning to the reader. The subject should be listed too.

23.60.152(T) – There appears to be a grammar problem or missing coma.

23.60.152 General development. Some deleted items seem like they are important. While they may simply be moved to other locations, it is extremely difficult to tell.

23.60.152 General development. There is no mention of pesticide use, and there should be.

23.60.157 Essential Public Facilities should be required to perform all mitigation sequencing steps like other development. They are not granted some free pass by GMA.

23.60.164 Standards for regulated public access: the list of facilities in B.1 should include other modes such as “hand boat launch or pullout, beach.” The widths required should be adjusted lower and pervious surfaces used for walkways that are in Conservancy environments – especially Conservancy Preservation. Hours of availability should only be allowed to be limited by approval of the Director (two locations in regs). For the determination of adequate public access, item 2 should include the incorporation of bike stands.

23.60.170.B. View corridors. The view corridor width for the downtown area does not seem wide enough given the typical height of development. It would be benefit the public to provide additional width as long as native vegetation is removed to accommodate doing so. In addition, additions to the corridors obstruct the view. Landscaping should be maintained to preserve views, as long as it doesn’t impact native vegetation areas. Benches, sculptures, etc. should be reviewed before placement, and not be allowed to obstruct views.

23.60.174 Standards for artificial reefs – standards should prohibit the use of materials that contain toxics.

23.60.176 Standards for breakwaters and jetties, groins and weirs – When demonstrating need, the structure should only be allowed for protecting a navigation inlet. Other purposes are not important enough to allow such a major impact to the shoreline functions.

23.60.186 – Grading. (D) spray on concrete is not allowed, and “similar materials” should also not be allowed.

23.60.187 Standards for piers and floats. Swimming floats dimensional standards (10) should be required to be offshore a set distance (30 feet?) from the OHW so that they minimize impacts the shoreline?

23.60.188 Standards for bulkheads shoreline stabilization. In the hard engineering priority list, add terraced and stepped bulkheads as options.

23.60.190 Vegetation and Impervious Surface Management in the Shoreline District, Subsections A, B, and G. The language relating to noxious weeds requires that mechanical treatment (hand-pulling, harvesting and cutting, bottom barriers, weed rolling, etc.) be given priority over use of herbicides. Further, the use of herbicides must be approved by the Director of DPD and the applicant must demonstrate that the use of herbicides will have no adverse impact to fish and wildlife. While we are pleased that integrated pest management principles are included, as well as the CAO 50 foot restriction near waterbodies, we would like to see stronger language restricting aquatic pesticides per the CAC

report: *“that prohibit or limit application of specific pesticides and fertilizers within the SMP shoreline jurisdiction.”*

23.60.190.C. Shoreline District landward of OHW. Item 3 needs to be strengthened so that re-landscaping does not include any existing, new, or previously required native vegetation.

23.60.202 Standards for floating homes and floating home moorages. We object to the expansion of any floating home or moorage opportunities. Any expanded overwater coverage of residential use is contrary to the SMP.

23.60.206 Standards for residences. Apparently expansion of overwater residences is allowed. We object to the expansion of any overwater residence. Any expanded overwater coverage of residential use is contrary to the SMP.

23.60.217 Standards for utility lines. Modify: “G. All disturbed areas shall be restored to pre-project configuration or a more habitat friendly configuration subject to approval by the director, and planted with native vegetation upon completion of utility line installation or maintenance projects, pursuant to an approved maintenance plan that ensures that the newly planted vegetation is re-established.”

23.60.220 Environments established. We recommend differentiating environments for submerged lands in most cases – at least for shallow water. This is done for the ship canal and should be considered for other areas such as the Duwamish River. In addition, there are some areas of Seattle that should be in Conservancy Protection such as Discovery Beach, rather than less protective environments. This is an area with actual intact ecological function, not just potential for it.

Urban Industrial (UI) Environment. Need to add a statement to the purpose section: “Ecological function shall be protected and improved where feasible.” This is a requirement for industrial uses in the SMP Guidelines.

Urban Maritime (UM) Environment. Need to add a statement to the purpose section: “Ecological function shall be protected and improved where feasible.” This is a requirement for industrial uses in the SMP Guidelines.

23.60.236 Regulated public access. The 600 foot exemption for multi-family is inappropriate, and instead should be based on the scale of the development.