



May 31, 2011

Margaret Glowacki
Department of Planning and Development
City of Seattle
700 5th Ave, #2000
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Seattle, WA 98124

RE: Comments on Draft Shoreline Master Program

Dear Maggie,

As a member of the Citizens Advisory Committee (CAC) representing commercial and industrial property owners in the ship canal, I have been involved in the process of updating the Shoreline Master Program (SMP) for three years already. I also have very pertinent practical experience with the current SMP code, having recently redeveloped the defunct Marco shipyard into the Salmon Bay Marine Center (SBMC), which I continue to operate. I have reviewed the draft SMP issued by DPD and have serious concerns about what is being proposed. I am very glad DPD has agreed to a second round of review and comments for the SMP.

I would like to begin by addressing the three main goals of the SMP:

1. Protect and restore ecological functions of the marine shoreline
2. Encourage water-dependent uses
3. Promote public access to the waterfront

It is interesting to note that Seattle DPD changes the order of these four priorities, placing ecologic functions in the first position, when the state WAC guidelines actually have it as the third priority. While I acknowledge that both in the state WAC and the DPD summary all the goals are said to be given equal weight, I feel this change is indicative of the excess weight and importance the Seattle SMP puts on ecologic function, to the detriment of the economic uses of the shoreline environments.

Protect and Restore Ecological Functions of the Marine Shoreline

The state SMA guidelines require local jurisdictions to follow the best available science to achieve no net loss of ecological function of the shoreline areas. I would like to begin by incorporating by reference the comments of Paul Nerdrum of Salmon Bay Sand and Gravel regarding the standards and completeness of the best available science being referenced by DPD in drafting the SMP. Paul does a very good job of

illuminating the shortcomings of the cited best available science, especially in regards Salmon Bay and the Ship Canal. Salmon Bay and the Ship Canal are home to many commercial and industrial shoreline uses that are significantly impacted by the environmental components of the SMP (setbacks, limitations on over water coverage, limitations on armored shorelines, ext.). To impose these limitations without sufficient justification is not warranted.

Separate from the issue of best available science, if the goal is to preserve and restore ecologic function, one of the best ways to accomplish this is to encourage redevelopment of the shoreline properties. When I redeveloped the failed Marco shipyard site I removed hundreds of creosote piling, tens of thousands of square feet of over water coverage, tons of debris and garbage from the lake bed, and put in one of the cleanest and greenest shipyard facilities on the west coast which employs hundreds of skilled marine trades people and has generated tens of millions of dollars in vessel refit and repair work. This represents an economic success story while achieving a significant improvement in ecological function. Yet under the proposed SMP I could not do this project again due to changes in setbacks, restrictions in uses, and numerous other changes the ship away at what can be done with a property.

To achieve the desired significant ecological improvements there needs to be a matching economic incentive for the property owner. The proposed SMP severely limits the uses a property can be used for and what can be built on it. If a property can only have less coverage, less square footage of buildings, less over water coverage if it is redeveloped, than there is little to no incentive to do so. Why would a property owner decide to redevelop their property if they will lose their current (legally non-conforming) tenants and can only put back smaller buildings, fewer square feet of piers and wharfs, and fewer lineal feet or moorage? The net effect is for property owners to decide to keep their property in its current form. The Seattle shoreline will largely stagnate, will largely miss out on the significant ecological improvements of redevelopment, and be unable to evolve and respond to changing economic and industry demands.

Encourage Water-Dependent Uses

The SMP's goal of supporting Water Dependent (WD) uses leaves out the Water Related (WR) and Water Enjoyment (WE) uses which are collectively referred to as Water Oriented (WO) uses that are contemplated in the state WAC and other jurisdiction SMP's. For the Seattle SMP to only have a goal of supporting WD uses and not the more broad WO description, leaves out a lot of important uses. The SMP's definition of WD uses only includes 13 uses. These include;

1. Ferry and passenger terminals
2. Marine construction and repair
3. Aquaculture
4. Cargo terminal for marine commerce or industry
5. Boat launch facilities
6. Marinas
7. Legally established floating homes as of January 2011
8. Tour boats

9. Cruise ships
10. Tug and barge operations
11. Recreation that provides physical access to the water
12. Yacht clubs
13. Limnological or oceanographic research facilities that include boat moorage or require the use of the water for its operation.

Many of the above listed uses are only allowed in certain shoreline zones, so certain zones are even more limited as to what uses are outright allowed. Does DPD really have a goal of only 13 approved uses for all of Seattle's shorelines? This last question is of course a bit of hyperbole as the SMP does contemplate WR and WO uses, BUT IT DOES NOT RECOGNIZE THEM AS PART OF THE GOAL OF AN ECONOMICALLY PRODUCTIVE SHORELINE.

The SMP's view of what should be allowed uses in the shoreline is overly restrictive and does not contemplate changing needs and evolving industries. I speak from experience when I say the code does not easily allow any use that has not been done before. This does not encourage evolution in industries or the introduction of new ones. As an example, my facility at SBMC primarily does commercial work on large yachts. Yet under the code, because the vessels being worked on are yachts, by SMP definition my facility is a recreational marina which is not allowed in the UM shoreline. It does not matter that it is a \$10 million dollar refit of a 200 foot yacht that is in all respects commercial work. By this logic, when Foss shipyard is working on a yacht, they are a recreational marina as well. Because of the very limited view the SMP has regarding what are allowed uses, companies have to spend large sums of money and time to justify their existence to DPD and prove they should be allowed to operate in the shoreline. The proposed SMP needs to be MORE flexible and allow more leeway in uses on shoreline properties, while still preserving WDWR uses on the site. Specifically I feel the commercial and industrial shorelines should have greater flexibility in uses above the ground floor if the main level of the site and the water is used for WDWR activities. This could be accomplished via code language similar to what is used in the US/UC zones around Lake Union.

Promote Public Access to the Waterfront

When the CAC met in 2008 and 2009 to review SMP issues prior to DPD drafting the proposed SMP, we discussed the issues regarding public access on industrial properties and came to the conclusion that it should not be required. I was thus quite surprised when the draft SMP came out requiring public access to all non-WD uses in the UM and UI zones. By this measure, Salmon Bay Sand and Gravel which is a WR use per the SMP definitions would have to allow public access (or prove why it should not be required). This is an operation with heavy machinery, overhead cranes, trucks coming in and out, and many other aspects that make it completely inappropriate to have public access. Additionally many commercial maritime companies have security requirements, including dictates from the Department of Homeland Security and the Coast Guard, which are incompatible with the public access requirements in the SMP. Simply put, there should be no requirement for public access in the industrial and commercial zones, unless it is on public property.

Specific Issues in the SMP

Beyond the broad issues of philosophy and approach I have outlined above, there are many specific instances of code language that are impractical, confusing, poorly implemented, or just flat out wrong. The overlap and discontinuity of the code also makes it very difficult to navigate. Too often an issue will be address in multiple locations within the code; some of the language will be in the section on the specific zone, but then you have to refer to the general development standard section, and then you need to go to the definitions section, and then you need to go to a specific code section for a definition that is not in the definitions section (such as “feasible”). This makes for a confusing code that often requires an expert lawyer to interpret.

The code is also far too prescriptive in trying to tell companies located in the shoreline how they must operate. The SMP should not be trying to codify Best Management Practices (BMP). In the first place, there are too many different kinds of work going on within the shoreline to be able to do this for all of them. Secondly, there are already established BMPs for most industries that have been well researched and assembled that can be incorporated by reference. Thirdly, BMPs change and evolve more quickly than the SMP; by trying to codify them in the SMP will lead to outdated practices being required by the SMP while the true industry BMPs have evolved and moved forward.

General Development Standards (All Zones)

- 23.60.027 - The SMP creates Creation of the Ecological Restoration and Mitigation Program, establishing the creation of the program and “habitat units” with monetary value. This program is not well defined and to my understanding not even complete, yet it has far reaching implications within the SMP. It imposes monetary fees in lieu of Habitat Units (HU), but the dollar values of HU’s are not defined and apparently subject to change over time. As the SMP reads now, legally existing non-confirming over water structures would have to pay 24 HU’s per SF any time they change the tenants in their building (23.60.122(D)(2)). This equates to a retroactive mitigation fee or tax that could easily cost a property owner hundreds of thousands of dollars, yet we cannot even evaluate the full extent of the impact as the pertinent regulations are not even complete. This is not acceptable. The entire program needs to be completely drafted and defined and offered to public comment and input before it can be included in the SMP.
- 23.60.032(D) and 23.60.034(B)(4) - Special use permit language and conditional use permit language has been significantly changed. The language in the current code allows a special or conditional use could be approved if it causes no “unreasonably adverse effects to the shoreline environment”. The new standard is that is must “mitigate all adverse effects to ecological functions”. That is a far higher hurdle to clear to get permit approval, is not a reasonable standard for an applicant to have to meet, and does not contemplate that an overall project could have a positive net ecological function and goes beyond the “no net loss” standard.

- 23.60.039 – The definition of “Feasible” does NOT include any economic component. Thus if there is a solution that costs \$100,000,000, it is feasible. This is ridiculous and there HAS to be some consideration of the cost when determining the feasibility of a project. Just because something can be done and has been done, does not necessarily make it feasible. The city of Seattle is undertaking a multi-billion dollar tunnel project under the viaduct, but that does not mean it is feasible for a private property owner. This must be updated to include cost as part of the consideration.
- 23.60.152(K) – The prohibition on repairing creosote piling is not practical. There are many structures built over creosote piling that make it impractical to remove and replace the piling, but simple to repair them to extend their life. There MUST be a way to repair these pilings to extend the life of existing structures.
- 23.60.187(D) – Having the SMP stipulate what kind of specific work can be performed on a vessel and how many people must be doing the work is overly prescriptive. In addition, it is not clear the exact meaning of the wording and what is being limited (vessel size? Number of people working on a vessel of a given size?).
- 23.60.188 - Hard engineered stabilization (bulkheads) are not allowed unless an applicant can “conclusively” prove no net impact and many other things. The net effect is it will be nearly impossible to permit a hard bulkhead. Nowhere in the criteria is there business or economic need taken into account. Likewise a property owner cannot repair or replace an existing bulkhead without meeting terms similar to those required to permit a new one (i.e. it is nearly impossible). These rules does not take into account viable economic and operational needs for armored shorelines and only gives weight to the ecological goals outlined in the SMP. Not allowing the repair or replacement of already existing armored shorelines does not even adhere to the ecological guideline, as it does not represent a net loss to repair or replace an existing bulkhead.
- 23.60.200 – The new SMP completely redefines commercial moorage to be commercial marinas, and thus all commercial moorage will now fall under the rules for marinas. This is not well considered or well thought out. Commercial moorage has very different needs from marinas. More vessel repair and maintenance happens on commercial vessels. Commercial vessels often have crew living board, which will conflict with the proposed live aboard rules.
- 23.60.214(A) – The overly broad definition of dwelling unit and live aboard will directly conflict with commercial vessel operations and their need to have crew stay on the vessel. This needs to be significantly changed to accommodate commercial vessel needs or eliminated.
- 23.60.214(B) – Limiting use of vessel to what is customary is overly broad and vague to the extreme. This language could be used to prevent a tug boat from being used for water quality

research, or prevent a historic ship from being a museum. It makes no sense for the land use code to be dictating vessel can only be used for what they have been used for in the past.

- 23.60.900 – There are many issues with definitions in the SMP
 - “Dry Dock” is a completed incorrect definition that actually describes a graving dock, of which there are none in Seattle. It does not contemplate floating dry docks (what most the shipyards in Seattle actually use), marine railways, synchrolifts, and travel lifts, which are all other ways a vessel can be removed from the water and can be generally lumped in with Dry Docks.
 - “Live Aboard” is any vessel used as a dwelling unit for any period of time – that is the vast majority of vessels
 - “Dwelling Unit in the code means a room or rooms located within a structure, designed, arranged, occupied or intended to be occupied by not more than one household as living accommodations independent from any other household. The existence of a food preparation area within the room or rooms shall be evidence of the existence of a dwelling unit. Absent a different definition for Live Aboard and Dwelling Unit within the SMP, almost any vessel could be defined as a Live Aboard.
 - Whether a marina is commercial or recreational is still defined by the type of vessel, and not the work being performed.

CW Zone

- 23.60.300 – This zone undergoes a significant change in what are allowed uses, outlawing long term moorage and most vessel repair activities in the CW zones. Most shipyards in Lake Union and the Ship Canal have piers built on their shared property lines with CW zones street ends and have been using them as part of their working waterfronts for decades. If Seattle is being honest in its stated goal of supporting the marine industry around here, it cannot make this change which will drastically cut into these yards’ ability to continue to function.

UM Shoreline

- 23.60.502 - Offices uses are not being outright banned in the UM zone in the proposed SMP. This is a change from the current code and does not take into account reasonable and viable maritime related business that should be allowed. These uses include naval architects and engineers, marine insurance companies, naval inspectors, maritime law specialists, and other specialized professional services that support the marine trades and industry. I realize that some of these could be allowed via the conditional use process, but that only allows a small percentage of a site to be utilized and takes up to a year or more to complete the conditional use

permit process. The realities of leasing a property and securing tenants cannot wait on a 12 month approval process. It simply is not practical.

- 23.60.502 – Caretaker Units (CTU) are no longer allowed in the shoreline. If CTU are allowed and needed for all other industrial zones, why is their suddenly no need for them within the shoreline zones and they are prohibited. I have four CTU's at my facility that have increased security and been the deciding factor in willing work. When a vessel is undergoing a major refit, the captains and crew usually won't be living on it, but need to be close at all times. Have the CTU's on site allows this. We have had tens of millions of dollars or work performed at SBMC, utilizing very expensive and valuable equipment, with no loss to theft. Much of this is due to have the CTU's on site.
- 23.60.504(D) – There should not be separate dredging standards in the SMP. This is more than adequately covered in the Doe, Army Corps, and Fish and Wildlife permitting standards. Another level of permitting is not required.
- 23.60.504(H) – Piers, docks, and floats should be an allowed use for WR relates uses as well as WD uses. If WR related uses are allowed on sites because they have need to have access to the water. That being the case, the facilities that allow that access to the water (piers, docks and floats), should be an allowed use for WR uses without having to go through special use or conditional use process.
- 23.60.504(I) – Existing armored bulkheads should be replaceable and maintainable without having to justify their need or existence within the commercial and industrial waterfront areas. This does not represent a loss of ecological function and is critical to maintaining a working waterfront, as is contemplated by the WAC guidelines.
- 23.60.510 – There should be no required setbacks for WDWR uses. If WR uses are to be allowed on a shoreline property because they have need to access the water, then they have need to be coming and going to the water and the setbacks are unreasonably hindering the very work those businesses need to do and why they are located there.
- Vessels only allowed to be used for “customary” uses while moored. What the heck does this mean and who determines what is customary?

Frankly, the above is only a small sample of the issues I have identified that directly impact me and my business. I know there are many others that have been brought up by the Port of Seattle, Cal Portland, Pacific Fisherman's Shipyard, various marinas, and many others. To say that the proposed SMP is flawed and needs to be revised is an understatement. I am not confident DPD on its own can sufficiently address the issues and concerns I and others have raised. What is needed is a joint DPD and stakeholder drafting committee to meet and revise the specific language in the SMP if we are to end up with a workable code. I strongly encourage and advise that such a working group be formed as soon as

possible to undertake the large task of revising the SMP into a workable format. Otherwise I fear this will be tied up in endless rounds of comments and reviews, and eventually litigation and appeals.

Best regards,

A handwritten signature in blue ink, appearing to read 'B Stabbert', with a long horizontal flourish extending to the right.

Brooke Stabbert
Salmon Bay Marine Center

Cc: Diane Sugimura, Director of DPD
Marshall Foster, Planning Director