



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** October 24, 2012

**To:** Richard Conlin, Chair  
Tim Burgess, Vice Chair  
Mike O'Brien, Member  
Planning, Land Use and Sustainability (PLUS) Committee

**From:** Ketil Freeman, Council Central Staff

**Subject:** Council Bill 117585 – Shoreline Master Program Update

**Introduction:**

The Shoreline Management Act (SMA) was enacted in 1972 and establishes three policy focus areas: 1) preservation of the shoreline for preferred uses, such as water-dependent and water-related commercial and industrial uses, 2) environmental protection and, 3) public access to the shoreline. Jurisdictions, like Seattle, containing state shorelines are required to adopt and periodically update Shoreline Master Programs (SMPs) to implement the policies of the SMA. Seattle last updated its SMP in 1987.

Council Bill 117585 contains the proposed SMP update. The SMP update is comprised of the following: land use regulations that apply in an overlay zone for the shoreline; land use regulations for shoreline-related environmentally critical areas; shoreline goals and policies adopted into the Land Use Element of the Comprehensive Plan; and a non-regulatory Shoreline Restoration and Enhancement Plan.

This memo:

- Describes the contents of a substitute bill,
- Sets out a handful of amendments that the Committee could act on immediately, and
- Categorizes outstanding issues for future Committee discussion.

**Substitute Council Bill:**

Staff has prepared a substitute bill that makes non-substantive changes to the introduced legislation. Changes include corrected spelling, punctuation, and cross-references; section renumbering; and other changes that do not change the effect or intent of proposed regulations or Comprehensive Plan goals and policies. Changes are in a redlined line-in / line-out format.

Moving a substitute will give the Committee a cleaner base bill for future amendments. Given the size and complexity of the legislation, it is likely that the Committee will have to make further non-substantive, house-keeping amendments to the bill as errors are identified.

**Clarifying Amendments (Attachment A):**

Attachment A to this memo sets out seven amendments that could be moved immediately. These are proposed amendments that have been identified by staff as clarifying amendments that are consistent with

the intent of the Department of Planning and Development (DPD) in drafting the proposed legislation and that do not require consideration of significant policy trade-offs. These amendments may not go as far proponents desire and could be revisited by the Committee in the future.

**Potential Issues for Future Committee Discussion:**

Potential issues for future Committee discussion are set out in the table below. These issues have been identified through written and oral comments provided to the Council and staff review. Staff has organized these issues into six broad regulatory categories and recommends that the Committee discuss the issues in that grouping to better understand the regulatory and policy background and trade-offs associated with a category of issues. It is likely that at least some identified issues will prove to be either: 1) unnecessary because they are already addressed through proposed exceptions, procedural requirements, or general development standards; 2) non-starters because they would conflict with requirements of the SMA; or 3) easily resolvable through clarifying amendments that do not involve significant policy choices.

<b>Shoreline Uses</b>
<ol style="list-style-type: none"> <li>1. SMA use preferences and non water-dependent and water-related (WD/WR) uses in the shoreline.</li> <li>2. Offset requirements for establishing or maintaining non-preferred uses in the shoreline.</li> <li>3. Regulations for location of WD/WR and non-WD/WR in multistory structures.</li> <li>4. Percentage of allowed non WD/WR uses in the Urban Maritime (UM), Urban Industrial (UI), Urban Harborfront (UH), and Urban Commercial (UC) Environments.</li> <li>5. Regulations for ground floor uses in the UC Environment.</li> <li>6. Boat sales as a WD/WR use.</li> <li>7. Large boat sales in the UC and Conservancy Waterway (CW) Environments.</li> <li>8. Small boat sales in UM, UC and CW Environments.</li> <li>9. Recreational marinas in the CW Environment.</li> <li>10. Non WD/WR principal uses in the UI Environment.</li> <li>11. Non WD/WR transportation uses in the Urban Harborfront (UH) Environment.</li> <li>12. Commercial and institutional uses in existing buildings in the Conservancy Management (CM) Environment.</li> <li>13. Animal shelters and kennels and non-WD/WR medical services in the shoreline.</li> <li>14. Principal and accessory use parking over water.</li> </ol>
<b>Setbacks</b>
<ol style="list-style-type: none"> <li>15. Setbacks and the width of shoreline buffers in the Critical Areas Ordinance.</li> <li>16. Setbacks for existing structures and pedestrian and bike paths in the Urban General (UG) Environment.</li> <li>17. Setbacks for WD/WR uses in the UI Environment.</li> <li>18. Location of non WD/WR uses in required setbacks in the UI Environment.</li> </ol>
<b>General Development Standards and Shoreline Modifications</b>
<ol style="list-style-type: none"> <li>19. Artificial reefs in the shoreline.</li> <li>20. Jetties, groins and weirs in the shoreline.</li> <li>21. Revegetation and restoration for replacement of utility lines.</li> <li>22. Development standards for replacement of piers and pilings (sleeving of creosote piles).</li> <li>23. Role of DPD and the SMA in regulating dredging.</li> <li>24. Standards for pesticide and herbicide use in the shoreline.</li> <li>25. Permanent mooring of work floats.</li> <li>26. Siting piers and moorages in shallow water.</li> </ol>

27. Painting and varnishing below the deck.

**View Corridors and Public Access**

- 28. View corridor requirements for multifamily residential uses on narrow waterfront lots.
- 29. View corridor requirements for the UH Environment.
- 30. Public access requirements and authority for requiring public access over private property.
- 31. Public access alternatives for lots next to public land in the UC Environment.
- 32. Public access requirements for multifamily development greater than 4 units.

**Residential Uses Over Water: Live-aboards and Floating Homes**

- 33. SMA use preferences and residential uses over water.
- 34. Definition of “vessel” and regulatory status of existing floating structures used as dwelling units (live-aboards).
- 35. Proposed regulations for new floating structures used as dwelling units including Sail Area / Hull Plan ratio and Sail Length / Beam ratio.
- 36. Moorage slip dimensions.
- 37. Live-aboard and marina Best Management Practices (BMPs),
- 38. Grey water containment and grey water discharge.
- 39. Standards for relocating floating homes.
- 40. Standards for reconfiguration of floating home moorages.
- 41. Standards for overwater coverage of floating home moorages.
- 42. The proposed floating home registration program.
- 43. Floating home BMPs.

**Other Development Standards and Proposed Redesignation of Environments**

- 44. Height limits in the UC and UM Environments.
- 45. Overwater lot coverage in the UC and UM Environments.
- 46. Vessel sizes for major / minor boat repair and large / small boat sales.
- 47. Programmatic shoreline permits.
- 48. No net loss documentation and procedural requirements.
- 49. Procedural standards for protecting archaeological and historic resources.
- 50. Redesignation of the proposed shoreline environment in the vicinity of Pier 1.
- 51. Redesignation of the proposed shoreline environment in the vicinity of Terminal 107.

**Attachment A: Clarifying Amendments**

	<b>Subject Matter</b>	<b>Proponent</b>	<b>Amendment Language</b>	<b>Discussion</b>
1.	Floating Home Setbacks 23.60A.202.D.5	Floating Homes Association	<p><b>23.60A.202.D.5 Standards for floating homes</b></p> <p>c. Setbacks between adjacent floating homes <del>and walls</del></p> <p>1) <u>If a floating home is being remodeled, the minimum distance between adjacent floating home floats or walls shall not be decreased to less than reduced below 10 feet or, if the existing distance is less than 10 feet, the distance between adjacent floating home walls the existing distance, whichever is less, and shall not be reduced to less than 6 feet if the floating home is being replaced or rebuilt.</u></p> <p>2) <u>If a floating home is being rebuilt or replaced, and</u></p> <p>a) <u>the existing distance between floating home walls is greater than 6 feet, the minimum distance between adjacent floating home floats or walls shall not be reduced below 10 feet or the existing distance, whichever is less, or</u></p> <p>b) <u>If the existing distance is less than 6 feet, the minimum distance shall be 6 feet.</u></p> <p>3) <u>In no case shall the distance between floats be decreased.</u></p> <p>4) <u>In no case shall the minimum distance between floating homes on opposite sides of a moorage walkway be decreased, wall-to-wall.</u></p> <p>d. <u>Setbacks between floats and floating home walls; and floating home moorage sites</u></p> <p>2) <u>If a floating home is being remodeled, the minimum distance between any floating home float or wall and the boundary of any floating home moorage site shall not be decreased to less than reduced below 5 feet or if the existing distance is less than 5 feet the distance between any floating home wall and the boundary of any floating home moorage site shall not be reduced to less than 3-ft. the existing distance, whichever is less, and shall not be less than 3 feet when the floating home is replaced or rebuilt.</u></p>	<p>The intent of the proposed regulation is to maintain existing provisions that govern setbacks and distances between floating homes.</p> <p>The proposed update would inadvertently establish more restrictive standards by establishing that setbacks be measured from floating home floats instead of floating home walls.</p> <p>The proposed amendments would maintain existing setback standards.</p>

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			<p style="text-align: center;"><u>2) If a floating home is being rebuilt or replaced, and</u></p> <p style="text-align: center;"><u>a) the existing distance between any floating home wall and the boundary of any floating home moorage site is greater than 3 feet, this distance shall not be reduced below 5 feet or the existing distance, whichever is less, or</u></p> <p style="text-align: center;"><u>b) If the existing distance between any floating home wall and the boundary of any floating home moorage site is less than 3 feet, the minimum distance shall be 3 feet.</u></p> <p style="text-align: center;"><u>3) In no case shall the distance between existing floats and the boundary of any floating home moorage site be decreased except as provided in 23.60A.202.D.5.d.4.</u></p> <p style="text-align: center;"><u>4) No minimum distance is required between a floating home <del>float</del> or wall and a moorage lot line when the lot line is adjacent to a public street right-of-way, a waterway, or the fairway.</u></p>	
2.	Dredging	Various Maritime Businesses and the Port of Seattle	<p><b>23.60A.172 Table A – Applicable standards for shoreline modifications</b></p> <p>5b. Dredging for the purpose of establishing, expanding, relocating or reconfiguring navigation channels, basins, <u>berthing areas and dry docks</u> is allowed if the applicant demonstrates dredging is necessary for assuring safe and efficient accommodation of existing navigational uses or for assuring safe and efficient accommodation of existing navigational uses <u>or safe berthing or operation of water dependant equipment such as dry docks.</u></p> <p>5c. Maintenance dredging of established navigation channels <u>or berthing areas</u> is restricted to maintaining the location, depth, and width previously authorized or permitted by the Army Corps of Engineers.</p>	<p>The proposed update could have been interpreted as precluding dredging for certain purposes, such as establishing berthing areas and drydocks for WD/WR uses.</p> <p>The proposed amendment clarifies that dredging is an allowed shoreline modification in certain environments for those purposes.</p>
3.	Mitigation Sequencing	Various Maritime Businesses and the Port of	<p><b>23.60A.158 Standards for mitigation sequencing</b></p> <p style="text-align: center;">A. Regulations set out in this Chapter 23.60A are minimum requirements that shall be supplemented by mitigation sequencing in this</p>	<p>The SMP guidelines define as "Feasible" as “an action, such as “a development project, mitigation, or preservation</p>

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		Seattle	<p>Section 23.60A.158 when needed to achieve no net loss of ecological functions. Mitigation under this Section 23.60A.158 is not intended to duplicate mitigation for the same ecological function that is required under other City regulations or under state and federal permits: coordination among local, state and federal regulatory agencies and Indian Tribes, as applicable, shall occur when determining required mitigation for Shoreline Substantial Development Permits.</p> <p style="padding-left: 40px;">B. Mitigation sequencing</p> <p style="padding-left: 80px;">1. The mitigation sequence below shall be undertaken in the following priority:</p> <p style="padding-left: 120px;">a. Step A. Avoiding the impact altogether by not taking a certain action or parts of an action;</p> <p style="padding-left: 120px;">b. Step B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;</p> <p style="padding-left: 120px;">c. Step C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;</p> <p style="padding-left: 120px;">d. Step D. Reducing or eliminating the impact over time by preservation and maintenance operations;</p> <p style="padding-left: 120px;">e. Step E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and</p> <p style="padding-left: 120px;">f. Step F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.</p> <p style="padding-left: 80px;">2. Lower priority measures shall be applied only if the higher priority measure is infeasible or inapplicable to achieve NNL.</p>	<p>requirement, [that] meets all of the following conditions:</p> <p style="padding-left: 40px;">(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;</p> <p style="padding-left: 40px;">(b) The action provides a reasonable likelihood of achieving its intended purpose; and</p> <p style="padding-left: 40px;">(c) The action does not physically preclude achieving the project's primary intended legal use.” (WAC 173-26-020 (15))</p> <p>The phrase “to achieve NNL” could be read to qualify feasibility in mitigation sequencing standards.</p> <p>The phrase propose amendment would drop “to achieve NNL” to avoid confusion.</p>
4.		Various Maritime Businesses and the Port of Seattle	<p><b>23.60A.486 Height in the UI Environment</b></p> <p style="padding-left: 40px;"><del>B. Height exceptions for water-dependent uses. The following height exceptions apply to water-dependent uses in the UI Environment:</del></p> <p style="padding-left: 80px;">1. Cranes, mobile conveyers, light standards and similar equipment necessary for the function of water-dependent uses or the servicing of vessels may extend above the maximum height limit;</p> <p style="padding-left: 80px;"><del>2. Other</del> <u>The Director may</u></p>	<p>The proposed update could have been interpreted as precluding or making non-conforming tall structures, such as boat building structures and cranes, necessary for WD/WR uses.</p> <p>The proposed amendment clarifies the height limit</p>

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			<p><del>authorize structures required for uses that are accessory to a water dependent or water related use, including but not limited to accessory office, accessory warehouse and accessory manufacturing facilities may be authorized by the Director up to 55 feet in the Ballard/Interbay Northend Manufacturing and Industrial Center and up to 70 feet for buildings and 80 feet for other structures in the Duwamish Manufacturing/Industrial Center if for the following structures:</del></p> <p style="padding-left: 40px;"><del>a. The accessory s</del>  <u>Structures for water dependent and water-related uses, for uses accessory to a water-dependent or water related uses, and for manufacturing if:</u></p> <p style="padding-left: 80px;"><u>(i) The structure</u>  requires additional height because of its intended use; <u>and</u></p> <p style="padding-left: 80px;"><u>(ii) The views from a substantial number of upland residences would not be substantially blocked by the increased height; or</u></p> <p style="padding-left: 40px;"><del>b. Granting additional</del>  <u>height for the An accessory structure to a water-dependent or water-related use if:</u></p> <p style="padding-left: 80px;"><u>(i) Allowing the additional height</u> would result in a significant amount of additional usable area for the principal water-dependent or water-related use and/or additional area for ecological restoration and enhancement; and</p> <p style="padding-left: 80px;"><del>e. (ii) No more than</del>  20 percent of the lot area is covered by portions of the structure that exceed the maximum height established in subsection 23.60A.486-<del>B</del>; <u>and</u></p> <p style="padding-left: 80px;"><del>d. (iii) The</del>  remaining 80 percent of the lot is preserved through a covenant for water-dependent and water-related uses if uses that are not water-dependent or water-related occupy the structure; and</p> <p style="padding-left: 80px;"><del>e. (iv) The views</del>  from a substantial number of upland residences would not be substantially blocked by the increased height.</p>	<p>exception that would apply to such uses.</p>

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5.	Rulemaking for Habitat Evaluation Procedure	Various Maritime Businesses and the Port of Seattle	<p><b>23.60A.027 Habitat Evaluation Procedures</b></p> <p>A. <u>Director’s Rule</u></p> <p>1. The Director by rule may establish procedures to evaluate ecological functions in the Shoreline District using a system of habitat units.</p> <p>2. <u>In developing the Director’s Rule the Director shall consult with relevant state and federal regulatory agencies and include affected stake holders.</u></p> <p>B. The procedures shall:</p> <p>1. Use appropriate scientific and technical information to determine, measure and/or quantify ecological functions; and</p> <p>2. Determine the costs of restoration and enhancement actions of habitat units, using full cost accounting principles, including consideration of the following: project design, permitting, construction, monitoring, maintenance, adaptive management, long term stewardship (indexed to the rate of inflation), and land value.</p> <p>C. <u>At least 30 days prior to the Department adopting the Director’s Rule, the DPD shall present the rule to City Council for review and comment.</u></p> <p>D. <u>If ecological restoration is required as a development standard, the Director may authorize providing such ecological restoration through the equivalent number of habitat units, if habitat units have been developed for the location.</u></p>	<p>Constituents expressed concern about a proposed delegation to the DPD Director of rulemaking authority establishing mitigation and habitat evaluation procedures.</p> <p>The proposed amendment clarifies that rulemaking must include consultation with other regulatory agencies with jurisdiction and must include consultation with the Council.</p>
6.	Payment for Habitat Units	Various Maritime Businesses and the Port of Seattle	<p><b>23.60A.028 Payment for habitat units</b></p> <p>A. Mitigation</p> <p>1. If mitigation actions pursuant to subsections 23.60A.152.A and 23.60A.158.B.1.e (Step E) or under Chapter 25.05 (SEPA) are required, the Director is authorized to allow the payment of fees in lieu of some or all of the mitigation required, if the applicant requests. Fees shall be paid into a fund for ecological restoration, creation, rehabilitation, and/or enhancement projects in the Shoreline District.</p> <p>2. A program under subsection 23.60A.028.A.1 shall be developed and operated consistent with the federal standards for in-lieu fee programs set out in 33 CFR 332 (or as amended).</p> <p>B. <u>Other habitat units</u></p> <p>1. <u>If habitat units are required under</u></p>	<p>The proposed update would authorize habitat offsets for siting non-preferred uses in the shoreline.</p> <p>Because these offsets are not mitigation they are not subject to federal or state oversight. Consequently, the City could promulgate a rule for quantifying habitat units and in-lieu payment without consulting with other regulatory authorities.</p> <p>The proposed amendment</p>

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			<p>this Chapter 23.60A for purposes other than subsection 23.60A.028.A.1, the Director may authorize payment for habitat units in lieu of applicant provided habitat units, if the applicant requests. Such fees shall be paid into a fund for ecological restoration, creation, rehabilitation, and/or enhancement projects in the Shoreline District.</p> <p style="text-align: center;"><u>2. If the value of habitat units change as a result of the review required in 23.60A.028.A.2 the same changes shall be made to habitat units under this subsection 23.60A.028.B.</u></p>	<p>clarifies that if a rule for mitigation – not offsets – is established by DPD after consulting with the Council and other regulatory authorities, then the price off the offset units will be adjusted to match the price of mitigation units to ensure consistent regulations within the same geographic area of the shoreline.</p>
7.	Harborfront Character Area Review	Staff	<p style="text-align: center;"><b><del>23.60A.458 Central Waterfront Landmark Designated Area review criteria</del></b></p> <p><del>A. Location. All developments located in the Central Waterfront Landmark Area, which comprises Piers 54, 55, 56, 57 and 59.</del></p> <p><del>B. Review Process. All applications for development in the Central Waterfront Landmark Area shall be referred to the Landmarks Preservation Board and to the Department of Neighborhoods for their review and comment prior to issuance of a permit. In order to avoid undue project delay, such review and comment shall be completed within 45 days of receipt of an application by the Landmarks Preservation Board and the Department of Neighborhoods.</del></p> <p><del>C. Review Standards. New construction or replacement or modification of existing structures shall be reviewed using the Central Waterfront Piers Design Guidelines developed by the Seattle Landmarks Preservation Board with the recognition by the Board and the City Historic Preservation Officer that alteration to existing structures may be necessary to meet requirements of the Shoreline Master Program to protect the shoreline environment.</del></p>	<p>The proposed update would create a process for review of historic piers on the central waterfront.</p> <p>After consultation with the Department of Neighborhoods, staff determined that because these piers are already designated landmarks, the review process is unnecessary.</p> <p>Adopted controls and incentives in the designating ordinance already require review by the Landmarks Designation Board.</p> <p>The proposed amendment would strike the section.</p>