

Seattle's Shorelines Today and Tomorrow: Updating Seattle's Shoreline Master Program

Citizens Advisory Committee Report September 2009



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The Committee would like to thank the presenters and members of the public who attended the Committee's meetings between May 2008 and June 2009. Their insight and dedication impressed the Committee and contributed greatly to its understanding of—and suggestions for—Seattle's shorelines.



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(AVAILABLE ON REQUEST OR AT DPD'S WEBSITE:

WWW.SEATTLE.GOV/DPD/PLANNING/SHORELINEMASTERPROGRAMUPDATE/REPORTSMATERIALS)

- A. CAC visioning exercise report (June 2008)
- B. CAC members and biosketches
- C. Policy and response papers prepared by DPD
- D. Meeting summaries prepared by Triangle Associates after each meeting



HOW TO READ THIS REPORT

This report is intended to provide a concise summary of the Seattle Shoreline Master Program (SMP) Update Citizens Advisory Committee's (CAC) year-long process to review and discuss key policy issue areas for the Seattle SMP update.

The section on each policy issue area identified in Chapter II includes background information about the issue and the Shoreline Management Act's (SMA) intent for that issue, followed by an overview of DPD's proposed changes that were the subject of CAC discussion, and a narrative description of the CAC's major comments on those proposals. At the end of each issue area section, the CAC has included a table synthesizing its major comments. Chapter III describes the next steps in the City's efforts to update the SMP and the CAC's roles in those next steps.

Please note that more detail on the subjects discussed and comments expressed by the CAC is available in the report's appendices (available from the SMP Update website or in hard copy via request of DPD), which include all the meeting summaries, policy and response papers developed for each issue area, as well as a list and biosketch of CAC members and the results of a shoreline visioning exercise the CAC undertook at its second meeting.





I. INTRODUCTION

The City of Seattle's Department of Planning and Development (DPD) is in the process of comprehensively updating its Shoreline Master Program (SMP) for the first time since 1987. The SMP constitutes the policies and regulations governing development and uses on and adjacent to marine and freshwater shorelines. This includes the waters of Puget Sound, Lake Washington, Lake Union/Ship Canal, Duwamish River, Green Lake, as well as associated wetlands and floodplains. These policies and regulations affect land uses, building bulk, scale and setbacks, public access requirements, bulkheads, docks, piers and construction practices.

Updating of the SMP is a state mandated requirement under the State of Washington's Shoreline Management Act (SMA), which was created by citizen referendum in 1972. The SMA establishes policy goals for the management of shorelines and the SMP guidelines establish the requirements on how to achieve the policy goals, with flexibility to acknowledge local concerns and conditions. The SMA establishes three major policy goals for SMPs:

- **Preferred Shoreline Uses:** The SMA establishes a preference for uses that are water-oriented and that are appropriate for the environmental context (such as port facilities, shoreline recreational uses, and water-dependent businesses). Single-family residences are also identified as a priority use under the Act when developed in a manner consistent with protection of the natural environment.
- **Environmental Protection:** The Act requires protections for shoreline natural resources, including "... the land and its vegetation and wildlife, and the water of the state and their aquatic life ..." to ensure no net loss of ecological function.¹
- **Public Access:** The Act promotes public access to shorelines by mandating inclusion of a public access element in local SMPs and requiring provisions to ensure that new development maintains public access features.

The goal of the update process is to improve the SMP to both comply with the new SMA guidelines developed by the Washington State Department of Ecology ("Ecology") in 2003, and better implement citizens' vision for Seattle's shorelines.² The State has established a December 2010 deadline for Seattle to adopt the updated SMP, in order to remain in compliance with the SMA.

The SMA requires that local governments actively encourage participation by the public and federal,

¹In Publication #04-06-020 (2004), the Washington State Department of Ecology states that the SMA requires "no net loss of ecological function necessary to sustain natural resources." The usual shorthand for this concept is "no net loss of ecological function."

²DPD undertook a community visioning process to kick-off the SMA update, to develop an overall direction for Seattle shorelines and establish the intent of future policy work. The process consisted of a telephone survey, a series of seven visioning workshops in the shoreline sub-regions, and comments provided via e-mail and the City's SMP Update web site (www.seattle.gov/dpd/Planning/ShorelineMasterProgramUpdate). This led to a Community Vision Report, which is available from the website.



state and other local agencies in updating SMPs. Ecology encourages local governments to form a citizen advisory committee to provide a forum to discuss shoreline management issues, provide input on policy, technical work and regulations, and promote communication with the general public concerning shoreline management issues. To this end, DPD convened the SMP Update Citizens Advisory Committee (CAC). The CAC's charge was to review, discuss and make recommendations to influence and guide DPD in its decision-making on revisions, additions and other changes during the development of an updated SMP.

DPD developed a list of potential stakeholders to serve on the CAC, asked for public input on the list and accepted nominations. Nominees were interviewed by Triangle Associates (which also provided meeting facilitation for the CAC and the Community Visioning Workshops). Triangle worked with DPD to develop and present Committee member recommendations to the DPD Director, who determined final selection. The objective was to provide a wide range of perspectives, not a proportionately representational group (a list and biosketches of CAC members are included as an appendix to this report).



At its first meetings (May 2008), the CAC reviewed the results of the community visioning process, adopted a charter describing roles and responsibilities, and approved a detailed work plan and timeline for the CAC process. The work plan (which was revised and updated throughout the CAC process) laid out major issue areas to be addressed by the CAC over the course of monthly evening meetings. The major issue areas that were discussed at the CAC meetings included:

- Shoreline Environmental Designations
- Residential Development Standards
- Commercial and Industrial Development Standards
- Shoreline Modifications (including dredging, shoreline stabilization and overwater structures)
- Shoreline Mitigation
- Public Access and Views
- Floating Homes
- Urban Stable/Urban Mixed Use Development and Use Standards
- Non-Conforming Structures and Uses



At its second meeting (June 2008), the CAC participated in an interactive visioning exercise. The result was a consensus vision statement to guide the CAC's deliberations as they discussed, debated and expressed their viewpoints on the above issue areas. The full record of the CAC's visioning exercise is attached to this report as an appendix. The vision statement reads as follows:

The SMP Update Citizens Advisory Committee envisions a future for Seattle's shorelines in which the Shoreline Management Act's three major co-equal policy goals (protecting preferred uses, providing environmental protection, and promoting public access) are truly balanced. This means that the opportunity for citizens to experience and interact with the shoreline in a wide variety of ways will not be limited by a lack of public access points or views. It means that the shoreline's ability to sustain diverse plants and animals will be both protected and restored. It means that existing historic, diverse and active uses of Seattle's shorelines will be maintained. And it means ensuring that Seattle remains a place where marine businesses thrive and make an important contribution to both the economy and our unique character.

Three documents were prepared for each of the issue areas, to document the CAC's review and discussion. Prior to each meeting, DPD prepared a policy paper, which provided an outline of existing standards and the new requirements per Washington Administrative Code (WAC) guidelines, as well as a list of issues that need to be addressed under that specific issue area. CAC members discussed each policy paper at the meetings, and were asked to identify areas of agreement, as well as provide statements of support or concern where there was not broad agreement. CAC members were also encouraged to provide written comments on the issue areas between meetings. After each meeting, a meeting summary was prepared by Triangle Associates, to describe areas of agreement and disagreement, clarify where and why there is disagreement, and state points of view fairly and clearly. DPD then developed response papers for each issue, containing a summary of the proposals DPD presented to the CAC, views expressed by CAC members, and DPD's responses to these comments. All of these documents are provided as appendices to this report.



For each issue area discussed on the following pages, there is an overview of DPD's proposed changes that were the subject of CAC discussion, and a narrative description of the CAC's major comments on those proposals. At the end of each section, the CAC has included a table synthesizing its major comments. Where possible, CAC members' views are categorized as statements of support or concern on the proposed changes. As noted above, more detail on the proposed policy changes, CAC comments, and DPD responses are included in the appendices at the end of the report.



II. CAC REVIEW OF PROPOSED SMP REVISIONS

A. SHORELINE ENVIRONMENT DESIGNATION

Overview of the Proposed Amendments



Background: Shoreline environments are designated based on the results of a Shoreline Characterization report and existing development patterns. Designations are intended to achieve ecological protection and development that will enhance the present or desired character of the shoreline and achieve the goals of the SMA. The shoreline environments are a special overlay which affects land uses within 200' of the shoreline. The environmental designation should be consistent and compatible with local comprehensive planning and zoning.

SMA: SMPs must contain a system to classify shoreline areas into specific environmental designations based on the existing use pattern, biological and physical character of the shoreline, and the goals and aspirations of the community. Each SMP needs to be consistent with State's guidelines (WAC 173-26-211 [4] and [5]), as well as the local comprehensive plan. State guidelines recommend a classification system of six (6) basic shoreline environments.

DPD Draft Policy Direction: The City's current and proposed classification system consists of eleven (11) shoreline environments. DPD is proposing specific purpose and location criteria for the existing environmental designations, to better meet the designation criteria recommended in the State guidelines.

DPD is not proposing to add a new aquatic designation to the classification system. The rationale for this is to minimize the number of different environmental designations, and to continue to use split zones for parcels that involve dry and submerged land where aquatic conditions warrant different levels of protection, based on existing environmental functions and land uses.

DPD is proposing to move all the management policies from the environmental designation provisions of the SMP to the Shoreline section of Seattle's Comprehensive Plan. This change will combine overarching policies together, as recommended by the SMP guidelines, and integrate these policies with other existing shoreline goals and policies. In addition, the policy of "no net loss of ecological function" and water quality protection will be specifically included in the SMP as over-arching policies for all shoreline environments.



CAC Comments

General Comments: Many CAC members expressed substantial concern over the organizational framework for the environment designations. The CAC views the SMP update as a once in a generation opportunity to simplify, streamline and clarify the unnecessarily complex, confusing and at times contradictory scheme presently in effect. The update is also seen by CAC members as an opportunity to align Seattle's shoreline code with other federal and state regulations as much as possible, to provide more certainty in the permitting process. Some CAC members urged DPD to contemplate ways to reorganize the present environment designation structure to make it more straightforward and understandable including, but not limited to:

- Consolidating management policies applicable to multiple environments within a section that sets forth universally applicable policies;
- Developing new or revised definitions of commonly-used SMP terms that are subject to different interpretations (e.g., "significant," "substantial," "minimize," "avoid," "prevent," "maintain," "restore," "desired character," "local aspirations"); and
- Clearly differentiating between environment designations that are applicable in upland areas and those that govern submerged or aquatic areas.



In order to meaningfully evaluate the impact of the proposed designation scheme and reduce confusion, it was suggested that a comparison matrix be prepared, broadly identifying the allowed uses and development standards that would prevail in each classification. This might identify environment designations so similar to others that they could be merged or eliminated. DPD was also encouraged to work collaboratively with stakeholders with interest in the Urban Maritime (UM), Urban Industrial (UI) and Urban Stable/Urban Mixed Use (US/UMX) designations to develop the final use table, following completion of a market demand study being conducted by DPD.

Purpose Statements & Designation Criteria: Some CAC members believe that the purpose statement for the UI environment inadequately describes the CAC's vision for public shoreline access and ecological restoration in these areas. The CAC recommended that DPD consider revising the UM, UI and US/UMX environments in recognition of changed needs and conditions within the Lake Union/Ship Canal area. Some members suggested that the demand for water-dependent and water-related business has decreased in that area, and that continued strict limitation of non-water-dependent and non-water-related uses (plus the cost associated with environmental protection) is causing economic hardship to property owners. Additionally, some members felt that the proposed UMX zone should be expanded to allow a greater mix of commercial and residential uses in some shoreline areas. Other members argued that while water-oriented uses are changing, most are still viable and shoreline space for water dependent uses is still at risk from displacement by allowing new residential or commercial uses.



Environment Designations Map: A number of concerns were identified related to the proposed environment designations map. The CAC believes that the near uniform application of the UI designation to shorelines along the Duwamish may be inadequate to address the complex issues of use management and the need for ecological restoration in this area. For this reason, several members recommend that the City adopt policy language clearly committing itself to the preparation and adoption of a Sub-Area Plan for the Duwamish Waterway and surrounding lands. Such a plan would examine opportunities for more efficient land and shoreline use (with an emphasis on protection and enhancement of industrial activities), ecological restoration, public access, recreation and community revitalization.

Synopsis of CAC Comments on Shoreline Environment Designations

- Where possible, environment designations should be consolidated and simplified.
- An environment designation comparison matrix would enable a more thoughtful and reasoned assessment of the designations, and help to identify areas of unnecessary overlap.
- The proposed treatment of upland, versus aquatic, areas is internally inconsistent and confusing. Separate designations should be created for each.
- A demand study of water-dependent/water-related uses should be conducted to inform the SMP's treatment of permitted, conditional and prohibited uses.
- The treatment of public parks in the environment designations (i.e., Conservancy Preservation, CP, and Conservancy Management, CM) needs to be more clear and consistent.
- The City should consider preparing and adopting a specific sub-area plan for the Duwamish River Valley and shorelines.

B. RESIDENTIAL DEVELOPMENT STANDARDS

Overview of the Proposed Amendments

Background: Residential development refers to one or more buildings, structures, lots, parcels or portions of parcels that are used or intended to be used to provide a dwelling for people. Residential development includes single-family residences, duplexes, other detached dwellings, multifamily residences, townhouses, condominiums, apartments and subdivisions. Floating homes are also residential development but are discussed separately and in more detail under Section G of this report. Residential development also includes accessory uses and structures such as garages, sheds, swimming pools, patios, gazebos, fences and guest cottages, when allowed by the underlying zoning. It should be noted that a Substantial Development Permit is not required for



construction of shoreline single-family residences; however, such construction must meet all the policies and development standards of the SMP.

SMA: Single-family residential development is a preferred use under the SMA. SMPs are required to include policies and regulations for residential development that assure no net loss of shoreline ecological functions. The state guidelines recommend additional provisions that include specific shoreline setbacks requirements for residential structures, buffer areas, density requirements, standards for shoreline armoring and vegetation conservation. Residential development, including accessory structures and uses, is to be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.

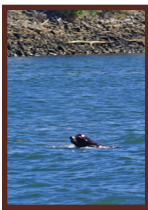
DPD Draft Policy Direction: Seattle's current SMP regulates residential development mainly through the current General Development Standards (SMC 23.60.152), which are very general. They do not require structure setbacks to protect shoreline ecological processes and functions; current setbacks are based on view protection. There are no specific vegetation conservation, buffer or density requirements and the shoreline armoring section is 20 years old and in need of revision. However, Seattle's Environmentally Critical Areas (ECA) code, adopted in May 2006, includes a 100' riparian management area, where vegetation conservation measures, mitigation for increases in impervious surface, and removal of vegetation are required. Additionally, a setback of 25' for residences and some non-water dependent businesses is required. Therefore, the changes to the SMP that DPD proposes are intended to incorporate the ECA requirements and provide the additional protection of the shoreline required by the WAC guidelines. Specifically, DPD proposes a setback of 35' for all residential structures. New landscaping standards would be required for new development or redevelopment. DPD is also proposing to limit multifamily residences to where they are currently permitted. In addition, DPD is considering new stormwater and Low Impact Development (LID) standards for residential development.

CAC Comments

Overwater Residences: Overwater residences include "floating homes" and single-family residences that are primarily located overwater on piers. This topic generated considerable CAC discussion and public comment during the meetings, and is addressed in detail under the "Floating Homes" and "Urban Stable/Urban Mixed Use" sections of this report.

Residential Setbacks: The issue of proposed changes to residential structure setbacks (from the current 25' to a proposed 35') generated much debate and a wide spectrum of opinion. A number





of CAC members agreed with DPD that the proposed setback increases could result in increased ecological benefit, while simultaneously helping to protect views from existing neighboring structures. Several members viewed the proposed increase as insufficient, and inconsistent with the best available science regarding ecological protection. Others contended that the present setback provisions work well, and should not be changed. This contingent asserted that the historic development pattern has resulted in the creation of many small shoreline lots, and that owners of undeveloped shoreline lots would be unduly impacted by the proposed setback increases, with little positive environmental or view benefit likely to be achieved and many nonconformities created. Some believe the ecological benefit from these proposed regulations has not been sufficiently established by science.

Multi-Family Residential Development: Multi-family residential development in shoreline areas is not identified as a preferred use under the SMA, and is proposed to be prohibited based on the underlying zone within some Urban Residential (UR) areas. Some CAC members viewed this prohibition as being in conflict with the City's comprehensive plan goals to encourage new housing units and increased residential densities. It was suggested that multi-family development, if carefully located (i.e., away from shoreline industrial areas) and conditioned to ensure shoreline restoration and public access, could be appropriate along some of Seattle's shorelines. Other members said multifamily residential is not a preferred use under the SMA and should be prohibited in UR areas.

Stormwater & Low Impact Development Standards: There was broad agreement among the CAC that stormwater is not adequately regulated by the City and is a major contributor to shoreline and water quality degradation. Members seemed to primarily disagree about the appropriate regulatory framework for stormwater management within the shoreline (i.e. the citywide stormwater regulations versus within the SMP). Concerns were also expressed that it is unfair to place most of the burden for the City's poor stormwater management on shoreline owners simply because they are at the "end of the pipe." All members agreed that this was unfair; however, some felt that the SMP should still include stormwater management provisions because stormwater discharged closer to the shoreline has a greater impact on water quality in the nearshore.



Many CAC members feel that stormwater management and water quality are crucial to restoring the health of the shorelines; shoreline habitat restoration alone will not do it. Some members further believe that stormwater management and water quality are not being adequately addressed anywhere within the City code at present, and that the proposed revisions to the City's stormwater code are insufficient. For these members, whether or not the SMP is the appropriate tool for addressing these concerns, the SMP is seen as unlikely to be successful in ensuring "no



net loss” (let alone restoration) of shoreline ecological function, unless the City more effectively addresses stormwater and water quality issues.

Several CAC members urged DPD to continue to evaluate whether the new stormwater code will meet the SMP guidelines and to incorporate stronger policy guidance encouraging low impact development (LID) practices to improve stormwater management and water quality. In addition, the CAC supported inclusion in the SMP of an aquatic weed control policy that prioritizes manual removal over the use of herbicides. The CAC also discussed the adverse impacts application of pesticides (including herbicides and algacides) and fertilizers have on shoreline ecological functions. While the CAC agreed this is a citywide issue, there was strong support for DPD including in the SMP new management policies (e.g., integrated pest management principles) that prohibit or limit application of specific pesticides and fertilizers within the SMP shoreline jurisdiction. DPD was also encouraged to examine the application of pesticides along City streets that may have an affect on shoreline resources.

Synopsis of CAC Comments on Residential Development Standards

- No consensus was reached on the question of setbacks for new residential development. Some CAC members advocated setbacks/buffers of 150’ as consistent with best available science; others felt the science was not conclusive and/or were concerned that the proposed 35’ setback could create substantial nonconformities and reduce the ability of small lot landowners to reasonably develop their properties.
- There was broad agreement among the CAC that stormwater is not adequately regulated by the City and is a major contributor to shoreline and water quality degradation.
- No consensus was reached on whether to incorporate new stormwater and low impact development (LID) standards into the SMP, or to include them in code language applicable citywide. If included in the SMP, DPD should work closely with Ecology to pursue the “no net loss of ecological function” statutory requirement.
- Some CAC members view the prohibition on multi-family development in some areas of the UR environment as being in conflict with the City’s comprehensive plan goals to encourage new housing units and increased residential densities.

C. COMMERCIAL/INDUSTRIAL DEVELOPMENT STANDARDS

Overview of the Proposed Amendments

SMA: The state requires that water-dependent uses be given priority to use the shoreline before non-water-dependent uses are allowed. Local jurisdictions are





instructed to evaluate the demand for water-dependent business on the shoreline. If it is determined that there is a surplus of land, updated regulations can allow non-water dependent uses on the shoreline.

DPD Draft Policy Direction: DPD recognizes the importance of marine industrial uses to the economic health of the City. DPD is proposing clearer definitions of “water-dependent” businesses and “water-related” businesses to meet the SMP update requirements. DPD is currently conducting a study to clearly define water-dependent and water-related uses that should be allowed on waterfront parcels in the Urban Industrial (UI), Urban Maritime (UM) and Urban Stable (US) environments. DPD is also proposing that water-related institutions, including water-related museums, be allowed in these environments.

DPD is recommending that caretaker units be allowed as accessory uses, that a clear definition of “caretaker unit” be included, and that such units be subject to specific development standards.

DPD is proposing to prohibit bus bases and overwater parking in the UH environment.

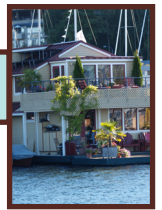
DPD is proposing building setbacks for all uses in commercial and industrial environment designations. DPD is currently evaluating best available science to determine a standard that appropriately balances ecological and economic goals and takes into account existing land uses. The intent is to continue to require re-vegetation as part of mitigation plans. DPD is evaluating other options to encourage additional setbacks and re-vegetation, such as reducing existing regulatory requirements to maintain view corridors and provide public access, in exchange for larger vegetated shoreline buffers.



CAC Comments

Caretaker Residences: Some CAC members expressed concern that the present SMP language relating to caretaker units is ambiguous and could permit a gradual and unintended expansion of residential uses into areas reserved for water-dependent and water-related industrial uses. That said, the CAC generally supported allowing caretaker units, if the SMP includes carefully crafted provisions ensuring that they be permitted only as an accessory

use to a primary water-dependent or water-related use; that expansion of caretaker residences not be allowed; and that their use as rental units to generate landowner income not be permitted. The CAC also heard from one of its members that marine repair and rigging businesses generate a demand for accessory residential accommodations for captains of boats that are in for service. There was general acknowledgement that this is an important industry on Seattle’s waterfront and that these residential uses are not strictly caretaker residences and thus could perhaps be considered separately. In addition, maritime industry representatives requested that DPD define the types of accessory structures that would be allowed in the UI and UM environments.



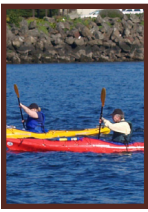
Vegetated Buffer Setbacks: As with the residential setback requirements, DPD's proposed vegetated buffer setbacks for commercial and industrial development spurred lively discussion. A number of CAC members supported an incentive-based approach as a necessary compromise to achieve improved shoreline ecological conditions. However, others did not believe the proposed compromise is sufficiently protective of the public's interest in shoreline visual and physical access or the preservation of ecological function. It was agreed that the question requires further study. An approach that may warrant further investigation is one that would provide landowners with optional setbacks, based on the functions and conditions in specific shoreline units, as well as the proposed improvement. Such an approach would perhaps be most effective if tied to a detailed restoration plan for a specific shoreline unit (e.g., Duwamish, Lake Union, Ship Canal). As with the proposed residential setbacks, some members believe the ecological benefit has not been sufficiently established by science. In addition, some members expressed concern about water quality in commercial and industrial areas. This included concern that marina and boat yard operations lead to discharges into adjacent waters that affect water quality protection efforts.



Green Infrastructure Incentives: The CAC discussed at some length the inclusion of incentive standards for developing with "green infrastructure." One concern with including provisions of this type within the SMP was that modifying these provisions becomes extremely cumbersome and difficult once they are approved by Ecology. In the end, the CAC's overall position with regard to green infrastructure incentives can be described as "cautiously supportive." If such provisions are directly related to clear objectives contained within the SMA (e.g., improved hydrologic continuity), the CAC could support their inclusion within the SMP. However, the CAC believed that some incentive provisions would be better suited for inclusion within code provisions that apply citywide (e.g., reduced carbon footprint incentives).

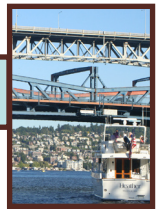


Easing Restrictions on Non-Water-Dependent and Non-Water-Related Uses: Although acknowledging the need for flexibility, the CAC was very concerned that some non-water-dependent and water-related uses could undermine the central purpose of several of the designations. A number of CAC members expressed the opinion that special care must be exercised to ensure that Seattle's shoreline industrial land base is preserved and protected from incompatible use encroachments. A concern was expressed that once a parcel's use is changed, it is very difficult to return it to a previous (water-dependent, for example) use. Non-water-dependent or -related



uses were viewed as appropriate in limited instances, but only if such uses provide substantial public benefits in the form of shoreline public access and ecological restoration. The CAC saw the Office of Economic Development's (OED) Maritime Cluster Study as an opportunity for the City to examine the anticipated demand and need for development and use of these shorelines. Some CAC members noted that the maritime industry relies on the current permit exemption process to maintain facilities and conduct minor improvements without the cost and delay of securing a substantial development shoreline permit. They advocated that these permit exemptions be allowed to continue and apply to both existing as well as non-conforming structures and uses.





Synopsis of CAC Comments on Commercial and Industrial Development Standards

- The CAC agreed with DPD that caretaker units should be permitted only for water-dependent uses; the purpose of such units should be clearly defined, and they should be strictly regulated (not be a means for land-owners to generate rental income).
- No consensus emerged on DPD's proposed building setback and revegetation recommendations, which are intended to increase ecological function in commercial and industrial areas; the CAC discussed regulatory measures and incentives to incrementally create green corridors, soften shorelines and improve salmon habitat, but further study and refinement of the proposal is believed necessary.
- Some CAC members advocated the creation of vegetative buffer setback alternatives, tied more directly to the functions and conditions of specific shoreline units and the type of improvement or development proposed; it was suggested that this approach could most effectively be implemented through a detailed Restoration Plan that has specific management recommendations for different shoreline units.
- The CAC was cautiously supportive of including "green infrastructure" provisions within the SMP, to advance the goals of the SMA. Some green infrastructure provisions may be better suited to code sections applicable citywide, rather than the SMP.
- The CAC was concerned that proposed SMP language may go too far in allowing non-water-dependent/water-related uses on waterfront industrial parcels; these properties are so limited and valuable, they should be preserved for water-dependent and water-related industrial uses, rather than redeveloped for other purposes.
- The market study currently being undertaken by the Office of Economic Development (OED) should carefully factor the City's objectives to both improve the health of the fishery along commercial and industrial shorelines, as well as the anticipated increases in demand and need for development and use of these same shorelines.
- Some CAC members believe that non-water-oriented and non-water-related uses along commercial and industrial shorelines should be allowed only if such uses provide substantial public benefit in the form of increased shoreline public access and restoration of ecologically damaged shorelines.
- The City should consider preparing and adopting a specific sub-area plan for the Duwamish River Valley and shorelines.
- Some CAC members believed that prohibiting recreational marina development along the City's industrial shorelines is misguided, and that the SMP should seek to encourage marinas. This should include encouraging existing and/or new boat moorage/storage to be located on land, possibly through tax or other incentives.



Marinas and Museums in the UI and UM Environments:

The CAC was divided regarding the circumstances under which to allow recreational marinas, yacht, boat and beach clubs in the UI and UM environments. Some members did not view marinas and yacht clubs as a significant use conflict, and favored allowing them as a means to encourage public enjoyment and use of the shoreline. However, others were wary of the potential for marinas and yacht clubs to become the source of noise and traffic “nuisance” complaints that could threaten primary industrial uses. The CAC generally supported allowing water-dependent and water-related institutional uses like aquariums along these shorelines, but cautioned against allowing institutional uses that do not require a shoreline location.

Uses and Standards in the Urban Harborfront Environment: The CAC broadly supported prohibiting bus bases in the UH environment, as a polluting and inappropriate use of land in the shoreline jurisdiction. Some CAC members urged the City to maintain some degree of flexibility to allow continued use of overwater parking areas, while others disagreed because of the environmental impact. There was broad agreement that the likely future removal of the Alaskan Way Viaduct and redevelopment of the waterfront has the potential to raise land and shoreline use issues that cannot be predicted at this time. The CAC advised the City to revisit this designation after the waterfront planning process has progressed further.

D. SHORELINE MODIFICATIONS

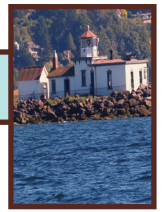
Overview of the Proposed Amendments

Background: Shoreline modifications are structures or activities that permanently change the physical configuration or quality of the shoreline, particularly at the point where land and water meet, or over nearshore areas. Shoreline modifications include, but are not limited to the following: dredging and filling; shoreline armoring; bulkhead repair and replacement; and overwater structures such as piers and docks. Each of these shoreline modifications are discussed below (houseboats and overwater residences are addressed under the “Floating Homes” and “Urban Stable/Urban Mixed Use” sections of this report).

Dredging and Filling

SMA: Dredging and dredge material disposal are required to be done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions. Filling shall be located, designed and constructed to protect shoreline ecological functions and





ecosystem-wide processes, including channel migration. Typical dredging or filling projects require other state and federal permits (US Army Corps of Engineers Permit, Washington Department of Ecology Water Quality Certification, Washington Department of Fish and Wildlife Hydraulic Project Approval), in addition to City permits. Each agency has a separate and limited regulatory authority, but overall they are directed to look primarily at navigation, water quality, sediment quality and endangered species impacts. Review under the SMP is intended to look comprehensively at the project, to ensure no net loss of ecological function.

DPD Draft Policy Direction: In general, dredging should only be permitted where necessary for access to water-dependent or water-related uses, environmental mitigation or enhancement, cleanup of contaminated materials, and installation of utilities and bridges. DPD is proposing to make minor changes to the existing location standards for dredging and filling in the Shoreline Environment Designation section. These changes include prohibiting dredging accessory to residential docks and piers in the CR and UR environments. Dredging projects would also be required to use best management practices to address dredged material containment, turbidity generation, dewatering of dredge materials and identification of contaminated materials. To further promote “green shorelines,” DPD is proposing that dredging for environmental mitigation or enhancement is allowed in all environments. Landfill on submerged land that does not create dry land should only be permitted where necessary for the operation of a water-dependent or water-related use, transportation projects of state-wide significance, installation of a bridge or utility line, disposal of dredged material in accordance with the Dredged Material Management Program, beach nourishment or environmental mitigation or enhancement.



CAC Comments

The CAC supported DPD's proposed changes to the SMP's dredging and filling regulations, and did not view them as a substantial departure from existing requirements. However, some CAC members were concerned that the changes represented a shift toward regulating activities that previously have been treated as shoreline permit exemptions. Concern was also expressed that several regula-



tory agencies already monitor and require permits for dredging and that additional review and oversight by DPD will only add another regulatory requirement and added expense for the applicant.

The Port of Seattle expressed deep concern about the proposed requirement to mitigate for “ongoing impacts” of maintenance dredging. The Port felt that the statutory authorization for such regulation was unclear (under the SMA and the State Environmental Policy Act, SEPA), and that mitigating such impacts was an indeterminate and speculative exercise. The Port contended that dredged channels are defined as development under the SMA, and that maintenance dredging of such a channel should be treated the same as maintenance of any other development in the shoreline jurisdiction.



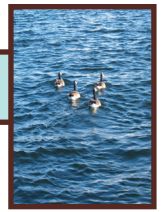
The CAC also discussed the possibility of allowing the use of dredge sediment for beach nourishment. While the idea was supported by the CAC in concept, it was acknowledged by the Committee that significant safeguards would be needed to ensure that such sediment contains no toxic chemical contamination and is the appropriate size to use in beach nourishment.

Shoreline Stabilization

Background: Shoreline stabilization includes actions taken to address erosion impacts to property and structures. These actions can include structural (“hard engineering” or “armoring”) and nonstructural methods (“soft engineering”). “Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads or rip rap. “Soft” structural measures rely on softer materials such as vegetation, sand and gravel, and drift logs. Nonstructural methods may also include building setbacks, relocation of structures to be protected and other planning or regulatory measures to avoid the need for structural stabilization.

SMA: New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. New development that would require shoreline stabilization should not be allowed. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence (documented by a geotechnical analysis) that the structure is in danger from shoreline erosion. Soft armoring methods are preferred over hard armoring methods.

DPD Draft Policy Direction: DPD is proposing several policy changes to encourage “green shorelines,” including ongoing exemptions for beach nourishment and bioengineering. In addition to these incentives, to comply with WAC guidelines, DPD is proposing new provisions that would allow new “hard engineering” only where it is demonstrated that principal structures are threatened and replacement of “hard engineering” only where it is demonstrated that principal struc-



tures or uses are threatened. A geotechnical study must demonstrate why softer solutions are not feasible for new or expanded bulkheads and that adjacent properties with soft shorelines will not be harmed by the installation of a new or expanded bulkhead. A given project would be considered replacement, if it repairs 49% or more of the existing bulkhead.

CAC Comments

The CAC supported soft engineering solutions wherever possible, and recognized that such techniques offer substantial ecological benefits (e.g., improved water quality and fish habitat). The CAC believed DPD's proposal was crafted in a manner that will help to reduce unnecessary shoreline armoring, while allowing bulkheads to remain in locations where "soft" solutions are unworkable. But two specific concerns did arise: 1) whether incremental removal of bulkheads could result in a loss of uplands and a shift in the location of the shoreline jurisdiction; and 2) whether the decision criteria as to when soft engineering solutions are, or are not, feasible were sufficiently clear. Maritime industry interests acknowledged DPD and the CAC intent to encourage "green shorelines", but cautioned that any revisions consider the necessity of "hard engineering" that is required for vessel berthing and for protection of shoreline erosion from passing vessel wakes. They emphasized that existing facilities should be allowed to maintain, repair or replace "hard engineering" structures.

Some CAC members expressed concern that valuable undeveloped portions of property could be lost to erosion if buildings are considerably set back from the shoreline. Others expressed support for allowing replacement of existing bulkheads, without demonstrating a need to do so. Some members favored adding a provision that new shoreline modifications not be allowed to create conditions that harm adjacent shoreline areas.



Some support was expressed for the "49% criterion" in DPD's proposal, as it would allow smaller repairs of erosion-related damage to bulkheads, while directing applicants for such repairs toward more ecologically sustainable options. Several CAC members noted that many residential bulkheads protect and maximize shorefront lawn area, but do not necessarily protect structures. Some CAC representatives were critical of the proposal, noting that the current standard practice for bulkhead repairs is to replace the whole bulkhead and that it would be impractical and uneconomical to be restricted to a 49%

replacement threshold. These members contend that if an existing bulkhead needs repair, an applicant should only need to demonstrate whether or not soft engineering will work, not that there is an imminent threat to an existing structure. It was suggested that a time restriction on additional repairs (e.g., 10 years) be included within refined SMP language, to preclude piecemeal rebuilding of bulkheads.



The Port of Seattle expressed considerable concern in formal comments that this policy, which they view as redefining maintenance and repair, is inconsistent with the substantial development permit exemptions provided for normal maintenance and repair under the SMA, RCW 90.58.3.(e)(i) and related rules, WAC 173-27-040(2)(b).



Overwater Structures

Background: Overwater structures include piers (fixed, pile supported structures), docks (fixed structures floating upon water bodies) and floats (floating structures that are moored, anchored or otherwise secured in the water and not connected to the shoreline). Floating homes and overwater buildings are also overwater structures and are discussed here in the context of the amount of overwater coverage that is allowed in each shoreline environment. A more in-depth analysis of

floating homes and overwater buildings is included in the “Floating Homes” and “Urban Stable/Urban Mixed Use” sections of this report. Overwater structures typically require permits from local, state and federal agencies.

SMA: New piers and docks shall be allowed only for water-dependent uses or public access. A pier or dock associated with a single-family residence is considered a water dependent use, provided that it is designed and intended as a facility for access to watercraft. Pier and dock construction must be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use.

Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided that portion of the development is the minimum size needed to meet the water-dependent use. New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. Piers and docks, including those that are accessory to single-family residences, must be designed and constructed to avoid or, if that is not possible, minimize and mitigate the impacts to ecological functions, critical areas resources such as eel-grass beds and fish habitats, and processes such as currents and littoral drift.

DPD Draft Policy Direction: Under current regulations, residential uses are allowed to have pier structures on their parcels. Single-family lots are limited to one pier structure per lot; multifamily lots are allowed multiple fingers on a pier structure dependent on the number of units on the lot. DPD originally proposed to reduce the allowed size of new piers to the size specified in current RGP3 regulation guidelines used by the US Army Corps of Engineers, (Corps) but to allow existing non-conforming (i.e., larger) docks to rebuild if their total size is reduced by a specific percentage (20% was proposed). However, based on discussions with the CAC, and further discussions with Ecology



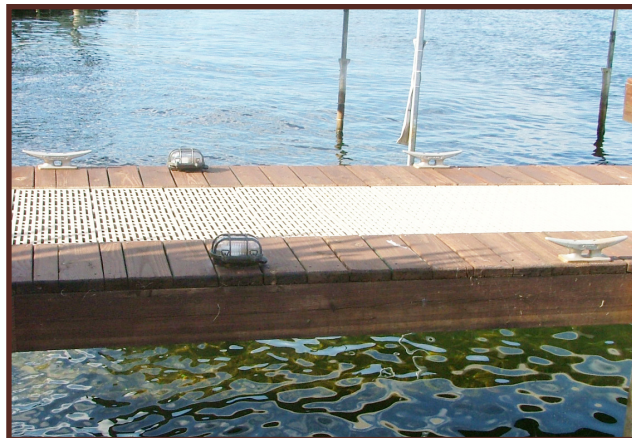
and the Corps, DPD withdrew its original proposal to use the Corps RGP3 standards because the Corps frequently permits docks that do not meet these standards. The most frequent standards that are modified are width of piers and depth of water.

DPD's new proposal requires that new piers and docks that are accessory to residences be sized based on best available science (see Table 1 in DPD's Overwater Structures Response Paper). Existing conforming and non-conforming docks may be maintained and repaired, but when a non-conforming dock is replaced or undergoes "substantial improvement," it must either meet the new standards or reduce the overwater coverage of the dock by 20%, applicant's choice.

Currently overwater coverage is regulated by lot coverage of submerged land for each shoreline environment. DPD is proposing that overwater structures for water-dependent and water-related uses be limited in size to the minimum necessary for the use. New development standards are also proposed to limit overwater coverage in the shallow nearshore habitat near the shoreline.

CAC Comments

The CAC found piers and docks accessory to residences to be a controversial and hotly debated topic. The size criterion in DPD's original proposal was viewed by a number of CAC members as too limited and inflexible. Several CAC members offered to provide DPD with specific alternative language for a proposed "shared dock incentive" and an alternative to following the Corps' RGP3 standard. At least two members stated that the City's best available science should be as good as or better than the RGP3, and that the SMP update is the right time to align agency regulations, simplify the permitting process for the applicant, and improving dock construction standards to minimize ecological loss. CAC feedback on DPD's revised proposal was generally favorable, although one member noted that the new proposal still failed to include language providing incentives for joint or shared docks and piers, as requested.

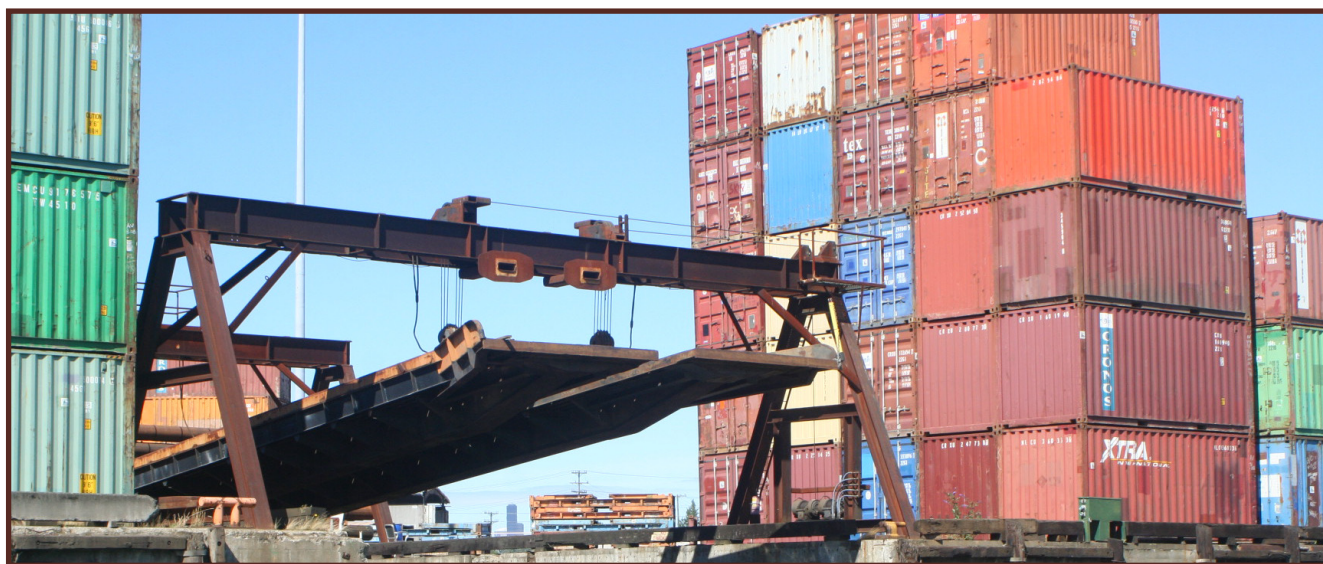


Some CAC members suggested that the City consider a second (optional) permit track option, in which an applicant can obtain a permit for a dock that doesn't meet the specific quantitative standards if they can show through an environmental analysis that the proposed dock configuration would achieve the same level of ecological functions as one built according to the numerical standards. This would require that the City have performance standards and criteria by which to evaluate the adequacy of the ecological analysis for the alternative dock proposal, but it would allow greater flexibility, address some homeowner's concerns and make the SMP responsive to updated science and dock construction techniques. One member expressed concern that such an approach could confuse the permitting process, undercut the Corps' process, and be difficult to implement.



Synopsis of CAC Comments on Shoreline Modification

- The CAC generally supported DPD’s revisions to dredging and filling requirements, though the Port expressed considerable concern about the City requiring mitigation for the “ongoing impacts” of dredged channel maintenance.
- Concern was expressed that without appropriate safeguards, allowing dredge spoils to be used for beach nourishment could lead to toxic contaminants being deposited.
- The CAC generally supported soft engineering solutions for shoreline stabilization wherever possible, though concerns were expressed regarding the criteria guiding when “soft solutions” would be deemed infeasible and “hard solutions” (i.e., armoring) permitted.
- Some CAC members were concerned that the proposed bulkhead repair provisions could lead to incremental replacement of such structures, despite the criterion limiting repair to no more than 49% of the structure. It was recommended that time limitations be included to preclude piecemeal bulkhead replacement. The Port of Seattle expressed considerable concern in formal comments that this policy is inconsistent with the substantial development permit exemptions provided for normal maintenance and repair under the SMA.
- DPD’s original residential dock/pier size limitations, drawn from the Army Corps’ RGP 3 standards, was viewed as too restrictive by many CAC members; DPD’s revised approach is more favorably viewed, but the CAC requested language to encourage joint or shared use docks and piers.
- The Port of Seattle and maritime industry stakeholders are concerned that proposed coverage limitations for water-dependent and water-related uses in the first 30’ waterward of the shoreline could severely restrict industrial activities, potentially lead to unintended environmental hazards (e.g., toxic spills) and violate the City’s Fire Code.





There were also concerns raised that limiting replacement of existing piers could create reverse incentives. For example, rather than replace an existing creosote piling pier with a more ecologically-friendly pier, an owner might keep the creosote pier to avoid losing pier size. The concern was that this might be worse for the environment than allowing the person to rebuild the pier to its existing size.

The Port of Seattle expressed concern that DPD's proposal to limit overwater coverage in the critical habitat area located within 30' of the shoreline is infeasible for cargo terminals and for "boat repair facilities, dry dock and other similar facilities." Other maritime industry stakeholders agreed with the Port's assessment, and indicated that the proposed provision would be limiting, restrictive, detrimental to industrial facilities, and could have the unintended effect of increasing the risk of environmental hazards (e.g., oil and hazardous materials spills). It was noted that the proposal could be in conflict with the City's Fire Code, which requires hook and ladder trucks and other emergency vehicles to be able to access overwater structures. Other CAC members suggested that overwater structures can be built with new technologies that mitigate these concerns.

E. SHORELINE MITIGATION

Overview of the Proposed Amendments

Background: The SMA mandates the preservation of shoreline ecological functions by avoiding or preventing impacts that would harm the shorelines of the state. "Mitigation" is a planning tool local jurisdictions are required to use to avoid or prevent shoreline impacts. Mitigation measures are ranked in order of priority—from avoiding the impact, to minimizing and reducing and then compensating for the impact of development. When impacts cannot be avoided, impacts must be mitigated to assure no net loss of shoreline ecological functions. The basic concept behind no net loss of ecological function is that any loss caused by a shoreline development must be offset, or mitigated, by an equivalent gain in ecological function.

SMA: One of the three main goals of the SMA is the environmental protection of shoreline natural resources. The state requires mitigation to ensure that no net loss of ecological function occurs during shoreline development. When impacts cannot be avoided, impacts must be mitigated to assure no net loss (WAC 173-26-201 (2) (C)). The SMA also mandates that local SMPs include goals, policies and actions to restore impaired shoreline functions and achieve overall improvements in shoreline ecological functions over time (WAC 173-26-201 [F]). As part of the SMP update process, a local jurisdiction should identify restoration opportunities through a combination of public and private programs and actions.

³SAMP is a process being developed for supporting maritime industry in the Ship Canal and Lake Union while simultaneously protecting the shoreline from further harm and, when possible, promoting shoreline restoration. Eligible applicants for shoreline development permits will have the option to either mitigate shoreline impacts at the proposed development site, or contribute to a fund for shoreline restoration mitigation elsewhere in the planning area. SAMP uses a new, systematic approach to measure a development project's impacts to the shoreline ecological function. More information is available at www.seattle.gov/dpd/planning/samp.



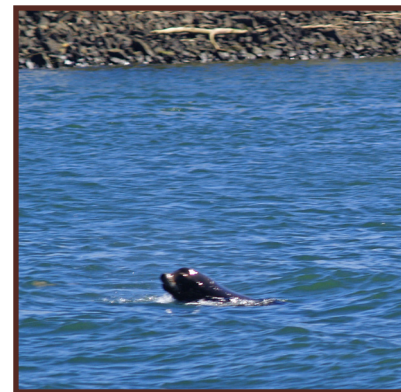
DPD Draft Policy Direction: DPD's review of the current SMP determined that the existing regulations do not provide enough specificity to meet the intent and direction of the new SMP requirements to achieve no net loss of ecological function. While the current regulations require mitigation of impacts caused to shoreline habitat from urban development, there is no clear method used to determine what the impacts are from a proposed development and then, in-turn, the appropriate mitigation for the development impacts.

Therefore, DPD is proposing to update the goals and policies as well as the general development standards to include more specific information to address potential impacts and to require specific mitigation standards to assure no net loss of ecological function. The methods developed for the Shoreline Alternative Mitigation Plan (SAMP)³ are proposed as one tool to help identify specific impacts from a development and to determine the appropriate mitigation measures (or habitat units) necessary to mitigate the proposed impacts. DPD proposes to use the methods in the SAMP model to develop the appropriate mitigation measures for specific shoreline areas in the rest of the City to help measure specific impacts from shoreline development projects, but not to create a mitigation bank. SAMP may also be used to identify restoration and mitigation opportunities on public and private properties where appropriate and carefully calculated and tailored to each water body. Mitigation can be provided either at the site of project impact, or at a place other than the site of project impact for water-dependent and water-related businesses and possibly for small sites where mitigation cannot be accommodated.

CAC Comments

Much of the CAC's discussion regarding updated SMP standards to assure no net loss of shoreline ecological function centered upon stormwater control. Committee members articulated two basic views. Some CAC members agree with DPD's proposal to establish stormwater standards to apply to smaller projects occurring within the shoreline jurisdiction that would otherwise be exempt under citywide stormwater rules. These members concur with staff that the cumulative effect of smaller projects occurring within the shoreline jurisdiction can have an adverse impact on water quality and shoreline ecology. Other members contend that the proposed regulatory changes are unnecessarily duplicative, that they unfairly burden shoreline property owners for a problem caused largely by properties and behaviors off the shoreline, and that stormwater regulations are more effective within code language applicable citywide.

One member proposed including one or more water quality policies (which would be applicable citywide, since they are automatically comprehensive plan policies) directing the City to take measures to ensure that water entering the shoreline jurisdiction meets specified standards. This could increase consistency within the comprehensive plan and supporting regulatory framework.





The CAC engaged in extensive discussions regarding the concept of “no net loss of ecological function.” While the CAC acknowledged that the SMA guidelines require the City to achieve no net loss, there was general concern with how the City may determine how to achieve it or how it could be measured.

The CAC expressed the general belief that the proposed SAMP is a good effort in the right direction, with some limitations. A number of CAC members believe the SAMP model to be an ambitious and pragmatic approach to mitigation that recognizes Seattle is an intense urban environment where pristine and natural shoreline conditions are unlikely to be re-established. However, it was pointed out that small pockets of shoreline along the Duwamish River have been re-established and now provide habitat for urban wildlife species including salmon. The SAMP proposal engendered a range of concerns including the following:

- Some CAC members are very concerned that an approach that allows one ecological function to be replaced entirely by another would not satisfy the “no net loss of ecological function” requirement of the SMA guidelines, as habitats and ecological functions are not as interchangeable as the SAMP would suggest.
- The five-year restoration timeline specified in the SAMP could be insufficient. Specifically, if mature habitats are to be replaced through creation of new habitats, such a short timeframe does not allow for creation of a habitat that actually replicates the ecological function of the original (actual restoration of function could take 10–15 years).
- Several concerns were expressed that the SAMP proposal lacks a monitoring program to ensure that its objectives are achieved and to assess its design, performance and implementation. Similarly, SAMP lacks a mechanism that requires the program to be periodically reviewed and revised based on actual results.
- Unless a mechanism for providing advance mitigation credits is incorporated within the SAMP (e.g., through a memorandum of understanding with WDFW), the concept may not be helpful to project proponents, because of state and federal mitigation requirements.
- Some CAC members observed that the SAMP appeared to emphasize off-site mitigation only on publicly-owned lands, and wished to emphasize that such projects must be encouraged and allowed on private lands as well.
- A few members expressed significant concern about using SAMP citywide. These members emphasized that each shoreline area is unique and that the habitat units and their relative values defined for the Ship Canal are likely to be inappropriate for other locations, such as the Duwamish. SAMP would need to be recalculated and researched in order to make it appropriate for each water body. Others expressed concern with the amount of time it would take to develop new tables to measure impacts in Duwamish and Elliott Bay. They fear that such tables would not be developed and that, instead, the SAMP for Ship Canal would be uniformly applied across the City.
- While supporting the SAMP in concept, the Port of Seattle expressed considerable concern that the program would be unworkable, and could result in both unclear mitigation requirements and “double jeopardy” for permit applicants. Other industrial users agreed with this concern.



- Finally, the CAC stressed the need to ensure that the replacement ratios within the SAMP (such as 1.5:1 or 2:1 ratios) are coordinated and consistent with other agencies, including King County, the US Army Corps of Engineers and Indian tribes.

The CAC expressed considerable concern over the proposed standards for off-site mitigation. Some members felt that greater emphasis should be placed on requiring on-site mitigation, allowing off-site mitigation only as a last resort. Some members felt the replacement ratios are inadequate, and that the actual long-term monitoring, management and maintenance costs of off-site mitigation projects are being substantially underestimated. Some believed off-site mitigation is ineffective for some habitat types.

The concept of mitigation banking received support from some CAC members, who believe that selling credits and then carefully documenting the ecological functions created through the banking system could be effective and largely obviate the need for replacement ratios. Other members pointed to what they saw as the generally poor history of mitigation banking in Washington state and the nation as a whole.

Synopsis of CAC Comments on Shoreline Mitigation

- The CAC was divided on the question of whether or not to establish stormwater controls for smaller projects occurring within the shoreline jurisdiction that are separate from, and more restrictive, than those that apply throughout the City.
- The CAC was generally supportive of the Shoreline Alternative Mitigation Plan (SAMP) in concept, with limitations, but some members expressed the concern that it may not be capable of achieving “no net loss” of ecological function.
- There was concern that the mitigation replacement ratios (for both on and off-site mitigation) are inadequate to actually replicate original shoreline habitat and function.
- Overall, there was concern that the SAMP may place too heavy an emphasis upon facilitating construction and development, rather than improving habitat functions.
- The Port of Seattle and other industrial users expressed concern that SAMP could result in unclear mitigation requirements.
- Several concerns were expressed that SAMP may not be appropriate for other shoreline locations and the amount of time it may take before the habitat units and their relative values could be determined for other shoreline areas.
- Committee members were divided on their support for mitigation banking, with some viewing it as a potentially effective tool, and others dubious of its efficacy given past failures in-state and nationwide.



Overall, there was concern expressed about the tone and emphasis of the SAMP, which appears to focus on facilitating construction and development, rather than improving the ecology of Seattle's lakes and waterways. Some CAC members advanced the concern that the program could be misused as a means to evade effective on-site mitigation in favor of a trading system that allows degradation of functions on private lands, in exchange for modest ecological improvements on public lands.

F. PUBLIC ACCESS AND VIEWS

Overview of the Proposed Amendments

Background: Public access to shorelines is one of the three major goals of the SMA. Seattle currently provides public access to shorelines through a combination of parks, trails, bikeways, street ends and easements on private property. Generally, the City's goals for improving public access are to add new public access where possible and to improve the connections between existing amenities to create a more integrated network of access points.



SMA: The state encourages local governments to plan for an integrated system of shoreline public access areas, consistent with the protection of private property rights. Specifically, SMP updates should include policies and regulations to protect and enhance both physical and visual access and to provide specific standards for improving public access for water-related, water-enjoyment and non-water-dependent developments. However, WAC 173-26 states that public access should not be required "where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment ... " Single-family residences are exempt from providing public access improvements. And public access improvements must not result in net loss of shoreline ecological functions.

DPD Draft Policy Direction: DPD's review of the existing SMP public access regulations found that the standards were generally effective, but that revisions were needed to improve the accessibility and enforcement of public access easements required on private property. Currently, water-related uses are exempt from public access requirements. DPD originally proposed requiring public access for all non-water dependent uses in the Urban Industrial (UI) and Urban Maritime (UM) shoreline environments. However, based on CAC member comments, DPD revised the initial proposal to exclude public access requirements on private property for allowed industrial uses in the UI and UM environments. The proposal would allow public access on public land in these shoreline environments.

DPD is also exploring options to allow fees-in-lieu, to promote and fund public access improvements in certain shoreline areas, exempt public access requirements for parcels below a certain width, and establish new development standards to promote higher-quality shoreline improvements. DPD completed a public access inventory and is proposing to add a policy in the SMP to encourage the prepa-



ration of a Shoreline Public Access Plan, to implement an integrated system of shoreline access throughout the City.

CAC Comments

Public Access Easements on Private Land:

The CAC discussed the role of the SMA and Washington's Public Trust Doctrine, both of which support public access to the water as a public resource owned by and available to all citizens. However, neither allows the public to trespass over privately-owned uplands to access tidelands. One member pointed out that requiring public access on privately-owned property as a condition of development has been the subject of considerable case law. In general, public access and/or environmental restoration are required for non-water dependent uses to give them status as "preferred uses" as defined by the SMA. Often, public access is required of water-enjoyment uses such as restaurants to make sure that all members of the public, not just those who can afford to dine there, are able to enjoy the shoreline. Two shoreline property owners raised concerns that requiring excessive public access and view corridors could be a "taking" of private property for public use, and questioned whether it is reasonable to require public access across private property when it is already provided on nearby public land.



One public access representative noted that there are more than 140 street-ends in Seattle that could be available for public access, but many of them are leased to private property owners. He also noted that both City ordinances and a Seattle Department of Transportation (SDOT) Directors Rule allow and encourage public use of all street ends for public access as their "highest and best use." While these areas are small, they still receive heavy public use when made available. The CAC held a spirited discussion as to whether street-ends in the UI and UM environments should be open for public access and recreational opportunities.

Public Access Security and Liability: The Committee engaged in considerable discussion on issues relating to security and liability in the context of providing public access. Industry representatives discussed problems when public access is provided adjacent to a maritime industrial facility. For example, there are potential security threats if visitors can observe/photograph industrial activities. Federal law requires some shipyards to have security plans, which are complicated by adjacent public access. Other members suggested that properties that redevelop would use state of the art technology and high fences, allowing public access to be incorporated in an appropriate and compatible manner. It was noted by one member that public access must be balanced by design considerations and the need for policing, safety and consideration of neighbors. Other concerns were raised that property owners should not have to take on the liability from



increased public access on abutting properties. One private property owner stated that the City should generate more tax revenue and buy any land it wants for public access. Another member stated that public access and ecological restoration requirements should take into account whether the primary use is water-dependent, water-enjoyment or non-water oriented.

Commercial, industrial and other members advocated that street-end leases should be looked at on a case-by-case basis. There was general agreement that screening and security to separate public access areas from private properties should be the responsibility of the property owner. There were concerns raised by many members (representing a broad cross-section of the group) that the street-end issue needs further discussion and coordination with Seattle's Department of Transportation, because SDOT's street end policies may be in conflict with the SMP.

Public Access Planning: Overall, there was strong support from the CAC to recommend a policy goal in the SMP directing the City to prepare a comprehensive Shoreline Public Access Plan. Members noted that it was important to understand what kinds of public access are desired in certain areas and that this information should be used to define development standards. One public access representative voiced support for continued public access in UM and UI environments and that public access points in these areas are important social justice issues. Another public access representative suggested that the Shoreline Public Access Plan should promote the City's transit goals by connecting bike and walking trails, to encourage people to get out of their cars. There was discussion about earlier proposals to use fees-in-lieu as a method to increase flexibility in industrial zones for meeting public access requirements. One member said that public access is important in industrial areas for use by workers and others at the ends of their shifts. One environmental representative stressed that fees-in-lieu should be narrowly defined and rare in use.

One member pointed out that required public access on central waterfront piers has eroded over time and better enforcement is needed. Views were also raised as a big concern in Seattle. DPD discussed various measures to improve enforcement of view corridors and public access requirements, including regulation of ornaments and signage.





Synopsis of CAC Comments on Public Access and Views

- Some shoreline property owner representatives were concerned that requiring public access and view corridors across private property was unreasonable if otherwise available nearby, and that if the public access requirements were excessive, “takings” challenges could ensue.
- The CAC was divided as to whether street-ends in the Urban Industrial (UI) and Urban Maritime (UM) environments should be open to for public access and recreational opportunities. Generally, public access, recreational, and environmental representatives were in favor of access. Commercial, industrial, and land owner representatives were concerned over access.
- The CAC identified a number of safety and security concerns associated with public access located adjacent to maritime industrial activities; some representatives believed this to be an unreasonable burden to place upon maritime industries. But the representatives of access believe it is the responsibility of the industrial user to secure their sites proactively.
- There was general agreement that screening and security to separate public access areas from private properties should be the responsibility of property owners, not the City.
- A broad cross-section of the CAC believes the issue of providing public access via street-ends requires discussion and coordination with Seattle’s Department of Transportation.
- The CAC supports inclusion of a policy within the SMP committing the City to preparation and implementation of a comprehensive Shoreline Public Access Plan.

G. FLOATING HOMES

Overview of the Proposed Amendments

Background: Floating homes have existed along Seattle’s waterways for approximately 120 years. The Seattle Comprehensive Plan recognizes the value and importance of these community assets by stating the need to “preserve the existing floating home community.” Today, there are approximately 500 floating homes in the City, several thousand less than in the 1940s and 1950s.



SMA: While shoreline single-family residences are a preferred use under the SMA, overwater residences (i.e., floating homes) are not. The SMP guidelines state that “overwater residences, including houseboats, are not a preferred use and should be prohibited” (WAC 173-26-241[3] [j]).



However, the SMA also states: “It is recognized that certain existing communities of floating and/or over-water homes exist and should⁴ be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.”

DPD Draft Policy Direction: To meet the WAC requirements and protect ecological functions, DPD is proposing stronger limits on overwater coverage in general. Specifically, the revisions would prohibit construction of new overwater residences, and expansion of existing overwater residences, if the existing floating home is on a float that is larger than 1,200 square feet. To further meet the intent of the state guidelines, DPD is proposing that floating homes be reclassified from a “water-dependent use” to an “allowed use.”

DPD proposes to continue to allow ongoing maintenance, repair, and replacement of existing overwater residences. DPD is proposing to consolidate the existing two floating home moorage standards (termed “non-conforming” and “conforming” standards) into one standard that will continue to allow redevelopment of existing sites. DPD also proposed to limit expansion of floating homes on floats larger than 1,200 s.f. The intent of this policy is to allow floating home owners to maintain, repair and replace their structures. New standards would also be included to prohibit new floating home basements.

CAC Comments

Proposed new SMP language treating floating homes as an “allowed” (rather than a water-dependent) use generated vigorous discussion and a diverse spectrum of views and concerns. There was consensus that the existing floating home community should be preserved. Some CAC members supported DPD’s recommendation to prohibit new floating homes because of their potential to degrade ecological functions, particularly salmonid habitat. One member stated that most floating homes are now very expensive, and could not be afforded by working class people today as was originally intended.



However, many CAC members believe that an outright prohibition of new homes is too restrictive, fails to recognize the historic diversity and character

⁴Under the SMA, “should” is defined to mean “that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking action.”

⁵The term “non-conforming” in this section of Seattle’s SMP is not the typical use and does not carry the same meaning as in other parts of the SMP or the Seattle Municipal Code.



of Seattle's floating homes community, and would undermine the viability of the floating homes community over the long-term. These members would prefer to continue classifying floating homes as a water-dependent use, and permit new floating homes in carefully limited areas along the shoreline, as is the case under the present SMP. One member representing public access interests suggested that size, scale and location criteria were more important than an outright prohibition of floating homes. Some members agreed with this suggestion, but others felt that no new floating homes should be permitted in Seattle.

The CAC member representing the Floating Homes Association (FHA) provided detailed written comments from that organization on DPD's proposed regulatory changes, which stressed the following:

- DPD's proposed Comprehensive Plan language should be modified as follows: "Existing floating home communities represent an important cultural resource because of their historic and unique contribution to Seattle's maritime culture. Existing floating home communities, moorages and homes, should be preserved, including allowance for repair, replacement and relocation as necessary. Because current regulations treat floating homes as overwater residences, not a preferred shoreline use, extension of floating home communities (as distinct from repair, replacement and relocation) would be allowed only if developed in a manner that provides a better environmental alternative than other allowed uses."
- Combining the conforming and non-conforming standards as proposed by DPD would create more complexity and potential contradictions than retaining the two distinct standards currently in use. It would be preferable to abolish the conforming/non-conforming nomenclature and substitute categories such as "standard A" and "standard B."
- The proposal prohibiting additional floor area unless the total float area is 1,200 square feet or less would have a significant financial and quality of life impact on a number of floating home owners, without any perceived gain for the environment.

A CAC member representing shoreline property owners noted that existing overwater residences in the City's Seaview Avenue NW area face similar issues as floating home owners.





Synopsis of CAC Comments on Floating Homes

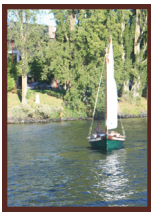
- Some CAC members support prohibiting the placement of new floating homes as a means to improve ecological function, particularly salmonid habitat.
- Many CAC members expressed support for the floating home community, citing its historical and cultural importance to the City.
- The CAC member representing the Floating Homes Association (FHA) opposes DPD's proposed treatment of floating homes as an "allowed," rather than "water-dependent" use, and believes the SMP should continue to treat existing floating homes as a water-dependent use appropriate to specific shoreline environment designations (e.g., UR).
- The CAC member representing floating homes opposes combining the conforming and non-conforming floating home moorage standards, believing this will create more complexity and potential contradictions. This member prefers to abolish the conforming/non-conforming nomenclature and substitute categories such as "standard A" and "standard B."
- The CAC member representing floating homes expressed opposition to DPD's proposed regulation prohibiting additional floor area unless the total float area is 1,200 square feet or less, believing it would have a significant financial and quality of life impact on a number of floating home owners without any gain for the environment. .

H. URBAN STABLE/URBAN MIXED USE DEVELOPMENT AND USE STANDARDS

Overview of the Proposed Amendments

Background: The Urban Stable (US) environment is a small shoreline environment found in Lake Union, the Ship Canal, Lake Washington near Leschi, and areas along Seaview Avenue NW. It is an environment where the underlying zoning is commercial, neighborhood commercial, residential or industrial commercial. Many of the lots have only small areas of dry land, with the majority of each parcel comprised of submerged lands. These lots support buildings that extend over-water on piers and most, but not all, were in existence before the SMA was enacted. Due to location and physical features and underlying zoning, the area is unsuitable for some water-dependent or water-related industrial uses.

SMA: The state does not provide specific guidelines on the US environment. However, guidelines for "high-intensity" environments are located in WAC 173-26-211 (5) (d). That same section of the WAC also provides guidance on preferred uses, which is particularly relevant to the US environment. This section directs that SMPs "limit non-water-oriented uses to those locations where (water-oriented and single family residential) uses are inappropriate or where non-water-oriented



uses demonstrably contribute to the objectives of the Shoreline Management Act.” Mixed-use projects, which combine water-oriented uses with non-water-oriented uses, are allowed under the new state guidelines. The concept for mixed-use provisions is that in return for including ecological restoration and public access features in the project, the developer is granted incentives that allow non-water-oriented uses.

DPD Draft Policy Direction: DPD is proposing to rename the existing US environment to Urban Mixed Use (UMX) environment, to better describe the allowed uses in this area, which allows a mix of water-oriented uses and to allow limited non-water-oriented development where it does not displace water-oriented uses and where it provides opportunities for public access, ecological function and recreational enjoyment of the shoreline.

DPD is proposing new shoreline setbacks and vegetated buffers in the UMX environment, while acknowledging that these standards cannot be met on all parcels. DPD is proposing flexibility in the application of these standards, to alleviate hardship for parcels with little or no dry land. Review of parcels in the Lake Union area shows that there are 15 lots with no dry land and 31 properties with <50’ of dry land. The objective of this revision is to reduce the number of non-conforming structures in this environment designation (see section on Non-conforming Uses and Structures for more information).

DPD is also in the process of analyzing potential incentives to encourage a reduction in the number of overwater buildings. One option under consideration is to develop a transfer of development rights (TDR) program that would allow additional development outside of setbacks in exchange for reducing the amount of development in setbacks or over water. DPD is also exploring the use of

fees-in-lieu for public access requirements and allowing certain non-water-dependent uses in over-water structures in exchange for restoration activities. DPD has hired a consultant to conduct an analysis of water-dependent and water-related uses. Final recommendations for this designation will be based on the outcome of that study.



CAC Comments

One CAC member noted that there are no vacant parcels in the US designation. Another member said that because we are only dealing with 15 parcels, all of these should be grandfathered under existing rules. The FHA representative said these 15 properties deserve the same consider-



ation as floating homes, in that they are a unique and historic overwater residential community.

Some CAC members were concerned that DPD's proposed limitations on overwater residences would effectively ban construction on small lots with limited upland areas available for development. This was perceived to be unfair by some, though the alternative point of view was also expressed (that owners who purchased small, vacant shoreline lots should not assume an ability to expand overwater and potentially damage the environment). There was considerable discussion among the Committee as to whether to allow reconstruction or redevelopment that does not increase the total amount of over-water coverage. One property owner requested that the City conduct an economic review of the 15 properties, to determine if the new regulations will result in a reduction in the fair market value of each parcel.

There were several specific concerns raised about DPD's proposal to require a 15' buffer, in combination with a 20' setback, in the US/UMX environment. The major concern expressed was that the new setback and buffer widths would lead to existing buildings becoming non-conforming structures and may trigger future reasonable use exception requests. Members pointed out that, in many cases, much of the setback and buffer would be paved, providing little environmental benefit. One member suggested that vegetated buffers would limit public access. Another suggested that buffer averaging might be used successfully in this situation.



A citizen at-large member suggested that, since there are only 15 properties, they should be examined on a case-by-case basis. Support was also expressed for the City to look at other options or incentives, such as height increases, TDRs, or tax rebates for reductions in over-water coverage. Fees-in-lieu were also suggested in this environment as a means to increase flexibility for property owners to meet public access requirements for non-water-dependent developments. One member recommended that DPD write the code so that owners of small lots in the US/UMX environment do not have to request a variance in order to meet the public access requirements. TDRs were opposed by some members.

I. NONCONFORMING USES & STRUCTURES

Overview of the Proposed Amendments

Background: A nonconforming use is a use occurring on a property that is not allowed under current code. One example is a residential use in an industrial zone. A non-conforming structure is a structure that is nonconforming to specific development standards such as height, lot cover-



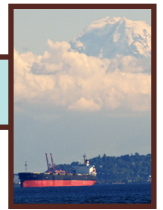
Synopsis of CAC Comments on US/UMX Environment

- Some CAC members noted that there are only a small number of parcels affected and felt they should be “grandfathered” or dealt with on a case-by-case basis.
- There was general agreement that new setback and buffers will increase the number of non-conforming structures.
- Some members suggested that reconstruction or redevelopment could be allowed, as long as it does not increase the total amount of over-water coverage.
- Several members suggested the City consider making existing buildings exempt from limitations on office, residential and non-water-dependent retail uses.
- The CAC agreed that final recommendations for this designation should be based on the outcome of a water-dependent study currently underway.
- One member suggested that an economic study be conducted to determine if property owners should be compensated for a loss in fair market value.

age, setback or parking. A property may be non-conforming to use standards, structure development standards or both of these. A legal nonconforming use or structure is a use or structure that was legally built under previous regulations, but does not meet existing standards. An illegal nonconforming use or structure was created in violation of existing regulations at the time it was created. Illegal nonconforming uses or structures are violations and do not have the same rights as legal nonconforming uses. For the purposes of this section, the discussion is limited to legal nonconforming use and structures.

SMA: State guidelines provide little guidance on nonconforming uses and structures, except to acknowledge that “in some circumstances existing uses and properties may become nonconforming with regard to the regulations and master programs should include provisions to address these situations in a manner consistent with achievement of the policy of the act and consistent with constitutional and other legal limitations” (WAC173-26-191).

DPD Draft Policy Direction: DPD is proposing existing and new provisions to address nonconforming structures. These include continuing to allow maintenance and repair of existing nonconforming structures where no expansion or replacement is proposed (no “sunset provisions”); and encouraging conformance with existing regulations, particularly for overwater structures and high impact activities, when replacement or substantial redevelopment occurs.



DPD recognizes that there are existing nonconforming uses on upland areas. The intent of this section is to allow replacement of nonconforming uses with other nonconforming uses, as long as it doesn't increase nonconformity in upland lots and areas that are not within a shoreline setback or overwater. On submerged land and within a structure setback area, the regulations would continue to prohibit replacement of nonconforming uses with other nonconforming uses.

DPD is also exploring the idea that certain non-water-dependent uses could be allowed in areas where water-dependent businesses are not in high demand (such as along the western shore of Lake Union) when specific non-water dependent uses provide ecological restoration in order to meet other goals of the SMP.

CAC Comments

Nonconforming Structures: A number of CAC members were supportive of DPD's overall approach to legal nonconforming structures, viewing it as an effort to avoid negatively impacting water-dependent uses and jobs, while at the same time attempting to improve overall ecological function. A number of committee members made the point that it was the cumulative effects of past development decisions over Seattle's history that have significantly eroded shoreline ecological functions, not recent development.

Although the CAC was supportive of DPD's overall regulatory direction regarding nonconforming structures, a number of concerns were identified. One committee member suggested that the regulations should provide incentives for the removal of creosote pilings; for instance, that the SMP could allow repair and replacement of a nonconforming overwater structure if all associated creosote pilings are removed and replaced.



Another member stated that while owners seeking to redevelop shoreline properties should be required to bring nonconforming structures into conformity, owners who simply seek to maintain a legal nonconforming structure should be allowed to retain such structures, provided they take specific steps to improve ecological function. A number of CAC members asserted that DPD's proposal to require owners of overwater structures desiring to undertake improvements to bring their structures into conformity would serve as a substantial disincentive for redeveloping such structures, and that many could, in consequence,

sit un-renovated and under-used for many years. The concern was that many property owners will seek to simply "make do" with existing structures, rather than attempting to renovate and being mandated to come into to structural conformity.



In sum, a number of committee members were critical of the proposed prescriptive approach towards nonconforming structures and view it as counter-productive to the City's objective of preserving industrial jobs. These CAC members favor an incentive-based approach that focuses on what the City wishes to achieve, as opposed to prescribing what the property owner cannot do. There was considerable concern that the proposal holds the potential to render the majority of structures within the Urban Mixed Use (UMX) environment "nonconforming," because of their proximity to bulkheads (within 35') and the absence of vegetated shoreline buffers on parcels containing such structures. Other members felt that the DPD proposal was fair by "grandfathering in" existing nonconforming structures, and that we need to be concerned about the environmental health of the shoreline as we move forward.

Nonconforming Uses: Several CAC members commented that the collective effect of DPD's changes related to nonconforming uses and structures could create a situation where a majority of shoreline structures are rendered nonconforming. These members cited as an example the proposal to treat recreational marinas (a water-dependent use) along the Duwamish as nonconforming.

Another CAC member noted the interrelationship between the proposed nonconforming use and structure changes, stating that limiting uses in overwater structures to water-dependent could reduce their value and make their renovation (including replacement of creosote pilings) economically infeasible. The Port of Seattle representative expressed the apprehension that the proposed allowable uses in the urban maritime (UM) environment were so narrow as to render nearly all upland uses within the shoreline jurisdiction at Fisherman's Terminal nonconforming. Such a strict regulatory approach could prohibit certain uses and activities that are critical to the maritime industry, even though they are not denominated "water-dependent" or "water-related." It was recommended that the SMP retain enough flexibility to allow such uses vital to the maritime industry.

Other Comments: Some CAC members commended DPD for attempting to restore the ecological function of Seattle's highly degraded shorelines. Other committee members feared that the overall approach is overly prescriptive, and needs to incorporate a more performance-based approach, in order to achieve clearly stated policy objectives (e.g., ecological restoration).



Synopsis of CAC Comments on Non-Conforming Uses & Structures

- General concern was expressed that DPD's proposed changes appear to create widespread structural and use non-conformities. While the purpose of improving ecological function is laudable, the concern is that the effect could be to discourage desirable structural renovations and environmental remediation.
- A number of CAC members stated that consideration should be given to a performance-based approach, rather than a prescriptive approach towards regulating nonconforming structures and uses. Such a course could provide owners of nonconforming structures and uses greater flexibility, while still achieving clearly identified ecological objectives.
- There is concern among some maritime industry representatives that the proposed revisions may unintentionally preclude a number of non-water-dependent and non-water-related uses that are nevertheless very important to the continued vitality of maritime industry.

III. NEXT STEPS

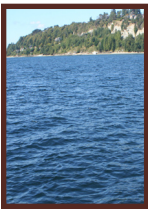
The work of the CAC is a major early step in the City's SMP update process. DPD has indicated that it convened the CAC at this juncture because it believes that it is important to get input from citizens early on in the process, when proposed policy changes are still being considered, rather than waiting until both the proposed policies and the code revisions that will implement those policies are already formulated. This improves DPD's ability to respond to the input it receives from the CAC.

DPD has explained to the CAC that the next step will be for DPD to include the CAC report with the associated materials it submits to the Mayor's office recommending revisions to the City's shoreline policies. After receiving comments and guidance from the Mayor's office, DPD will begin work on preparing code sections of the SMP update, to implement those policies. A draft SMP should be ready for public review in late fall of 2009. At that point, DPD will release the draft to the public and will distribute it to the CAC for its review and comment.

Although the CAC is no longer meeting monthly, DPD has said it plans to reconvene the CAC when the draft code is released. DPD will describe the changes in the draft code and the CAC will have an opportunity to ask questions and provide feedback to DPD.

Over the course of this summer, DPD is also conducting further market analysis on maritime cluster economic issues, including forecasting future demand. CAC members have been invited to participate in this process. This market analysis report is scheduled to be completed in August 2009.

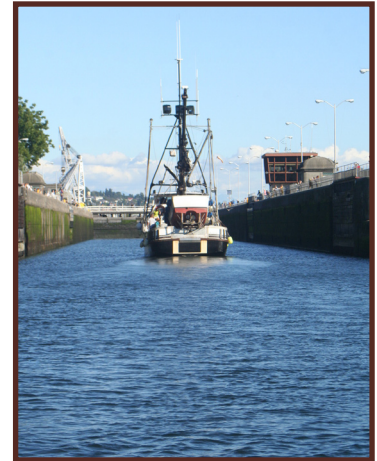
Concurrently, DPD is also preparing the draft Shoreline Restoration Plan. The Restoration Plan



is a separate, stand-alone document that is not regulatory. It will build off information in the Shoreline Characterization Report on what areas should be protected, and will identify opportunities to enhance shoreline areas that have been degraded. The Restoration Plan will also include the salmon recovery work and watershed planning involving Watershed Resource Inventory Areas (WRIA) 8 and 9. DPD anticipates holding a public meeting or workshop on the restoration plan in the fall of 2009.

After public comment on the draft SMP and restoration plan, DPD will bring the revised SMP to the Seattle City Council in spring of 2010. DPD has explained that there will be an extensive public involvement process with the City Council, where the public may voice concerns and comments.

DPD has also indicated that it may request the CAC to reconvene or may check in with the committee via email if there are other issues that come up during these next steps that would benefit from CAC involvement. The deadline for the adopted SMP to be submitted to the Washington State Department of Ecology for its review and approval is December 2010.



IV. APPENDICES

(AVAILABLE ON REQUEST OR AT DPD'S WEBSITE:

WWW.SEATTLE.GOV/DPD/PLANNING/SHORELINEMASTERPROGRAMUPDATE/REPORTSMATERIALS)

- A. CAC visioning exercise report (June 2008)
- B. CAC members and biosketches
- C. Policy and response papers prepared by DPD
- D. Meeting summaries prepared by Triangle Associates after each meeting

