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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
) S-15-001 and S-15-002
)
 FOSS MARITIME COMPANY)
) **DPD MOTION TO DISMISS CLAIMS**
)
 from an interpretation by the Director,)
 Department of Planning and Development.)
)

I. RELIEF REQUESTED

The scope of this appeal is narrow: what activities are within the SMP definition “cargo terminal” and do the appellant’s activities at the cargo terminal fit either within that definition or the SMP definition of an “accessory use” to a cargo terminal. The combined appeals identify 34 issues, some with multiple contentions within an issue. Nineteen issues or sub-issues are outside of the Hearing Examiner’s jurisdiction. Thirteen issues or sub-issues within the Hearing Examiner’s jurisdiction can be resolved as a matter of law. The Department of Planning and Development for the City of Seattle moves to dismiss such claims to focus the hearing.

II. BACKGROUND

The decision on appeal is DPD Interpretation No. 15-001 (Ex. 1), concluding the use “cargo terminal” established for Terminal 5 does not include moorage for an oil rig and its

1 accompanying vessels and that an additional permit is necessary for such moorage. This
2 Interpretation does not determine what permit might be appropriate.¹ The Interpretation does not
3 prohibit the oil rig and accompanying vessels from mooring in the City under additional permits
4 at this site² or at other locations in the City that already have appropriate permits.

5 The DPD Director issued the Interpretation pursuant to the authority in the Seattle
6 Municipal Code (SMC) providing that “an interpretation . . . may be initiated by the Director.”³
7 The Interpretation states it “was generated by the Department of Planning and Development
8 (DPD) in response to general questions it has received regarding the proposal to moor an
9 exploratory drill rig and two accompanying tugboats at the Port of Seattle’s (Port’s) Terminal 5
10 facility for periods of approximately six months per year when the drilling rig is not in use in the
11 Artic.”⁴ A shorthand summary of the Interpretation (not to be used in place of the more nuanced
12 Interpretation, itself) is that vessels in the business of transporting cargo from place to place may
13 moor, load, unload, provision, and lay berth (moor between trips, including wintering-over), but
14 vessels and floating structures not in the business of transporting cargo may not moor, load, or
15 provision at a cargo terminal without an additional use permit.

16 There is no dispute Terminal 5 is in the “Shoreline District,” a special review district
17 created in SMC Chapter 23.60⁵ that is part of the City’s required Shoreline Master Program
18 (SMP) adopted by the City and approved by the Washington State Department of Ecology

19 _____
20 ¹ Based on the Shoreline Master Program, unknown historical facts, and the scope of the Port’s activities, several
different types of permit could be appropriate (e.g., commercial moorage, a permit establishing the use for the
record, or a shoreline conditional use permit).

21 ² Sites may have more than one use; e.g., Terminal 91, which appellants describe as a cargo terminal use (Appeal of
Port of Seattle, p. 2, lines 3-4), also has use permits for “public facilities” (fireboats – Master Use Permit 3017290)
22 and “passenger terminal” (cruise ships - MUP 3006901). Ex. 2, face page and signature page only.

³ SMC 23.88.020.A. All sections of the SMC cited are attached as Ex. 3.

⁴ Ex. 1, p. 1, Background, ¶ 1.

23 ⁵ Chapter 23.60 will be superseded by Chapter 23.60A effective June 15, 2015. This motion includes citations to
23.60A as well as Ch. 23.60, and cited sections of Ch. 23.60A are set out in Ex. 4.

1 (Ecology), pursuant to RCW Chapter 90.58, the Shoreline Management Act (SMA). The SMP
2 regulations, including procedures, standards, and definitions, are “superimposed upon and
3 modify the underlying land use zones.”⁶ In particular, uses must be permitted in both the
4 Shoreline District and the underlying zone.⁷

5 “Cargo terminal” is defined in the SMP.⁸ Appellants do not dispute the cargo terminal
6 use is established in DPD permits, nor do appellants contend that DPD has issued permits
7 specifically identifying additional uses for this site, as DPD has for Terminal 91. Whether an
8 additional use is established by pre-SMP historic use not identified in later SMP permits is
9 outside the scope of this appeal, as discussed below in Section IV.E.

10 The issues before the Hearing Examiner are: (1) what activities are allowed at an SMP
11 “cargo terminal,” as a matter of law; (2) what activities are being carried out on/by the oil rig and
12 accompanying vessels at the cargo terminal, as a matter of fact de novo; (3) whether mooring the
13 oil rig and its accompanying vessels at the cargo terminal is within the definition of “cargo
14 terminal,” as a matter of law; and (4) if not, whether such activities are “accessory” to a cargo
15 terminal under the SMP definition of “accessory use,” as a matter of law.⁹

16 All other issues should be dismissed as outside the Hearing Examiner’s jurisdiction.

17 III. HEARING EXAMINER JURISDICTION

18 Hearing Examiner Rule 3.02(a) provides that the Hearing Examiner may dismiss an appeal
19 without a hearing if the appeal fails to state a claim for which the Hearing Examiner has jurisdiction
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22 ⁶ SMC 23.60.014; 23.60A.016.A.

⁷ SMC 23.60.014.A; 23.60A.016.B.

23 ⁸ SMC 23.60.906; 23.60A.906.

⁹ *Clamshacks v. Skagit County*, 45 Wn. App. 346, 351, 725 P.2d 459 (1986).

1 to grant relief,¹⁰ and subsection 3.02(b) provides that part of an appeal similarly may be dismissed.

2 The Hearing Examiner's jurisdiction is limited to the scope of review specifically set out in
3 the Seattle Municipal Code (SMC).¹¹ For interpretations, "Appeals shall be considered de novo,
4 and the decision of the Hearing Examiner shall be made upon the same basis as was required of the
5 Director."¹² Also, "The Hearing Examiner may affirm, reverse or modify the Director's
6 interpretation either in whole or in part or may remand the interpretation to the Director for further
7 consideration."¹³ The basis for the Director's interpretation is set out in SMC 23.88.020.A:

8 Interpretations generally. A decision by the Director as to the meaning, application or intent
9 of any development regulation in Title 23 or in Chapter 25.09, Regulations for
10 Environmentally Critical Areas, as it relates to a specific property, or a decision by the
Director upon review of a determination of consistency of a proposed project with a planned
action ordinance, is known as an "interpretation." . . .

11 Therefore, the Hearing Examiner's jurisdiction is limited to determining de novo the
12 meaning, application, or intent of "cargo terminal" and "accessory use" at a cargo terminal as
13 defined in the SMP portion of the SMC and determining how those terms are applied to the facts
14 relating to Terminal 5 presented at the hearing. Issues outside of the Hearing Examiner's
15 jurisdiction should be dismissed, as set out below.

16 IV. FOSS ISSUES TO BE DISMISSED

17 The issues or sub-issues DPD moves to dismiss are set out in numeric order starting with
18 appellant Foss's issues.¹⁴ They include issues based on lack of jurisdiction and issues where
19 there is no issue of fact and DPD will prevail as a matter of law.

21 ¹⁰ *In the Matter of the Appeals of International Community Health Services and Capitol Hill Housing*, W-15-002
and 15-003.

22 ¹¹ *Chausee v. Snohomish County Council*, 38 Wn.App. 630, 636, 689 P.2d 1084 (1984).

23 ¹² SMC 23.88.020.G.5 (emphasis added).

¹³ SMC 23.88.020.G.6.

¹⁴ Foss's Notice of Appeal uses bullets rather than numbers; the City has numbered Foss's issues as shown on Ex. 5.

1 **A. Foss issue 1 (part) – Reliance on regulations not applicable in the Shoreline**
2 **District**

3 Foss cites the definition of “cargo terminal” set out in SMC Ch. 23.84A,¹⁵ but that definition
4 does not apply to this Interpretation. As the Background section notes, to be permitted in the
5 Shoreline District a use must be permitted in both the shoreline environment¹⁶ and the underlying
6 zone.¹⁷ The SMP defines cargo terminal for the shoreline environment.¹⁸ If both the SMP and Ch.
7 84A for the underlying zone define the same term, the SMP states the SMP definition controls,¹⁹
8 and Foss’s citation to Ch. 84 should be dismissed.

9 **B. Foss Issue 3 - Past inconsistent DPD actions or enforcement**

10 Foss asserts the Interpretation misconstrues the scope of “cargo terminal” because it is
11 inconsistent with how DPD has “implemented and enforced” cargo terminal in the past. This
12 should be dismissed for two reasons: The Hearing Examiner lacks jurisdiction to hear issues based
13 on estoppel.²⁰ And, even if jurisdiction existed, prior incorrect applications of the Code to other
14 sites does not prevent correctly applying the definition to this site, due to the public’s interest in
15 zoning,²¹ failure to enforce in other situations does not bar correct application here, as a matter of
16 law.²² Therefore, both DPD and the Hearing Examiner may correctly interpret the law through this
17 Interpretation without regard to prior construction of the Code on other sites.

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20 ¹⁵ Foss cites SMC 23.84A.046; that section is the definition of words beginning with the letter “Y” and has no
21 applicability. Likely, Foss intended to cite the cargo terminal definition in SMC 23.84A.038.

22 ¹⁶ A “shoreline environment” is the term for a Shoreline District “zone.”

23 ¹⁷ SMC 23.60.014.A; SMC 23.60A.016.B.

¹⁸ SMC 23.60.906 and 23.60A.906.

¹⁹ SMC 23.60.900; SMC 23.60A.900.

²⁰ *Chausee, op. cit.*, footnote 11.

²¹ *Buechel v State Dept. of Ecology*, 125 Wn2d. 196, 211, 884 P.2d 910 (1994).

²² *Mercer Island v. Steinman*, 9 Wn. App. 479, 483, 513 P.2d 80 (1973). *Dykstra v. Skagit County*, 97 Wn. App.670,
677, 985 P.2d 424 (1999), rev. denied 140 Wn. 2d 1016 (2000).

1 **C. Foss Issue 5 - Reliance on regulations not applicable in the Shoreline District**

2 Similar to issue 1, Foss erroneously cites the definition of “accessory use” in SMC
3 23.84A.040 and the Director’s authority for determining “accessory” and “incidental” uses in SMC
4 23.42.020. Because the site is in the Shoreline District, regardless of whether the activity could be
5 accessory or incidental in the underlying zone, it must also be consistent with the definition for
6 accessory use in the SMP,²³ and citations to these non-SMP provisions should be dismissed.

7 **D. Foss Issue 7 – Failure to appeal prior permits for Terminal 5 use**

8 Foss asserts DPD is barred from issuing this Interpretation because DPD failed to timely
9 appeal other permits for this site that allegedly approved mooring the oil rig, citing DPD’s recent
10 decision granting an exemption from a shoreline substantial development permit to allow the
11 Port to replace bollards. Although this limited purpose permit did not determine the scope of the
12 term “cargo terminal” as Foss asserts, this issue is based on estoppel. It is based on the principle
13 that local governments lack authority to change the scope of issued permits after the LUPA appeal
14 period expires.²⁴ Estoppel is outside the Hearing Examiner’s jurisdiction (see Foss issue 3).

15 **E. Foss Issue 8 – The oil rig’s activity is a legally permissible non-conforming
16 use under Ch. 23.42**

17 It is undisputed that permits issued for the site under the SMP establish only a cargo
18 terminal use. In reviewing an interpretation the Hearing Examiner lacks jurisdiction to determine
19 whether activities conducted on the site prior to the adoption of the SMP are sufficient to establish
20 an additional use that is not identified in existing SMP permits. DPD would make such a
21 determination under the procedure “establishing the use for the record,” which applies if the use is
22 either “something that can be approved under present City codes or something that could have been

23 ²³ SMC 23.60.014.A and 23.60.900; SMC 23.60A.016.B and 23.60A.900.

²⁴ *Chelan County v. Nykreim*, 146 Wn. 2d 904, 933 and 9338-40, 52 P.3d 1 (2002).

1 authorized at its present location in the past and has existed since that time.”²⁵ The appeals do not
2 identify such a determination as the matter being appealed.²⁶ Such a determination is not before the
3 Hearing Examiner on this appeal, and on an appeal of an interpretation the Hearing Examiner has
4 no jurisdiction to undertake such a determination prior to DPD.²⁷

5 **F. Foss issue 9 – Vested right to proceed under earlier permits**

6 Foss claims the “right to proceed . . . is a right vested . . . under prior permits issued relating
7 to Terminal 5.” This claim is based on the continued legitimacy of those past permits, rather than
8 “vesting,”²⁸ and so is essentially the same issue as Foss issue 7. Both are *Nykreim* estoppel
9 arguments that past permits control and cannot be changed by the Interpretation; the Hearing
10 Examiner has no jurisdiction to consider estoppel.

11 **G. Foss Issue 11 – Compliance with interpretation procedures**

12 Foss contends that the Interpretation failed to follow the procedural requirements for
13 issuing an interpretation in SMC 23.88.020. No provision expressly states that the Hearing
14 Examiner has jurisdiction to review whether DPD followed the correct interpretation procedures,
15 and so this issue may be dismissed. In addition, DPD correctly followed the interpretation
16 process for an interpretation that is not issued as part of an application for a permit.

17 It is undisputed that this Interpretation does not relate to a “project application under
18 consideration.” Neither the Interpretation nor the appeals identify such an application. Both
19 appeals contend that the Interpretation conflicts with permits already issued. All parties agree
20 the Interpretation is appealable to the Hearing Examiner; this is based on the provision allowing

21 ²⁵ Tip 217, “How to Legalize a Use not Established by Permit.” Ex. 6.

22 ²⁶ Port Appeal, p. 4; Foss Appeal, p. 2.

23 ²⁷ Additionally, Foss issue 8 states that nonconforming uses are governed by chapter 23.42, but SMC 23.42.100 states it does not apply in the “shoreline overlay district.”

²⁸ Vesting is a statutory right to have permits processed under the regulations in effect at the time a permit application has progressed sufficiently. *Portala Village v. City of Kirkland*, 183 Wn.App. 191, 202, 334 P.3d 1143 (2014). Here Foss asserts the permits are already issued, and “vesting” does not apply.

1 appeals of an “interpretation that is unrelated to any specific project application.”²⁹ The only
2 procedural requirements are to provide notice of the interpretation in the Land Use Information
3 Bulletin and to Ecology, which the City did.³⁰ The Hearing Examiner should dismiss this issue.

4 **H. Foss Issues 12, 13, and 14 – DPD actions outside the Interpretation decision**

5 The scope of the Hearing Examiner’s jurisdiction in an appeal of an interpretation is the
6 same as the DPD Director’s in issuing the interpretation.³¹ The Hearing Examiner lacks jurisdiction
7 to hear issues about DPD actions outside the determination made in the Interpretation, itself: how
8 the Director will “apply” the interpretation in the future (Foss issue 12, at p. 7, lines 19-22, and Foss
9 issue 14); and whether the Director has changed the Interpretation in a subsequent document that is
10 not part of this appeal (Foss issue 13). These claims should be dismissed.

11 **I. Foss Issue 15 - Reliance on regulation not applicable in the Shoreline District**

12 Foss claims the Interpretation errs in stating that the DPD Director lacks authority to
13 interpret or define principal and accessory uses unlisted in the SMP by finding them substantially
14 similar to listed uses. Foss ignores the plain language in SMC 23.42.010 and is inconsistent with
15 the SMP’s different process for unlisted uses in shoreline environments, required by the Washington
16 State Department of Ecology administrative rules.

17 The Interpretation considers whether the Director has the authority to determine that
18 mooring the oil rig and accompanying vessels, although not part of the cargo terminal use, is an
19 unlisted use that is sufficiently similar to a use allowed in the zone to authorize such moorage.
20 Interpretation Finding of Fact 9 sets out the Director’s authority to make this determination under
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23 ²⁹ SMC 23.88.020.F.1.

³⁰ SMC 23.88.020. E; Ex. 7: Land Use Bulletin and Ecology notice

³¹ SMC 23.88.020.G5 and 6. See section III above.

1 SMC 23.42.010;³² and Interpretation Conclusion 8 determines that authority cannot be applied in
2 the Shoreline District because SMC 23.42.010 is specifically limited to uses in “zones” regulated in
3 Subtitle III, Division 2, and the regulations for uses in “shoreline environments” in the Shoreline
4 District are in regulations for overlay districts, Subtitle III, Division 3. Foss cannot sustain its
5 argument by ignoring express limitations on the Director’s authority, and this issue should be
6 dismissed.

7 In addition, Ecology’s administrative rules provide say unlisted uses in the Shoreline District
8 are allowed using the conditional use process,³³ and the SMP so provides.³⁴

9 **J. Foss Issue 16 – Arbitrary treatment**

10 Foss contends the Interpretation is an arbitrary action representing selective and inconsistent
11 interpretation and enforcement of the Land Use Code, singling out Foss for discriminatory
12 treatment. This claim is outside the Hearing Examiner’s jurisdiction. As noted above, the Hearing
13 Examiner’s jurisdiction on an interpretation appeal is the same as the DPD Director’s. Arbitrary
14 action and selective interpretation and enforcement by DPD are not a listed grounds for the Hearing
15 Examiner’s review. The Hearing Examiner considers appeals de novo.

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18 ³² “Principal uses not listed in the respective zones of Subtitle III, Division 2 of SMC Title 23, Land Use Code shall
19 be prohibited in those zones. If a use is not listed, the Director may determine that a proposed use is substantially
20 similar to other uses permitted or prohibited in the respective zones, therefore, and should also be permitted or
21 prohibited.”

22 ³³ WAC 173-27-160 Review criteria for conditional use permits: “(3) Other uses which are not classified or set forth
23 in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate
consistency with the requirements of this section and the requirements for conditional uses contained in the master
program.” Ex. 8.

³⁴ SMC 23.60.034: “Uses or developments which are identified in this chapter as requiring shoreline conditional use
approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the
underlying zones and are not prohibited in the Shoreline District, may be approved, approved with conditions or
denied by the Director in specific cases based on the criteria in WAC 173-27-160, as now constituted or hereafter
amended, and any additional criteria given in this chapter. Upon transmittal of the Director’s approval to the
Department of Ecology (DOE), the permit may be approved, approved with conditions or denied by DOE.” See,
SMC 23.60A.034.A.2.

1 arguments are outside the jurisdiction of the Hearing Examiner and should be dismissed. See Foss
2 issue 7.

3 **C. Port Issue 4 – Other SMP provisions obviate the need for a permit**

4 The Interpretation concludes that an additional permit is needed to moor the oil rig and
5 accompanying vessels, because such mooring is not part of the established “cargo terminal” use.
6 The Port erroneously contends that no permits are needed because “moorage” is a permitted use
7 in the shoreline environment and no shoreline substantial development permit (SSDP) is needed
8 to establish a use.

9 No SSDP is needed to establish a use because the activity of moorage at existing piers is
10 not “development” under the SMP.³⁵ However, the Shoreline Management Act regulates “uses”
11 as well and requires compliance with SMP regulations even when there is no development and
12 no SSDP is required.³⁶

13 The City’s SMP implements this stating:

14 “No development shall be undertaken and no use, including a use
15 that is located on a vessel, shall be established in the Shoreline
16 District unless the Director has determined that it is consistent with
17 the policy of the Shoreline Management Act and the regulations of
18 this chapter. This restriction shall apply even if no substantial
19 development permit is required.”³⁷

20 Compliance with the regulations of the chapter for establishing a use is determined via a standard
21 Master Use Permit, a DPD permit required to establish or change a use.³⁸

22 The Port’s erroneously contends that because Urban Industrial shoreline environment
23 standards list moorage as a “permitted” use there is no need to actually obtain a permit. Uses in

35 SMC 23.60.908; SMC 23.60A.908.

36 *Clam Shacks of America, Inc. v. Skagit County*, 109 Wn.2d 91, 95-96, 743 P.2d 265 (1987).

37 SMC 23.60.016; SMC 23.60A.012

38 SMC 23.40.002.A and B.

1 the Shoreline District are categorized as “permitted” (or “permitted outright”), “special uses
2 permitted,” “conditional uses,” and “prohibited uses”³⁹ to regulate the process for obtaining the
3 use permit required by SMC 23.40.002. This follows the convention in the zoning provisions of
4 Title 23, which similarly designate uses. Nothing in Title 23 or Ch. 23.60 overrides the
5 requirement in SMC 23.40.002 to obtain a permit to establish permitted uses, otherwise no use
6 permit would be needed for any permitted use, only for special and conditional uses. The Port’s
7 issue should be dismissed.

8 **D. Port Issue 5 (part) and Foss Issue 18 – Regulating the operation of vessels**

9 Appellants contend DPD is regulating the operation of vessels in violation of SMC
10 23.60.018⁴⁰ or regulating vessels based on vessel operations at sea (for which appellants identify no
11 legal impediment). The City’s use regulations for types of moorage are based on the use of the
12 shoreline and do not regulate the “operation of vessels.”

13 The SMP identifies and defines various types of moorage: e.g., passenger terminal,
14 recreational marina, commercial moorage, tugboat services. These reflect the activities that occur
15 while the vessel is moored. A cargo terminal is for storing and transferring goods (regardless of
16 whether they arrive or leave via vessels), and includes accessory warehouses, railroad yards, storage
17 yards, and offices.⁴¹ At passenger terminals passengers disembark from carriers such as ferries, and
18 the use typically include ticket counters, waiting areas, management offices, and activities for
19 passengers.⁴² Commercial moorage is a use that leases or sells piers or slips primarily for

20 _____
21 ³⁹ See e.g., 23.60.840 – 23.60.848. The new SMP uses the identifier “P = allowed by permit” in its use tables; see,
e.g. Table A for 23.60A.482.

22 ⁴⁰ SMC 23.60.018, states in part: “Except as specifically provided otherwise, the regulations of this chapter shall not
apply to the operation of boats, ships and other vessels designed and used for navigation . . .” See, SMC
23.60A.018.

23 ⁴¹ SMC 23.60.906; 23.60A.906. Cargo terminals on waterfront lots are allowed if they are water-dependent (SMC
23.60.090.B), i.e., shipping cargo by water, and therefore, mooring vessels while loading/unloading is included.

⁴² SMC 23.84A.038, Transportation facility, subsection 3.

1 commercial vessels, except barges, and may include minor vessel repair, haulout, dry boat storage,
2 tugboat dispatch offices, etc.⁴³ A recreational marina is a use that leases or sells piers or slips
3 primarily for recreational vessels, with minor vessel repair, haulout, and other services for that type
4 of use.⁴⁴ In addition, the SMP has special regulations for recreational marinas related to sewage,
5 transient moorage, etc.⁴⁵

6 These differentiations do not regulate how a vessel operates at sea, they regulate where
7 vessels moor when they are on the shoreline and create a common-sense approach to segregating
8 vessels that may have varying needs for maneuvering and services. A vessel wishing to unload
9 container cargo needs different types of piers and available services than a typical recreational
10 vessel. If a large commercial vessel not engaged in cargo terminal activity needs a deeper channel
11 or more complex provisioning capabilities than what is on offer at commercial moorage sites, as
12 appellants assert, then sites with the desired attributes can obtain a permit for commercial moorage,
13 just as Terminal 91, which is a cargo terminal, obtained additional permits for mooring fireboats
14 (public facility use) and cruise ships (passenger terminals).

15 If SMC 23.60.018 precluded the City from differentiating among the types of moorage,
16 these use categories would have no meaning, and vessels would be able to moor anywhere. This is
17 inconsistent with the Shoreline Management Act directive to regulate uses along the shoreline.⁴⁶

18 **E. Port Issue 6 – Interpretation is arbitrary in a constitutional sense**

19 Part of Port issue 6 raises similar issues to Port issue 5, in alleging the Interpretation is
20 based on a vessel's operation at sea, and should be dismissed.

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22 ⁴³ SMC 23.60.906; "commercial marina" SMC 23.60A.926

⁴⁴ SMC 23.60.926; SMC 23.60A.926

⁴⁵ SMC 23.60.200; SMC23.60A.200

23 ⁴⁶ RCW90.58.080(1) "Local governments shall develop or amend a master program for regulation of uses. . . .";
RCW 90.58.020; *Clam Shacks*, 109 Wn.2d 91, 95-96, 743 P.2d 265 (1987).

1 Issue 6 also contends the Interpretation is arbitrary in violation of the Washington State
2 Constitution because it is based on a vessel's operation at sea and on DPD's alleged disapproval
3 of the oil rig's functions away from the mooring at Terminal 5. DPD's motivation and whether
4 DPD's interpretation was arbitrary are not grounds for the Hearing Examiner decisions under
5 23.88.020, and the Hearing Examiner lacks jurisdiction over constitutional issues (see Foss
6 issues 17, 19 and Section III).

7 **F. Port Issue 7 – Criteria in the SMP accessory use definition ignored**

8 The Port contends: (1) the Interpretation improperly relies on the use of the vessel at sea
9 (addressed in Port Issue 5, and should be dismissed); (2) no shoreline use allows mooring and
10 provisioning of large ships that are not cruise ships (addressed in Port issue 11, and should be
11 dismissed); and (3) DPD's analysis "focuses on the word intrinsic and effectively ignores the word
12 incidental" (p. 7, lines 9 - 14). This issue is wrong as a matter of law.

13 The Port acknowledges the SMP definition of "accessory use" requires the use be both
14 "incidental and intrinsic."⁴⁷ That being the case, if one attribute is lacking, the use cannot be
15 "accessory" in the Shoreline District. The Port's argument that the Interpretation is flawed because
16 it allegedly does not fully address whether the proposed moorage is also "incidental" to a cargo
17 terminal is irrelevant - because moorage of the oil rig and its accompanying vessels is not "intrinsic"
18 to a cargo terminal use, it cannot be "accessory."

19 In addition, the Port relies on an inaccurate restatement from the Interpretation: "cargo
20 vessels would not be permitted at cargo terminals because their moorage would be intrinsic to such
21 use, but not incidental."⁴⁸ The Interpretation says the opposite:

22 We accept that lay berthing of vessels otherwise used for

23 ⁴⁷ Port Appeal, p. 7, lines 11-12.

⁴⁸ Port Appeal, p. 7, lines 13-14.

1 transporting goods in the stream of commerce may be regarded as
2 incidental and intrinsic to the function of a cargo terminal. This
3 recognizes that shipment of some sorts of goods is seasonal and that
4 vessels involved in that sort of trade are necessarily idle for periods
5 of the year.⁴⁹

6 **G. Port Issue 8 – SMP use process vitiates SMP “accessory use” definition**

7 The Port erroneously contends that pending SMC 23.60A.090.B (currently 23.60.092)
8 obviates demonstrating a proposed accessory use meets the SMP definition of “accessory use” –
9 “incidental and intrinsic” to the principal use. This claim misreads the Code and should be
10 dismissed.

11 SMC 23.60.092.A states (emphasis added):

12 Any principal use permitted in a specific shoreline environment
13 either outright, or as a special use, conditional use or Council
14 conditional use shall also be permitted as an accessory use outright
15 or as a special use, conditional use or Council conditional use,
16 respectively.

17 Similarly, SMC 23.60A.090.B states (emphasis added):

18 B. Any principal use allowed, allowed as a special use, allowed as
19 a shoreline conditional use, or allowed as a Council conditional use
20 in a specific shoreline environment may be an accessory use using
21 the same process as if the use were the principal use, unless the use
22 is prohibited as an accessory use in the shoreline environment. For
23 the purposes of this subsection 23.60A.090.B, water-based
airports, heliports, and helistops shall not be considered to be
accessory to a principal use and are allowed pursuant to the
applicable shoreline environment.

Both sections state a use that meets the SMP accessory use definition can be allowed in the
particular shoreline environment via the appropriate use process: a permitted, special, or conditional
use. These sections set out the applicable permit process for a use that already meets the accessory
definition. Otherwise, the definition of “accessory use” would be surplusage. Under the Port’s

⁴⁹ Ex. 1, Interpretation, p.5, Conclusion 11, emphasis added.

1 reasoning, any use permitted outright in the shoreline environment could automatically qualify as an
2 accessory use, even if that use were entirely unrelated to the principal use.

3 **H. Port Issue 9 – Violation of Public Trust Doctrine**

4 The Port contends the Interpretation violates the Public Trust Doctrine, independent of
5 being inconsistent with the SMP. That doctrine is reflected in the SMA and consequently in the
6 City's SMP. The Hearing Examiner has no jurisdiction to apply it apart from determining
7 consistency with the SMP, because the Hearing Examiner's jurisdiction is limited to applying
8 Title 23, just as the DPD Director's authority is (see Section III). This issue should be dismissed

9 **I. Port Issue 10 and Foss Issue 19 – Inconsistency with SMA use priorities**

10 Appellants contend Interpretation interferes with a Port priority conferred by RCW
11 90.58.020, the Shoreline Management Act,⁵⁰ which identifies the following activities as priority
12 uses:

13 In the implementation of this policy the public's opportunity to
14 enjoy the physical and aesthetic qualities of natural shorelines of
15 the state shall be preserved to the greatest extent feasible consistent
16 with the overall best interest of the state and the people generally.
17 To this end uses shall be preferred which are consistent with
18 control of pollution and prevention of damage to the natural
19 environment, or are unique to or dependent upon use of the state's
20 shoreline. Alterations of the natural condition of the shorelines of
21 the state, in those limited instances when authorized, shall be given
22 priority for single-family residences and their appurtenant
23 structures, ports, shoreline recreational uses including but not
limited to parks, marinas, piers, and other improvements
facilitating public access to shorelines of the state, industrial and
commercial developments which are particularly dependent on
their location on or use of the shorelines of the state and other
development that will provide an opportunity for substantial
numbers of the people to enjoy the shorelines of the state.⁵¹

⁵⁰ Port issue 10 refers to the "SMP," but cites to RCW 90.58.020, the SMA.

⁵¹ RCW 90.58.020, part.

1 Based on this context, "ports" means port activities or uses established by a port through a use
2 permit, rather than activities carried out by the Port of Seattle without a use permit. Being a
3 "priority" use means the SMP should designate areas for these uses on the water and waterfront
4 lots before other uses that are not water-dependent or water-related.⁵²

5 Identifying a priority use has nothing to do with whether an additional use permit is needed
6 to carry out that use. Requiring use permits is the function of the SMA for all uses, with no
7 exemption for priority uses.⁵³ If DPD decided a second use permit is needed for an additional
8 priority activity on a site controlled by the Port, such as water-dependent commercial moorage, that
9 is not inconsistent with the priorities created in the SMA. Under appellants' theory, if a port has a
10 permit for any one port activity, that permit would automatically include every possible port activity
11 or else be "impermissible interference." That result is inconsistent with the SMA.

12 **J. Port Issue 11 and 7 (part) – Inconsistency with Alaska Gateway and moorage**
13 **provisions of the City's Comprehensive Plan.**

14 The Port erroneously contends the Interpretation bars moorage for large commercial
15 vessels and thus violates amended Comprehensive Plan provision LU 270.⁵⁴ Nothing in the
16 Interpretation bars obtaining such a permit. If there were a dispute whether an existing use
17 classification applies to mooring the oil rigs and accompanying vessels, the SMP says unlisted
18 uses can be accommodated through the conditional use process.⁵⁵ Comprehensive Plan policies
19 to be an Alaskan gateway and to accommodate moorage needs for all vessels are not defeated by
20 requiring a use permit for general commercial moorage on a site that has a cargo terminal permit.

21 ⁵² WAC 173-26-201(2)(d): "As summarized in WAC 173-26-176, the act establishes policy that preference be given
22 to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use
23 the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when
discussing appropriate uses for various shoreline areas.

⁵³ RCW90.58.080(1): "Local governments shall develop or amend a master program for regulation of uses on
shorelines of the state . . ." *Clamshacks, op. cit.*

⁵⁴ Ex. 9.

⁵⁵ SMP 23.60.034; SMC 23.60A.034.

1 14, 15. Other issues or sub-issues can be dismissed because they cite SMC provisions that do not
2 apply in the Shoreline District, or they are issues in which there is no issue of fact and the claim can
3 be decide as a matter of law.
4

5 DATED this 15th day of June, 2015.

6 PETER S. HOLMES
7 Seattle City Attorney

8 

9 By: s/Eleanore S. Baxendale, WSBA #20452
10 Assistant City Attorney
11 eleanore.baxendale@seattle.gov
12 Seattle City Attorney's Office
13 701 Fifth Ave., Suite 2050
14 Seattle, WA 98104-7097
15 Ph: (206) 684-8232
16 Fax: (206) 684-8284
17 *Attorneys for Respondent*
18 *Department of Planning and Development*
19
20
21
22
23

Exhibit 1

EXHIBIT 1

Interpretation of the Director Under Seattle Municipal Code Title 23

Regarding the Use of the
Property at
2701 - 26th Avenue SW (Terminal 5)

DPD Interpretation No. 15-001
(DPD Project No. 3020324)

Background

This interpretation was generated by the Department of Planning and Development (DPD) in response to general questions it has received regarding a proposal to moor an exploratory drilling rig and two accompanying tugboats at the Port of Seattle's (Port's) Terminal 5 facility for periods of approximately six months per year when the drilling rig is not in use in the Arctic. The central issue is whether this proposed moorage is consistent with the legally established use of the property as a cargo terminal or whether a permit must be obtained to establish a different or additional use. The Port and its lessee, Foss Maritime (Foss), have been cooperative in providing information about proposed activities at Terminal 5.

Media reports indicate that two drilling rigs are destined for Seattle: the Polar Pioneer and the Noble Discoverer. The information provided by the Port indicates that only one of these, Polar Pioneer, would moor at Terminal 5. This interpretation is based on the Port's representations.

Findings of Fact

1. The Port's Terminal 5 facility is at the north end of the Duwamish River, near Harbor Island, and located in an IG1 U/85 (General Industrial-1) zone and a UI (Urban Industrial) shoreline environment.
2. Seattle Municipal Code (SMC) Section 23.40.002 requires a permit in order to establish or change the use of a property. The recognized existing use of the Terminal 5 facility, as reflected in decisions including Projects 9404118 and 9404124, is as a cargo terminal.
3. Foss entered into a two-year lease of Terminal 5 with the Port on February 9, 2015. By the terms of the lease, Foss is to use the facility as a marine cargo terminal. In an April 8 letter to DPD, Foss expressed its intent to load and unload its own vessels as well as those

- of other customers at Terminal 5 during the lease. The Foss representative said Foss intended to receive and move goods, cargo, equipment, supplies, stores, provisions and other materials into the vessels associated with the drilling rig, for transportation to other locations. The letter indicates that the services they intend to provide for Shell Offshore would be a fraction of the activity they hope to conduct at Terminal 5.
4. As reported in the Seattle P-I, the Polar Pioneer is a 400-foot tall, 292-foot drilling rig. The Peninsula Daily News describes it as a 400-foot-long, 355-foot-tall rig. Based on the media reports, the Polar Pioneer was delivered to Port Angeles aboard a heavy-lift ship, to be unloaded and towed to Seattle. Based on information provided by the Port and Foss, the drilling rig and two tugboats would be moored at Terminal 5 for several months out of the year.
 5. The Port has indicated that a variety of types of vessels use its facilities. The Port documented that its fee schedules include specific fees for "lay berthing" of vessels that are not actively being loaded or unloaded. The Port has asserted that this is common and necessary, as much cargo activity is seasonal, and some vessels used to transport cargo sit idle during the off-season.
 6. Seattle's current Shoreline Master Program is codified at SMC Chapter 23.60, which is a part of Subtitle III, Division 3 of Title 23. An updated shoreline master program has been approved by the City and is awaiting final approval by the Washington State Department of Ecology. DPD anticipates that the new provisions will take effect later in May.
 7. "Cargo terminal" is defined at SMC 23.60.906 as:

[A] transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or stored outdoors in order to transfer them to other locations. Cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices.
 8. The definition of "cargo terminal" under the new provisions, to be codified at SMC 23.60A.906, remains the same as the current definition, apart from minor punctuation changes, such as addition of a comma after "carriers."
 9. SMC 23.42.010 provides in part:

Principal uses not listed in the respective zones of Subtitle III, Division 2 of SMC Title 23, Land Use Code shall be prohibited in those zones. If a use is not listed, the Director may determine that a proposed use is substantially similar to other uses permitted or prohibited in the respective zones, therefore, and should also be permitted or prohibited.

10. SMC 23.42.020.A provides in part:

Any accessory use not permitted by Title 23, either expressly or by the Director, shall be prohibited. The Director shall determine whether any accessory use on the lot is incidental to the principal use on the same lot, and shall also determine whether uses not listed as accessory uses are customarily incidental to a principal use.

11. For purposes of the Land Use Code generally, "accessory use" is defined at SMC 23.84A.040 as "a use that is incidental to a principal use." A more specific and limiting definition of "accessory use" is provided for purposes of the current shoreline code at SMC 23.60.940: "a use which is incidental and intrinsic to the function of a principal use and is not a separate business establishment unless a home occupation." This definition remains the same under the new shoreline provisions, at SMC 23.60A.940.

12. "Good" is defined, in relevant part, by Webster's New Collegiate Dictionary (based on Webster's third new international dictionary) as:

3 . . . *bp* : personal property having intrinsic value but usu. excluding money, securities and negotiable instruments . . . *dp* : WARES, COMMODITIES, MERCHANDISE <canned ~s>

Conclusions

1. The activity that is the subject of this interpretation is the proposed moorage of an oil-drilling rig and two accompanying tugboats that would be located at the Port's Terminal 5 facility during winter months when this equipment is not being used for exploratory drilling in the Arctic. In recent years permits for this property have characterized the use as a "cargo terminal."
2. The question raised is whether the proposed activity requires a permit to legally establish a use that allows this moorage. The analysis may be broken down into two sub-questions:
 - Is the proposed activity properly characterized as a "cargo terminal" use based on the definitions in the current code, and in the updated shoreline master program the City is in the process of adopting; and
 - If the proposed activity does not specifically match the activities described in the cargo terminal definition, may the proposed activity nevertheless be allowed as an accessory use, without obtaining a separate use permit?

Consistency with current and future use definitions

3. Under the current and the proposed new shoreline standards, a cargo terminal is a **transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or**

stored outdoors in order to transfer them to other locations. (The proposed new definition adds a comma after "carriers.")

4. **Is Terminal 5, if used for the proposed activity, a "transportation facility"?** This term is not defined within the shoreline code, but is generally defined in the Land Use Code, at Section 23.84A.038 as "a use that supports or provides the means of transporting people and/or goods from one location to another." One of the subcategories in the general definition is parking and moorage. The proposed activity would support the transportation of the equipment to and from the Arctic, and falls within the range of uses listed under the broad category of "transportation facility."
5. **Does the proposed activity involve "quantities of goods or container cargo"?** Neither the drilling rig nor the tugboats would carry container cargo. The definition of cargo terminal is broad enough to include transportation of many different types of goods, in greatly differing quantities. The exploratory drilling equipment affixed to the drilling rig, however, would not fall under the definition of "goods" as it is used under the code, nor could the drilling rig itself be considered "quantities of goods or container cargo."
6. **If the equipment on the drilling rig could be considered goods, would they be "stored without undergoing any manufacturing processes, transferred to other carriers, or stored outdoors in order to transfer them to other locations"?** This provides three options for activities that might occur at a cargo terminal: storage without manufacturing, transfer to other carriers, or outdoor storage. The unifying theme is that the goods are at the cargo terminal **in order to be transferred to other locations.** The drilling rig would be at Terminal 5 only for purposes of seasonal storage. Terminal 5 would not serve as stop where the rig or the equipment on it would be stored or transferred in the course of transit from a starting location to an ultimate destination.
7. The two tugboats that would accompany the drilling rig with the equipment likewise would not bear quantities of goods in the process of being transferred to other locations, apart from provisioning that might be anticipated for vessels at moorages generally.
8. It has been argued that even if the proposed use does not meet the definition of cargo terminal, it should be regulated as a cargo terminal use, as this is the most similar use category regulated under the code. In general, under SMC 23.42.010, if a principal use does not fit in any of the regulated use categories, as defined, there is authority to regulate that use according to the standards for the most similar defined use. That provision, however, specifically extends to the standards in Subtitle III, Division 2 of the Land Use Code. Seattle's Shoreline Master Program, which includes the use regulations specific to the Shoreline Overlay District, is in Subtitle III, Division 3 of the code, and is outside of the scope of Section 23.42.010. The authority to regulate an undefined use according to the standards for the most similar defined use does not extend to the use provisions in the shoreline code.

Moorage as an accessory use

9. Even if we were to determine that the proposed seasonal moorage of the drilling rig and tugboats did not meet the definition of cargo terminal, it might be permissible if that sort of moorage activity is accessory to a cargo terminal. The definition of cargo terminal says that cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices. It does not state that other accessory uses are not allowed. We do not conclude that other accessory uses are precluded merely because they are not specifically listed.
10. Based on information received from the Port, "lay berthing," or moorage of vessels that are not actively loading or unloading materials, is a normal, customary and essential practice at marine cargo terminals. The Port has specific dockage fees for lay berthing in the fee schedule for its facilities. According to the Port, lay berthing occurs at marine cargo terminals throughout the coastal and inland waterways of the country and the world, specifically at marine cargo terminals in Seattle, Bellingham, Everett, Port Angeles, Tacoma, Olympia, San Diego, Los Angeles, Long Beach, Sacramento, San Francisco, Oakland and Portland. According to the Port, temporary, seasonal and sometimes indefinite berthing of vessels must be provided by ports until duty calls those vessels back to the sea. The Port indicates that cargo, emergency response, military, and research vessels, as well as barges and tugboats, commonly lay berth at the Port of Seattle's cargo terminals.
11. For purposes of the shoreline code, "accessory use" is defined as "a use which is incidental **and intrinsic to the function** of a principal use, and is not a separate business establishment unless a home occupation." SMC 23.60.940. This differs, and is more stringent than, the definition that generally applies under the Land Use Code: "a use that is incidental to a principal use." SMC 23.84A.040. We accept that lay berthing of vessels otherwise used for transporting goods in the stream of commerce may be regarded as incidental and intrinsic to the function of a cargo terminal. This recognizes that shipment of some sorts of goods is seasonal, and that vessels involved in that sort of trade are necessarily idle for periods during the year. We do not, however, find that provision of moorage to other vessels and equipment, not used for transfer of goods to other locations, is intrinsic to the function of a cargo terminal. Such moorage would be regarded as a separate principal use, defined as "any use, whether a separate business establishment or not, which has a separate and distinct purpose and function from other uses on the lot." SMC 23.60.940.
12. Even if we were to agree that moorage of the drilling rig and tugboats could be allowed as an accessory use at a cargo terminal, some question also is raised as to whether sufficient levels of activity relating to the principal cargo terminal use, transfer of quantities of goods or container cargo, would continue while the drilling rig and tugboats are moored there. The factual component of that question is unresolved. On the one hand, the drilling rig and tugboats would occupy much of the site's frontage available for moorage along the Duwamish, and upgrades and repairs to that frontage are also contemplated which would possibly limit its use for loading and unloading of cargo


during the same period. On the other hand, both the Port and Foss have advised us that it is their intent that other cargo terminal use of the property will continue.

13. The legal component of that question obviates the factual question because, even if cargo terminal activity is the predominant use, moorage of vessels not used for transport of cargo in the process of being transferred to other locations is not intrinsic to the function as a cargo terminal, and thus would not qualify as a legitimate accessory use.

Conclusion

An additional use permit is required for the proposed seasonal moorage at the Port of Seattle's Terminal 5 facility of a drilling rig and accompanying tugboats.

Entered May 7, 2015



Andrew S. McKim
Land Use Planner – Supervisor

Exhibit 2



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3006901
Applicant Name: Matthew Blinstrub for the Port of Seattle
Address of Proposal: 2001 West Garfield St.

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow the relocation of an existing cruise vessel passenger facility from Terminal 30 to Terminal 91 (2001 W Garfield St). Project includes demolition of four existing structures and construction of a 143,000 sq. ft. cruise terminal building on Pier 91, seven canopies, three guard shacks and three electrical substations. Project also includes removing and replacing asphalt, existing timber pile fender system, structural elements and dredging in vessel berth areas to support the berthing of cruise ships maintenance. Surface parking for 1,446 vehicles to be provided. Environmental Impact Statement prepared by the Port of Seattle. Related projects at T30-3006903 and T25-3006902.

The Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit - To allow cruise ship terminal in an Urban Industrial (UI) shoreline environment pursuant to Seattle Municipal Code. (SMC 23.60.020 and 23.60.720)

SEPA - For conditioning only. (Chapter 25.05 Seattle Municipal Code)

SEPA DETERMINATION: [] Exempt [] DNS [] MDNS [X] EIS**
[] DNS with condition
[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

** The Port of Seattle has disclosed the environmental impacts of the proposal in its Terminal 30 Container Reactivation and Cruise Terminal Relocation (DEIS) (October, 2006) which contains the main body of information regarding the proposal, and Final Environmental Impact Statement (FEIS) (December 2006) which responds to public and agency comments and provides supplementary information. Together, these documents constitute the complete SEPA evaluation of the proposal. The Final SEPA Decision was adopted by the Port on February 20, 2007. On March 6, 2007 an appeal of the FEIS was filed with the Port's General Counsel. On March 16, 2007, the Hearing Examiner for the Port granted the Port's Motion to Dismiss the appeal.

PAGES 2 THROUGH 44 INTENTIONALLY OMITTED

57. Contaminated soil shall be disposed of at facilities permitted to manage the type of soil that is present at the site and in a manner consistent with the requirements of the Solid Waste Regulations (WAC 173-350) and State Dangerous Waste Regulations (WAC 173-303). Soil may be treated in place if removal is not feasible.
58. Dewatering discharges shall be monitored to assess the quality and will provide for treatment, if needed, and compliance with applicable discharge permits for short-term (i.e., construction dewatering) and any long-term (operational dewatering) discharges. If necessary, investigate whether excavations which require dewatering will intercept groundwater contamination.
59. Appropriate shields on exterior lighting fixtures shall be used to reduce light spillage. Security lighting shall be directed away from adjacent residential areas to the north and west.
60. Low-reflectivity building glazing and building materials shall be incorporated into the design.
61. To limit the amount of lighting adjacent to the shoreline areas of the site, light fixtures shall be focused downward to walkways and away from the aquatic environment.
62. Exterior lighting on homeporting cruise ships shall be low-intensity and shielded and be directed away from aquatic areas.

During Construction

63. A professional archaeologist shall be available during ground-disturbing activities if subgrade excavations will be deep enough to intersect intact tide flat surfaces below the fill at P-91. An Archaeological Construction Monitoring and Discovery Plan shall be prepared for subgrade excavations that are expected to reach lower than fill level.
64. The Port shall install directional signage to direct passengers to the cruise ship terminal. The Port should work with Seattle Department of Transportation (SDOT) to approve the design and location of these signs.

Signature: (signature on file) Date: June 7, 2007
Colin R. Vasquez, Senior Land Use Planner



City of Seattle

Edward B. Murray, Mayor

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3017290
Applicant Name: Joe Hampton
Address of Proposal: 2001 W Garfield St

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development application to allow 5 new 40' x 10' floats and 10 steel piles to support 2,000 sq. ft. of new moorage for emergency response fire and rescue boats to accommodate and relocate Seattle Fire Department, Station #5. Access to the fire boat moorage will be provided by a 145 ft. long gangway. Project includes 3 modular structures for crew (1,850 sq. ft.) and equipment (750 sq. ft. and 1,200 sq. ft.) Review includes shoreline restoration and improvements.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit - To allow a public facility in an Urban Industrial (UI) shoreline environment. (SMC 23.60.840 J)

SEPA - (Chapter 25.05 Seattle Municipal Code)

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition or
 involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The Port of Seattle's Terminal 91 includes Piers 90 and 91; Pier 90 is the easternmost of the two piers. The site is comprised of about 35 acres of adjacent water area and about 72 acres of yard area north of the Magnolia Bridge. The terminal also includes 14 acres of open space, a 24-acre open-water park deeded to the City of Seattle, and the vacated Smith Cove Waterway, owned by the Port of Seattle. The site is situated in an area generally known as Smith Cove, at the north end of Elliott Bay, between the residential neighborhoods of Queen Anne Hill to the east and Magnolia bluff to the west. The property is within an Urban Industrial (UI) shoreline environment and is zoned General Industrial I with a 45-foot height limit (IG-1/U45).

PAGES 2 THROUGH 10 INTENTIONALLY OMITTED

CONDITIONS – SEPA and SHORELINE

During Construction

1. The proposed construction best management practices (BMPs), which include compliance with state and federal permitting requirements for protection of water quality standards and protection of aquatic life, and other construction-related BMPs shown on submitted plans shall be implemented during construction.

For the Life of the Project

2. The vegetation planted consistent with the habitat mitigation plan (“Native Riparian Planting Area” plan) as shown on submitted plans shall be maintained for the life of the project. No chemical herbicides, insecticides or pesticides shall be used in this area. Dead plants shall be replaced with the same or similar native species.
3. Artificial lighting for the project shall be maintained at levels consistent with those shown in submitted plans and described in lighting analysis memo dated July 17, 2014, provided by applicant in order to prevent and minimize artificial light spillage to the water adjacent to project.

Signature: (signature on file) Date: August 14, 2014
Ben Perkowski, Senior Land Use Planner

Exhibit 3

23.40.002 - Conformity with regulations required

- A. The establishment or change of use of any structures, buildings or premises, or any part thereof, requires approval according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, except:
1. establishment of an urban farm, or community garden, that is permitted outright under the provisions of this Title 23 applicable to the lot;
 2. as permitted in subsections 23.47A.004.E and 23.47A.004.F;
 3. keeping of animals as permitted under Section 23.42.052;
 4. reinstatement of a use interrupted by a temporary use authorized pursuant to Section 23.42.040; and
 5. for uses located entirely within public rights-of-way.
- B. No use of any structure or premises shall hereafter be commenced, and no structure or part of a structure shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations specified in this title for the zone and overlay district, if any, in which it is or will be located.
- C. Owners of such structures, building or premises or parts thereof are responsible for any failure of such structures, buildings or premises to conform to the regulations of this title and for compliance with the provisions of this title in or on such structures, buildings or premises. Any other person who created, caused or contributed to a condition in or on such structure, building or premises, either alone or with others, is also responsible under this title for any failure to conform to the regulations of this title. Building and use permits on file shall be prima facie evidence of the time a building was built or modified, or a use commenced, and the burden of demonstrating to the contrary shall be upon the owner.
- D. Changes to existing structures that make the structures nonconforming may be permitted if the changes are required by law for reasons of health and safety.

(Ord. 123649, § 4, 2011; Ord. 123378, § 1, 2010; Ord. 122816, § 1, 2008; Ord. 122311, § 18, 2006; Ord. 121093 § 1, 2003; Ord. 119473 § 1, 1999; Ord. 118794 § 14, 1997; Ord. 112522 § 7(part), 1985; Ord. 110669 § 6, 1982; Ord. 110381 § 1(part), 1982.)

23.42.010 - Identification of principal permitted uses.

Principal uses not listed in the respective zones of Subtitle III, Division 2 of SMC Title 23, Land Use Code shall be prohibited in those zones. If a use is not listed, the Director may determine that a proposed use is substantially similar to other uses permitted or prohibited in the respective zones, therefore, and should also be permitted or prohibited.

(Ord. 118794 § 15, 1997; Ord. 113978 § 1, 1988; Ord. 110669 § 9, 1982; Ord. 110381 § 1(part), 1982.)

23.42.020 - Accessory uses.

A. Any accessory use not permitted by Title 23, either expressly or by the Director, shall be prohibited. The Director shall determine whether any accessory use on the lot is incidental to the principal use on the same lot, and shall also determine whether uses not listed as accessory uses are customarily incidental to a principal use.

Unless Title 23 expressly permits an accessory use as a principal use, a use permitted only as an accessory use shall not be permitted as a principal use.

B. The general development standards for each zone shall apply to accessory uses unless the general standards are specifically modified.

(Ord. 117570 § 12, 1995; Ord. 117263 § 3, 1994; Ord. 113978 § 2, 1988; Ord. 110669 § 10, 1982; Ord. 110381 § 1(part), 1982.)

23.42.100 - Nonconformity—Applicability and intent.

- A. The nonconformity provisions of this chapter apply to uses and sites in all zones, except for the shoreline overlay district (see Chapter 23.60).
- B. It is the intent of these provisions to establish a framework for dealing with nonconformity that allows most nonconformities to continue. The Code facilitates the maintenance and enhancement of nonconforming uses and developments so they may exist as an asset to their neighborhoods. The redevelopment of nonconformities to be more conforming to current code standards is a long term goal.

(Ord. 120293 § 1 (part), 2001.)

23.60.014 - Regulations supplemental.

The regulations of this chapter shall be superimposed upon and modify the underlying land use zones in the Shoreline District. The regulations of this chapter supplement other regulations of this title in the following manner

- A. Uses. To be permitted in the Shoreline District, a use must be permitted in both the shoreline environment and the underlying zone in which it is located.
- B. Development Standards.
 1. A development in the Shoreline District shall meet the development standards of the shoreline environment, any other overlay district in which it is located, as well as those of the underlying zone. In the case of irreconcilable conflicts between the regulations of the shoreline environment and the underlying zoning, the shoreline regulations shall apply, except as provided in this subsection B.
 2. The height permitted in the Shoreline District shall be the lower of the heights permitted by the applicable shoreline environment and the underlying zone, except in the Urban Harborfront (UH) Environment where the shoreline height limits shall control.
 3. The floor area ratio (FAR) of the underlying zone may not be exceeded, regardless of whether or not the maximum height and lot coverage permitted in the shoreline environment can be achieved.
 4. Where view corridors are required in the Shoreline District, yards and/or setbacks of the underlying zoning may be reduced or waived by the Director. Where view corridors are not required by the Shoreline District, yards and/or setbacks of the underlying zoning shall be required.
 5. Development standards for which there are regulations in the underlying zoning but not in this chapter shall apply to developments in the Shoreline District. Such standards include but shall not be limited to parking, open space, street-level location, facade treatments, building depth, width and modulation, and vehicular access. In the case of irreconcilable conflict between a shoreline regulation and a requirement of the underlying zoning, the shoreline regulation shall apply, unless otherwise provided in subsections B2 and B3 above.
 6. Measurements in the Shoreline District shall be as regulated in this chapter, Subchapter XVII, Measurements.
 7. Lake Union construction limit line.
 - a. Established. There is established along the shores of Lake Union and waters in the vicinity thereof in the City, a "Seattle Construction Limit Line." The Seattle Construction Limit Line, formerly designated on Exhibit "A" of SMC Section 24.82.010 which this subsection replaces, shall be superimposed upon and modify the Official Land Use Map of The City of Seattle, as established in Chapter 23.32.
 - b. Unlawful Construction-Exceptions. It is unlawful to erect, construct or maintain any building or structure outward from the shores of Lake Union beyond the Lake Union Construction Limit Line established in subsection 23.60.014 B7a except such buildings or structures as are expressly authorized by the laws of the United States or State of

Washington; provided, any residential structure located in whole or in part outside the construction limit line prior to December 18, 1968 shall be permitted as a lawful, nonconforming structure as long as the same is not extended, expanded or structurally altered.

- C. Standards applicable to environmentally critical areas as provided in Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Areas, shall apply in the Shoreline District. If there are any conflicts between the Seattle Shoreline Master Program and Seattle Municipal Code Chapter 25.09, the most restrictive requirements shall apply.

(Ord. 117571 § 1, 1995; Ord. 116325 § 1, 1992; Ord. 113466 § 2(part), 1987.)

23.60.016 - Inconsistent development prohibited.

No development shall be undertaken and no use, including a use that is located on a vessel, shall be established in the Shoreline District unless the Director has determined that it is consistent with the policy of the Shoreline Management Act and the regulations of this chapter. This restriction shall apply even if no substantial development permit is required.

(Ord. 120866 § 1, 2003; Ord. 118793 § 3, 1997; Ord. 113466 § 2(part), 1987.)

23.60.018 - Nonregulated actions.

Except as specifically provided otherwise, the regulations of this chapter shall not apply to the operation of boats, ships and other vessels designed and used for navigation; nor to the vacation and closure, removal or demolition of buildings found by the Director to be unfit for human habitation pursuant to the Seattle Housing Code; ^[23] nor to correction of conditions found by the Director to be in violation of the minimum standards of Chapters 22.200, et seq., of the Seattle Housing Code; nor to the demolition of a structure pursuant to an ordinance declaring it to be a public nuisance and providing for summary abatement. None of these actions shall constitute a development requiring a permit.

(Ord. 113764 § 1(part), 1987; Ord. 113466 § 2(part), 1987.)

23.60.034 - Criteria for shoreline conditional use approvals.

Uses or developments which are identified in this chapter as requiring shoreline conditional use approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the underlying zones and are not prohibited in the Shoreline District, may be approved, approved with conditions or denied by the Director in specific cases based on the criteria in WAC 173-27-160, as now constituted or hereafter amended, and any additional criteria given in this chapter. Upon transmittal of the Director's approval to the Department of Ecology (DOE), the permit may be approved, approved with conditions or denied by DOE.

(Ord. 118793 § 6, 1997; Ord. 113466 § 2(part), 1987)

23.60.092 - Accessory uses.

- A. Any principal use permitted in a specific shoreline environment either outright, or as a special use, conditional use or Council conditional use shall also be permitted as an accessory use outright or as a special use, conditional use or Council conditional use, respectively.
- B. Uses prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses. Examples of accessory uses include parking, offices and caretaker's quarters not exceeding eight hundred (800) square feet in living area. For purposes of this section, landfill, water-based airports, heliports and helistops shall not be considered to be accessory to a principal use and shall only be permitted as provided in the applicable shoreline environment.
- C. Unless specifically stated otherwise in the regulations for the applicable environment, accessory uses which are non-water-dependent and non-water-related, even if accessory to water-dependent or water-related uses, shall be permitted over water according to subsection A above only if either:
 - 1. The over-water location is necessary for the operation of the water-dependent or water-related use; or
 - 2. The lot has a depth of less than fifty (50) feet of dry land.
- D. Parking shall not be permitted over water unless it is accessory to a water-dependent or water-related use located on a lot with a depth of less than fifty (50) feet of dry land and the Director determines that adequate on-site or off-site dry land parking within eight hundred (800) feet is not reasonably available.
- E. Piers, floats, pilings, breakwaters, drydocks and similar accessory structures for moorage shall be permitted as accessory to permitted uses subject to the development standards unless specifically prohibited in the applicable shoreline environment.
- F. Accessory uses shall be located on the same lot as the principal use; provided that when the accessory use is also permitted as a principal use in the shoreline environment applicable to an adjacent lot, the accessory use may be located on that adjacent lot.

(Ord. 119929 § 1, 2000; Ord. 116907 § 9, 1993; Ord. 116616 § 8, 1993; Ord. 113466 § 2(part), 1987.)

Part 2 Nonconforming Uses and Structures

23.60.200 - Recreational marinas.

General requirements for recreational marinas:

- A. Lavatory facilities connected to a sanitary sewer and adequate to serve the marina shall be provided.
- B. Self-service sewage pumpout facilities or the best available method of disposing of sewage wastes and appropriate disposal facilities for bilge wastes shall be provided at marinas having in excess of three thousand five hundred (3,500) lineal feet of moorage or slips large enough to accommodate boats larger than twenty (20) feet in length, and shall be located so as to be conveniently available to all boats. An appropriate disposal facility for removal of bilge wastes shall be either a vacuum apparatus, or oil-absorbent materials and waste receptacles.
- C. Untreated sewage shall not be discharged into the water at any time. Treated sewage shall not be discharged while boats are moored.
- D. Long-term parking areas shall be located away from the water. Short-term loading areas, however, may be located near berthing areas.
- E. Public access shall be provided as follows:
 - 1. The minimum public access for a marina providing less than nine thousand (9,000) feet of moorage space shall consist of an improved walkway at least five (5) feet wide on an easement at least ten (10) feet wide leading to an area located at the water's edge, which area shall be at least ten (10) feet wide and shall provide at least ten (10) feet of water frontage for every one hundred (100) feet of the marina's water frontage.
 - 2. The minimum public access for a marina providing nine thousand (9,000) or more feet of moorage space shall consist of an improved walkway at least five (5) feet wide on an easement at least ten (10) feet wide leading to a public walkway at least five (5) feet wide on an easement at least ten (10) feet wide located along the entire length of the marina's water frontage.
 - 3. Marinas which provide less than two thousand (2,000) lineal feet of moorage space and which contain only water-dependent or water-related principal uses are exempt from this public access requirement.
- F. Transient Moorage.
 - 1. Transient moorage shall be provided at the rate of forty (40) lineal feet of transient moorage space for each one thousand (1,000) lineal feet of moorage space in the marina if one (1) or more of the following conditions apply:
 - a. The marina provides nine thousand (9,000) or more lineal feet of moorage;
 - b. The marina is part of a development which includes restaurants or other nonwater-dependent or nonwater-related uses which operate during evening and weekend hours;
or
 - c. The marina is owned, operated, or franchised by a governmental agency for use by the general public.
 - 2. The Director may waive the requirement for transient moorage if it is found that there is adequate transient moorage already existing in the vicinity.
 - 3.

Transient moorage for commercial vessels may be required as part of a recreational marina providing more than nine thousand (9,000) lineal feet of moorage if the site is in an area near commercial facilities generating commercial transient moorage demand.

- G. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided.

(Ord. 113466 § 2(part), 1987.)

23.60.840 - Uses permitted outright on waterfront lots in the UI Environment.

The following uses shall be permitted outright on waterfront lots in the Urban Industrial Environment as either principal or accessory uses:

- A. Existing dwelling units;
- B. The following commercial uses:
 - 1. Marine sales and services except sale and rental of small boats, boat parts and accessories,
 - 2. Research and development laboratories,
 - 3. Wholesale showrooms, and
 - 4. Food processing and craft work, water-dependent or water-related;
- C. The following storage uses:
 - 1. Warehouses, and
 - 2. Outdoor storage uses;
- D. The following transportation facilities:
 - 1. Tugboat services,
 - 2. Commercial moorage,
 - 3. Dry boat storage,
 - 4. Passenger terminals, water-dependent or water-related, and
 - 5. Cargo terminals, water-dependent or water-related;
- E. Streets, railroads and bridges;
- F. The following utilities:
 - 1. Utility lines,
 - 2. Solid waste management uses, water-dependent or water-related,
 - 3. Recycling uses, water-dependent or water-related,
 - 4. Utility service uses whose operations require a shoreline location, and
 - 5. Minor communication utilities, except freestanding transmission towers;
- G. Manufacturing uses;
- H. The following institutional uses:
 - 1. Water-dependent or water-related research and education facilities of colleges and universities,
 - 2. Shoreline recreation facilities of colleges and universities, and
 - 3. Water-dependent or water-related colleges, institutes for advanced study, and vocational schools;
- I. High-impact uses, water-dependent or water-related;
- J. Public facilities, water-dependent or water-related;
- K. Shoreline recreation uses; and
- L. Aquaculture.

(Ord. 122310, § 28, 2006; Ord. 120927 § 21, 2002; Ord. 113466 § 2(part), 1987.)

23.60.842 - Special uses permitted on waterfront lots in the UI Environment.

The following uses may be authorized on waterfront lots in the UI Environment by the Director as either principal or accessory uses if the special use criteria in Section 23.60.032 are met:

- A. Airports, water-based;
- B. The following shoreline protective structures:
 - 1. Natural beach protection,
 - 2. Bulkheads to support a water-dependent or water-related use, or to enclose a permitted landfill area, or to prevent erosion, when natural beach protection is not a practical alternative;
- C. Dredging when necessary for water-dependent and water-related uses or to install utility lines;
- D. The following types of landfill:
 - 1. Landfill on dry land where necessary for a permitted use and as part of an approved development,
 - 2. Landfill on submerged lands which does not create land where necessary for a water-dependent or water-related use or for the installation of a bridge or utility line, and
 - 3. Landfill which creates dry land:
 - a. When the dry land is necessary for a water-dependent or water-related use, and
 - b. If more than two (2) square yards of dry land per lineal yard of shoreline is created, the landfill meets the following additional criteria:
 - (1) No reasonable alternative to the landfill exists,
 - (2) The landfill provides a clear public benefit, and
 - (3) The landfill site is not located in Lake Union or Portage Bay.

(Ord. 113764 § 1(part), 1987; Ord. 113466 § 2(part), 1987.)

23.60.844 - Conditional uses on waterfront lots in the UI Environment.

The following uses may be authorized on waterfront lots in the UI Environment by the Director, with the concurrence of DOE, as either principal or accessory uses if the criteria for conditional uses in WAC 173-27-160 are satisfied:

- A. Yacht, boat or beach clubs which do not have eating and drinking establishments and recreational marinas when:
 - 1.
 - a. Not located where frequent interference with the turning basins or navigational areas of large vessels or other conflict with shipping is likely to occur, and
 - b. Not located where likely to conflict with manufacturing uses because of dust, noise or other environmental factors, or parking and loading access requirements or other safety factors; and
 - 2. If located outside the Duwamish area, the yacht, boat or beach club or marina is located on a lot not suitable for a water-dependent or water-related manufacturing use, or for permitted water-dependent commercial uses because of:
 - a. Shallow water depth, or
 - b. An inadequate amount of dry land; provided that yacht, boat or beach clubs may have non-water-dependent facilities over water only when:

- (1) The dry-land portion of the lot is less than fifty (50) feet in depth, and
- (2) The location of such facilities on the dry-land portion of the lot is not feasible.

B. Non-water-dependent Commercial Uses.

1. The following non-water-dependent commercial uses when meeting the criteria of subsection B2:
 - a. Sale and rental of small boats, boat parts and accessories;
 - b. General sales and services;
 - c. Eating and drinking establishments in the Ballard Interbay Northend Manufacturing/Industrial Center;
 - d. Heavy sales and services except commercial laundries and wholesale showrooms;
 - e. Offices;
 - f. Mini-warehouse in the Ballard Interbay Northend Manufacturing/Industrial Center; and
 - g. Food processing and craft work.
2. The uses listed in subsection B1 are permitted when:
 - a. The total of non-water-dependent commercial uses occupy no more than ten (10) percent of the dry-land portion of the lot; and
 - b. The non-water-dependent commercial uses are located to accommodate any water-dependent or water-related uses on the lot.
3. The uses identified in subsection B1 may be relocated on a lot provided the requirements of subsection B2 are met.

(Ord. 122310, § 29, 2006; Ord. 119971 § 1, 2000; Ord. 118793 § 37, 1997; Ord. 113764 § 1(part), 1987; Ord. 113466 § 2(part), 1987.)

23.60.846 - Council conditional uses on waterfront lots in the UI Environment.

- A. Sewage treatment plants may be authorized by the Council according to the procedures of Section 23.60.068 when:
1. Located in the Duwamish area;
 2. A determination has been made, according to the process established in Section 23.60.066, Process for determination of feasible or reasonable alternative locations, that no feasible alternative exists to locating a plant in the Seattle Shoreline District. The determination as to feasibility shall be based upon the Shoreline Goals and Policies of the Seattle Comprehensive Plan, the Shoreline Management Act, as amended, and a full consideration of the environmental, social and economic impacts on the community;
 3. The plant is set back sixty (60) feet from the line of ordinary high water;
 4. A public access walkway is provided along the entire width of the shoreline except for any portion occupied by barge loading and unloading facilities to serve the plant, public access being most important along views of the water and any other significant shoreline element; and
 5. All reasonable mitigation measures to protect views and to control odors, noise, traffic and other impacts on the natural and built environment shall be provided.

(Ord. 118793 § 38, 1997; Ord. 113466 § 2(part), 1987.)

23.60.848 - Principal uses prohibited on waterfront lots in the UI Environment.

The following principal uses are prohibited on waterfront lots in the UI Environment:

- A. Residential uses;
- B. The following commercial uses:
 - 1. Medical services,
 - 2. Animal shelters and kennels,
 - 3. Pet grooming,
 - 4. Automotive sales and service,
 - 5. Lodging,
 - 6. Heavy commercial services,
 - 7. Entertainment uses, and
 - 8. Eating and drinking establishments in the Duwamish Manufacturing/Industrial Center;
- C. The following transportation facility uses:
 - 1. Parking, principal use,
 - 2. Personal transportation services,
 - 3. Passenger terminal, non-water-dependent,
 - 4. Cargo terminal, non-water-dependent,
 - 5. Transit vehicle bases,
 - 6. Helistops, and
 - 7. Heliports;
- D. Mini-warehouses in the Duwamish Manufacturing/Industrial Center;
- E. The following utilities:
 - 1. Major communication utilities,
 - 2. Solid waste management, non-water-dependent,
 - 3. Recycling uses, non-water-dependent,
 - 4. Power plants,
 - 5. Sewage treatment plants, located outside of the Duwamish area, and
 - 6. Freestanding transmission towers for minor communication utilities;
- F. High-impact uses, non-water-dependent;
- G. All institutional uses except shoreline recreation facilities of colleges and universities and boat and yacht clubs without eating and drinking facilities;
- H. Public facilities not authorized pursuant to Section 23.60.854 and those that are neither water-dependent nor water-related;
- I. Agricultural uses except aquaculture;
- J. All open space uses except shoreline recreation; and
- K. Groins and similar structures that block the flow of sand to adjacent beaches, except for drift sills or other structures that are part of a natural beach protection system.

(Ord. 122310, § 30, 2006; Ord. 120927 § 22, 2002; Ord. 119971 § 2, 2000; Ord. 118663 § 22, 1997; Ord. 113764 § 1(part), 1987; Ord. 113466 § 2(part), 1987.)

23.60.900 - Definitions generally.

For the purpose of this chapter, certain terms and words are defined. The definitions established in this Subchapter XVI are in addition to definitions contained in Chapter 23.84A, which are also applicable to this chapter. In the event that a definition in this chapter differs from a definition of the same term in Chapter 23.84A, the definition in this chapter shall apply in the Shoreline District.

(Ord. 122771, § 5, 2008; Ord. 122310, § 32, 2006; Ord. 113466 § 2(part), 1987.)

23.60.906 - "C."

"Cargo, breakbulk" means cargo packed in separate packages or individual pieces of cargo and loaded, stored and unloaded individually.

"Cargo, containerized" means cargo packed in a large (typically eight (8) feet by eight (8) feet by twenty (20) feet)) trunklike box and loaded, stored and unloaded as a unit.

"Cargo, neo-bulk" means cargo which has historically been classified as generalized cargo, such as grain, oil, and automobiles, but now is moved in bulk movements usually in specialized vessels.

"Cargo terminal" means a transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers or stored outdoors in order to transfer them to other locations. Cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices.

"Clerestory" means an outside wall of a room or building that rises above an adjoining roof and contains windows.

"Commercial use" means the following uses:

- General retail sales and services;
- Heavy sales and services;
- Eating and drinking establishments;
- Lodging;
- Offices;
- Entertainment;
- Automotive sales and services;
- Marine sales and services;
- Animal shelters and kennels;
- Food processing and craft work;
- Medical services;
- Research and development laboratories.

"Commercial moorage" means a parking and moorage use in which a system of piers, buoys, or floats is used to provide moorage, primarily for commercial vessels, except barges, for sale or rent, usually on a monthly or yearly basis. Minor vessel repair, haulout, dry boat storage, tugboat dispatch offices, and other services are also often accessory to or associated with the use.

Communication Devices and Utilities (and Related Terms). See Section 23.84A.006 "C."

"Conditional use" means a use identified in this chapter as requiring specific approval by either the Department of Ecology (Shoreline Conditional Use) or the City Council (Council Conditional Use). Unless specifically stated in this chapter the term "conditional use" without modification shall mean Shoreline Conditional Use.

Seattle, WA Municipal Code

(Ord. 122310, § 34, 2006; Ord. 120927 § 24, 2002; Ord. 113466 § 2(part), 1987.)

23.60.908 - "D."

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this title at any water level.

"Development standards" means regulations pertaining to the physical modification of the environment including the size and location of structures in relation to the lot. Development standards include maximum height of structures, minimum lot area, minimum front, side and rear yards, setbacks, maximum lot coverage, maximum floor area ratio, view corridors and regulated public access.

"Development, Substantial." See "Substantial development."

"Director" means the Director of the Department of Planning and Development of The City of Seattle.

"Drift sill" means a structure of rocks built into a beach as part of natural beach protection used to preserve a beach by stopping the littoral sand drift but which does not protrude above the finished grade of beach sediment.

"Dry land" means land at an elevation above the line of ordinary high water or mean higher high water.

"Dry boat storage" means a parking and moorage use, in which space on a lot on dry land or inside a building over water or on dry land, is rented or sold to the public or to members of a yacht, boat or beach club for the purpose of storing boats. Sometimes referred to as dry moorage.

(Ord. 122310, § 35, 2006; Ord. 121276 § 26, 2003; Ord. 113466 § 2(part), 1987.)

23.60.926 - "M."

"Manufacturing" means the following uses as defined in Chapter 23.84A, Definitions:

- Light manufacturing;
- General manufacturing;
- Heavy manufacturing.

"Marina, recreational" means a parking and moorage use, in which a system of piers, buoys, or floats is used to provide moorage, primarily for pleasure craft, for sale or rent, usually on a monthly or yearly basis. Minor vessel repair, haulout, dry boat storage and other services are also often accessory to or associated with the use.

"Marine sales and service" means a commercial use that includes one (1) or more of the following uses:

- Sale or rental of large boats;
- Marine service station;
- Major or minor vessel repair;
- Sale and rental of small boats, boat parts and accessories.

"Marine service station" means a marine sales and service use in which fuel for boats is sold, and where accessory uses including but not limited to towing or minor vessel repair may also be provided.

"Master Program." See "Shoreline Master Program."

"Mean higher high water (MHHW)" means the tidal elevation determined by averaging the higher of each day's two (2) high tides at a particular location over recorded history.

"Mean lower low water (MLLW)" means the 0.0 tidal elevation. It is determined by averaging the lower of each day's two (2) low tides, at a particular location over recorded history.

"MHHW." See "Mean higher high water."

"MLLW." See "Mean lower low water."

"Monitor" means a raised, central portion of a roof having low windows or louvers for light and air.

"Moorage, covered" means a pier or system of floating or fixed accessways covered with a roof, to which boats on water may be secured.

"Moorage, open" means an uncovered pier or system of floating or fixed accessways to which boats on water may be secured.

"Moorage, transient" means moorage available to the public, generally for a fee, on a short-term basis. Transient moorage may be available on an hourly, daily or weekly basis.

"Moorage walkway" means the pier, float(s) or combination of pier and float(s) designed and used to give pedestrian access from the land to floating home sites at a floating home moorage. Ramps which provide access to individual floating homes are not moorage walkways.

"Mortuary service" means a medical service use which provides services including but not limited to the preparation of the dead for burial or cremation, viewing of the body and funerals.

(Ord. 122310, § 37, 2006; Ord. 113466 § 2(part), 1987.)

23.60.940 - "U."

"Use" means the purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased. For purposes of this chapter, uses shall also include activities and structures which modify the land, such as dredging, landfill, breakwaters, shoreline protective structures, and utility lines.

"Use, accessory" means a use which is incidental and intrinsic to the function of a principal use and is not a separate business establishment unless a home occupation.

"Use, principal" means any use, whether a separate business establishment or not, which has a separate and distinct purpose and function from other uses on the lot.

"Use, Water-dependent." See "Water-dependent use."

"Utilities" means the following uses:

- Communication utility;
- Utilities service uses;
- Solid waste management;
- Recycling;
- Sewage treatment plant;
- Power plant; and
- Utility lines.

"Utility extension, limited" means the extension of a utility service that: (1) is categorically exempt under Chapter 43.21C RCW for one (1) or more of the following: natural gas, electricity, telephone, water, or sewer; (2) will serve an existing use in compliance with this chapter; and (3) will not extend more than two thousand five hundred (2,500) linear feet within the shoreline areas subject to this chapter.

"Utility lines" means pipes, cables or other linear conveyance systems used to transport power, water, gas, oil, wastewater or similar items. Utility lines include outfalls and intakes.

(Ord. 122310, § 41, 2006; Ord. 118793 § 44, 1997; Ord. 113466 § 2(part), 1987.)

23.84A.038 - "T"

"Tandem houses" means two unattached single-family dwelling units occupying the same lot.

"Tandem parking" means one (1) car parked behind another where aisles are not provided.

"TDP" or "transferable development potential" means base residential floor area, measured in square feet of gross floor area, that may be transferred from one lot to another according to provisions of this Title 23. These terms do not denote or imply that the owner of TDP has a legal or vested right to construct or develop any development or to establish any use.

"TDP, Landmark" means TDP transferred from, or transferable from, a lot based on its status as a Landmark TDP site.

"TDP, open space" means TDP transferred from, or transferable from, a lot based on its status as an open space TDP site.

"TDP, South Downtown Historic" means TDP transferred from, or transferable from, a lot based on its status as a South Downtown Historic TDP site.

"TDP site, Landmark" means a lot, in an area where the applicable provisions of the zone permit Landmark TDP to be transferred from a lot, that includes one or more structures designated wholly or in part as a landmark under Chapter 25.12 or its predecessor ordinance, if the owner of the landmark has executed and recorded an agreement acceptable in form and content to the Landmarks Preservation Board, providing for the restoration and maintenance of the historically significant features of the structure, and which lot includes no other structure that is not accessory to one or more of such structures.

"TDP site, open space" means a lot, in an area where the provisions of the zone permit open space TDP to be transferred from a lot, that satisfies the applicable standards for an open space TDP site in Chapter 23.58A and the provisions of the zone to the extent that an exception from those standards has not been granted.

"TDP site, South Downtown Historic" means a lot within the Pioneer Square Preservation District or the International Special Review District that satisfies the conditions to be a sending lot for South Downtown Historic TDP under Chapter 23.58A.

"TDR" or "Transferable development rights" means development potential, measured in square feet of gross floor area, that may be transferred from a lot pursuant to provisions of this Title 23. Such terms do not include regional development credits, nor do they include development capacity transferable between lots pursuant to Planned Community Development provisions. These terms do not denote or imply that the owner of TDR has a legal or vested right to construction or develop any development or to establish any use.

"TDR, arts facility" means either TDR from a major performing arts facility that are transferable pursuant to Section 23.49.014 G; or TDR that are eligible for transfer based on the status of the sending lot as an arts facility TDR site, and if they are eligible for transfer on any other basis, are designated by the applicant seeking to use such TDR on a receiving lot as arts facility TDR.

"TDR, DMC housing" means TDR that are eligible for transfer based on the status of the sending lot as a DMC housing TDR site and, if they would be eligible for transfer on any other basis, are designated by the applicant seeking to use such TDR on a receiving lot as DMC housing TDR.

"TDR, housing" means TDR that are eligible for transfer based on the status of the sending lot as a housing TDR site and, if they would be eligible for transfer on any other basis, are designated by the applicant seeking to use such TDR on a receiving lot as housing TDR.

"TDR, Landmark" means TDR that are eligible for transfer based on the fact that the sending lot or a structure on such lot is designated as a landmark or as part of a landmark under Chapter 25.12 or its predecessor ordinance, except Landmark housing TDR.

"TDR, Landmark housing" means TDR that are eligible for transfer based on the status of the sending lot as a Landmark housing TDR site and, if they would be eligible for transfer on any other basis, are designated by the applicant seeking to use such TDR on a receiving lot as Landmark housing TDR.

"TDR, open space" means TDR that may be transferred from, or transferable from, a lot based on its status as an open space TDP site.

"TDR site, arts facility" means a lot meeting the following requirements:

1. The lot is located in the South Lake Union Urban Center either in an IC zone or in a zone with a height limit of 85 feet or more;
2. Each structure to be developed on the lot is a major performing arts facility; or has or will have a minimum of one FAR or all of its chargeable floor area if there is less than one FAR in the structure(s) committed for at least 50 years to occupancy by one or more not-for-profit organizations dedicated to the creation, display, performance or screening of art by or for members of the general public.
3. The arts facility commitments on the lot comply with Section 23.50.053 for structures in the South Lake Union Urban Center and are memorialized in a recorded agreement between the owner of such an arts facility and the Director of the Seattle Office of Arts and Cultural Affairs.

"TDR site, DMC housing" means a lot meeting the following requirements:

1. The lot is located in a Downtown Mixed Commercial (DMC) zone;
2. Each structure to be developed on the lot has or will have a minimum of fifty (50) percent of total gross above-grade floor area committed to low-income housing for a minimum of fifty (50) years, unless such requirement is waived or modified by the Director of the Office of Housing for good cause;
3. The lot will have above-grade gross floor area equivalent to at least one (1) FAR committed to very low-income housing use for a minimum of fifty (50) years; and
4. The low-income housing and very low-income housing commitments on the lot comply with the standards in Section 23.49.012 B1b and are memorialized in a recorded agreement between the owner of such low-income and very low-income housing and the Director of the Office of Housing.

"TDR site, housing" means a lot meeting the following requirements:

1. The lot is located in any Downtown zone except PMM, DH-1 and DH-2 zones, or is located in the South Lake Union Urban Center in any SM zone with a height limit of 85 feet or higher;
2. Each structure on the lot has a minimum of 50 percent of total gross above-grade floor area committed to low-income housing for a minimum of 50 years;
3. The lot has above-grade gross floor area equivalent to at least 1 FAR committed to very low-income housing use for a minimum of 50 years;
4. The above-grade gross floor area on the lot committed to satisfy the conditions in subsections 2 and 3 of this definition is contained in one or more structures existing as of July 27, 2001 and the area was in residential use as of that date and
5. The low-income housing and very low-income housing commitments on the lot comply with the standards in subsection 23.49.012.B.1.b and are memorialized in a recorded agreement between the owner of the low-income and very low-income housing and the Director of Housing.

"TDR site, Landmark housing" means a lot meeting the following requirements:

1. The lot is located in any Downtown zone except IDM, IDR, PSM, PMM, DH-1 and DH-2 zones;
2. The lot contains a designated landmark under SMC 25.12 and such structure will be renovated to include a minimum of fifty (50) percent of total gross above-grade floor area committed to low-income housing for a minimum of fifty (50) years;
3. The lot has or will have above-grade gross floor area equivalent to at least one (1) FAR committed to very low-income housing use for a minimum of fifty (50) years;
4. The low-income housing and very low-income housing commitments on the lot comply with the standards in Section 23.49.012 B1b and are memorialized in a recorded agreement between the owner of such low-income and very low-income housing and the Director of the Office of Housing.

"TDR site, open space" means a lot that has been approved by the Director as a sending lot for open space TDR, which approval is still in effect, and for which all the conditions to transfer open space TDR have been satisfied.

"TDR, South Downtown Historic" means TDR, except Landmark TDR, that are eligible for transfer based on the status of a structure on the sending lot as contributing to the architectural or historic character of the Pioneer Square Preservation District or the International Special Review District pursuant to Section 23.66.032.

"TDR site, South Downtown Historic" means a lot eligible to transfer South Downtown Historic TDR, located within the Pioneer Square Preservation District or the International Special Review District, that includes one or more structures determined to be contributing to the architectural or historic character of the district pursuant to Section 23.66.032.

"Theaters and spectator sports facilities." See "Entertainment."

"Topographic break" means a separation of two (2) areas by an abrupt change in ground elevation.

"Tower" means the portion of a structure above the podium height established for structures that exceeds a specified height in a Seattle Mixed (SM) zone.

"Tower, nonresidential" means the portion of a structure in nonresidential use above the podium height established for structures that exceeds a specified height in a Seattle Mixed (SM) zone.

"Tower, residential" means the portion of a structure in residential use above the podium height established for structures that exceeds the applicable base height limit for residential uses in a Seattle Mixed (SM) zone.

"Towing service." See "Parking and moorage" under "Transportation facility."

"Townhouse" See "Residential use."

"Townhouse unit" means a dwelling unit in a townhouse development.

"Transferable development potential" See "TDP"

"Transferable development rights" See "TDR"

"Transit facility, rail." See "Transportation facility."

"Transit service, frequent" means transit service headways in at least one direction of 15 minutes or less for at least 12 hours per day, 6 days per week, and transit service headways of 30 minutes or less for at least 18 hours every day.

"Transit station, light rail." See "Rail transit facility" under "Transportation facility."

"Transit station access easement" means an easement for a pedestrian route or connection to provide direct access from street level to transit tunnel stations and concourses and/or light rail transit facilities.

"Transit station access, grade-level" means a pedestrian connection that provides direct access from street level to transit tunnel stations or concourses and/or light rail transit facilities at approximately the same level as the station mezzanine.

"Transit station access, mechanical" means a pedestrian connection that incorporates a mechanical device, such as an escalator, to provide direct access from street level to transit tunnel stations and concourses and/or light rail transit facilities.

"Transit vehicle base." See "Bus base" under "Vehicle storage and maintenance" under "Transportation facility."

"Transitional Encampment" means a use having tents or a similar shelter that provides temporary quarters for sleeping and shelter. The use may have common food preparation, shower, or other commonly-used facilities that are separate from the sleeping shelters.

"Transparent" when used with reference to material in windows, doors and display windows, means clear or lightly tinted.

"Transmission tower." See "Communications utilities and devices."

"Transportation facility" means a use that supports or provides a means of transporting people and/or goods from one

location to another. Transportation facilities include but are not limited to the following:

1. "Cargo terminal" means a transportation facility in which quantities of goods or container cargo are, without undergoing any manufacturing processes, transferred to carriers or stored outdoors in order to transfer them to other locations. Cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices.
2. "Parking and moorage" means the short term or long term storage of automotive vehicles or vessels or both when not in use. Parking and moorage uses include but are not limited to:
 - a. "Boat moorage" means a use, in which a system of piers, buoys or floats is used to provide moorage for vessels except barges, for sale or rent usually on a monthly or yearly basis. Minor vessel repair, haul out, dry boat storage, and other services are also often provided. Boat moorage includes, but is not limited to:
 - 1) "Commercial moorage" means a boat moorage primarily intended for commercial vessels except barges.
 - 2) "Recreational marina" means a boat moorage primarily intended for pleasure craft. (See also, "Boat moorage, public".)
 - b. "Dry boat storage" means a use in which space on a lot on dry land, or inside a building over water or on dry land, is rented or sold to the public or to members of a yacht or boating club for the purpose of storing boats. Sometimes referred to as "dry storage."
 - c. "Parking, principal use" means a use in which an open area or garage is provided for the parking of vehicles by the public, and is not reserved or required to accommodate occupants, clients, customers or employees of a particular establishment or premises. Battery charging stations for electric vehicles are accessory to principal use parking. Principal use parking includes but is not limited to the following uses:
 - 1) "Park and pool lot" means a principal use parking use, operated or approved by a public ridesharing agency, where commuters park private vehicles and join together in carpools or vanpools for the ride to work and back, or board public transit at a stop located outside of the park and pool lot.
 - 2) "Park and ride lot" means a principal use parking use where commuters park private vehicles and either join together in carpools or vanpools, or board public transit at a stop located in the park and ride lot.
 - d. "Towing services" means a parking and moorage use in which more than two tow trucks are employed in the hauling of motorized vehicles, and where vehicles may be impounded, stored or sold, but not disassembled or junked.
3. "Passenger terminal" means a transportation facility where passengers embark on or disembark from carriers such as ferries, trains, buses or planes that provide transportation to passengers for hire by land, sea or air. Passenger terminals typically include some or all of the following: ticket counters, waiting areas, management offices, baggage handling facilities, restroom facilities, shops and restaurants. A passenger terminal use on the waterfront may include moorage for cruise ships and/or vessels engaged in transporting passengers for hire. Activities commonly found aboard such vessels, whether moored or under way, that are incidental to the transport of passengers shall be considered part of the passenger terminal use and shall not be treated as separate uses. Metro street bus stops, monorail transit stations, and light rail transit stations are not included in this definition. Also excluded is the use of sites where passengers occasionally embark on or disembark from transportation in a manner that is incidental to a different established principal use of the site.
4. "Rail transit facility" means a transportation facility used for public transit by rail. Rail transit facilities include but are not limited to the following:
 - a. "Light rail transit facility" means a structure, rail track, equipment, maintenance base or other improvement of a light rail transit system, including but not limited to ventilation structures, traction power substations, light rail transit stations and related passenger amenities, bus layover and intermodal passenger transfer facilities, and transit station access facilities.
 - b. "Light rail transit station" means a light rail transit facility whether at grade, above grade or below grade that provides pedestrian access to light rail transit vehicles and facilitates transfer from light rail to other modes of transportation. A light rail transit station may include mechanical devices such as elevators and escalators to move passengers and may also include such passenger amenities as informational signage, seating, weather protection, fountains, artwork or concessions.
 - c.

"Light rail transit system" means a public rail transit line that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service, owned or operated by a regional transit authority authorized under Chapter 81.112 RCW. A light rail transit system may be designed to share a street right-of-way although it may also use a separate right-of-way. Commuter rail, and low capacity, or excursion rail transit service, such as the Waterfront Streetcar, are not included.

5. "Transportation facility, air" means one of the following transportation facilities:
 - a. "Airport, land-based" means a transportation facility used for the takeoff and landing of airplanes.
 - b. "Airport, water-based" means a transportation facility used exclusively by aircraft that take off and land directly on the water.
 - c. "Heliport" means a transportation facility in which an area on a roof or on the ground is used for the takeoff and landing of helicopters or other steep- gradient aircraft, and one or more of the following services are provided: cargo facilities, maintenance and overhaul, fueling service, tie-down space, and other accessory buildings and open spaces.
 - d. "Helistop" means a transportation facility in which an area on a roof or on the ground is used for the takeoff and landing of helicopters or other steep- gradient aircraft, but not including fueling service, hangars, maintenance, overhaul or tie-down space for more than one aircraft.
6. "Vehicle storage and maintenance" means a use in which facilities for vehicle storage and maintenance are provided. Vehicle storage and maintenance uses include but are not limited to:
 - a. "Bus base" means a transportation facility in which a fleet of buses is stored, maintained, and repaired.
 - b. "Railroad switchyard" means a vehicle storage and maintenance use in which:
 - 1) Rail cars and engines are serviced and repaired; and
 - 2) Rail cars and engines are transferred between tracks and coupled to provide a new train configuration.
 - c. "Railroad switchyard with a mechanized hump" means a railroad switchyard that includes a mechanized classification system operating over an incline.
 - d. "Streetcar maintenance base" means a transportation facility in which a fleet of streetcars is stored, maintained, and repaired.
 - e. "Transportation services, personal" means a vehicle storage and maintenance use in which either emergency transportation to hospitals, or general transportation by car, van, or limousine for a fee is provided. Such uses generally include dispatching offices and facilities for vehicle storage and maintenance.

"Traveled way" means the portion of a freeway, expressway, or parkway, and its entrance or exit ramps, or scenic route, exclusive of shoulders, used for the movement of vehicles.

"Tree" means a plant defined as a tree in the Sunset Western Garden Book, 7th Edition, 2001. The size of a tree is identified as follows:

1. "Small tree" means a tree identified as a "small tree" in the Department of Transportation's "Recommended Street Trees and Planting Schedules," or a tree not listed in such schedules that is normally expected to have a spread less than or equal to 15 feet in diameter at maturity.
2. "Small/medium tree" means a tree identified as a "small/medium tree" in the Department of Transportation's "Recommended Street Trees and Planting Schedules," or a tree not listed in such schedules that is normally expected to have a spread greater than 15 feet and less than or equal to 20 feet in diameter at maturity.
3. "Medium/large tree" means a tree identified as a "medium/large tree" in the Department of Transportation's "Recommended Street Trees and Planting Schedules," or a tree not listed in such schedules that is normally expected to have a spread greater than 20 and less than or equal to 25 feet in diameter at maturity.
4. "Large tree" means a tree identified as a "large tree" in the Department of Transportation's "Recommended Street Trees and Planting Schedules," or a tree not listed in such schedules that is normally expected to have a spread greater than 25 feet in diameter at maturity.
5. "Large existing tree" means an existing tree with a trunk diameter exceeding 6 inches when measured at 4.5 feet above the ground.

"Tree, exceptional" means a tree designated as such per Chapter 25.11.

"Triplex" means a single structure containing three (3) dwelling units.

Seattle, WA Municipal Code

(Ord. 124378, § 94, 2013; Ord. 124172, § 66, 2013; Ord. 123776, § 13, 2011; Ord. 123729, § 7, 2011; Ord. 123649, § 62, 2011; Ord. 123589, § 103, 2011; Ord. 123495, § 90, 2011; Ord. 123046, § 63, 2009; Ord. 122935, § 22, 2009; Ord. 122611, § 14, 2007; Ord. 122330, § 3, 2007; Ord. 122311, § 100, 2006)

23.84A.040 - "U"

"Underground" means entirely below the surface of the earth, measured from existing or finished grade, whichever is lower, excluding access.

"University." See "Institution."

"Urban plaza." See "Plaza, urban."

"Urban center" means an area designated as an urban center in Seattle's Comprehensive Plan.

"Urban center village" means a portion of a larger urban center designated in Seattle's Comprehensive Plan as an urban center village.

"Urban village" means an area designated in Seattle's Comprehensive Plan as an urban center, hub urban village or residential urban village.

"Urban village, hub" means an area designated in Seattle's Comprehensive Plan as a hub urban village.

"Urban village, residential" means an area designated in Seattle's Comprehensive Plan as a residential urban village.

"Usable open space." See "Open space, usable."

"Use" means the purpose for which land or a structure is designed, built, arranged, intended, occupied, maintained, let or leased.

"Use, accessory" means a use that is incidental to a principal use.

"Use, conditional" means a use or other feature of development that may be permitted when authorized by the Director of the Department of Planning and Development ("administrative conditional use"), or by the Council ("Council conditional use"), pursuant to specified criteria.

"Use, nonconforming" means a use of land or a structure that was lawful when established and that does not now conform to the use regulations of the zone in which it is located, or that has otherwise been established as nonconforming according to section 23.42.102.

"Use, principal" means a use that is not incidental to another use.

"Utility" means a use in which power, water or other similar items are provided or transmitted; or sewage is treated, or solid waste is stored, transferred, recycled or incinerated. High-impact uses and utility lines are not considered utilities. Subject to the foregoing exclusions, utilities include but are not limited to the following uses:

1. "Communication utilities, major." See "communication devices and utilities."
2. "Communication utilities, minor." See "communication devices and utilities."
3. "District energy supply facility" means a utility use in which hot water, steam, or electricity is produced for local distribution to structures on two or more lots. Examples include sewer heat recovery pumps, ground-source heat pumps, standalone solar collection facilities, biodigesters, and heat recovery incinerators.
4. "Power plant" means a utility use in which power in the form of electricity is produced by wind, solar or water forces or the combustion of materials such as coal, oil, or gas and/or in which steam is produced by combustion or electricity. A nuclear power plant, solid waste incineration facility and the concurrent incidental production of electricity or useful heating or mechanical energy, or cogeneration, as well as the recovery of waste heat, are not considered a power plant. The production and use of electricity produced from solar energy or other sources of natural energy as an accessory use is not a power plant use, and the sale of excess energy so produced is not evidence of a power plant use.
5. "Recycling" means a utility use in which recyclable materials are collected, stored, and/or processed, by crushing, breaking, sorting and/or packaging.
- 6.

"Sewage treatment plant" means a utility use in which sanitary or combined sewage is received, treated, and discharged, but does not include: Conveyance lines and associated underground storage facilities; pumping stations; or commercial or industrial facilities for "pretreatment" of sewage prior to discharge into the sewer system.

7. "Solid waste management" means a utility use in which solid waste other than recyclable materials is collected, stored, processed or incinerated. Solid waste management includes, but is not limited to, the following uses:
 - a. "Salvage yard" means a solid waste management use in which junk, waste, discarded or salvaged materials, including materials and household items salvaged from deconstructed or demolished residential structures, are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including automobile wrecking yards, house-wrecking yards, and places or yards for storage of salvaged house-wrecking and structural steel materials and equipment, but only when such activity is not conducted primarily within an enclosed building, and excluding the following: pawnshops and establishments for the sale, purchase, or storage of used furniture, used cars in operable condition, used or salvaged machinery in operable condition or the processing of used, discarded or salvaged materials as a minor part of manufacturing operations.
 - b. "Solid waste incineration facilities" means a solid waste management use in which solid waste is reduced by mass burning, prepared fuel combustion, pyrolysis or any other means, regardless of whether or not the heat of combustion of solid waste is used to produce power. Heat-recovery incinerators and the incidental production of electricity or useful heating or mechanical energy, or cogeneration, are not considered a solid waste incineration facility.
 - c. "Solid waste landfills" means a solid waste management use in which solid waste is permanently placed in or on land, including sanitary landfills and compliance cell landfills.
 - d. "Solid waste transfer station" means a solid waste management use in which discarded materials are collected for transfer to another location for disposal by compaction, shredding or separating, but does not include processing that changes the chemical content of the material.
8. "Utility services use" means a utility use that provides the system for transferring or delivering power, water, sewage, storm water runoff, or other similar substances. Examples include electrical substations, pumping stations, and trolley transformers.

(Ord. [124378](#), § 95, 2013; Ord. [123963](#), § 32, 2012; Ord. [123872](#), § 7, 2012; Ord. [123495](#), § 91, 2011; Ord. [122311](#), § 100, 2006)

23.84A.046 - "Y"

"Yard." See "Yard, front," "Yard, side" and "Yard, rear."

"Yard, front" means an area from the ground upward between the side lot lines of a lot, extending from the front lot line to a line on the lot parallel to the front lot line, the horizontal depth of which is specified for each zone. The front yard includes all portions of the lot that are within the specified distance from the street along which the front lot line extends, even if separated from the street by an intervening lot. In the case of an irregularly-shaped lot, the front yard shall be a portion of the property as determined according to subsection 23.86.010.B.

"Yard, rear" means an area from the ground upward between the side lot lines of a lot, extending from the rear lot line to a line on the lot parallel to the rear lot line, the horizontal depth of which is specified for each zone. In the case of an irregularly-shaped lot, the rear yard shall be a portion of the property adjacent to the rear lot line as determined according to subsection 23.86.010.C.

"Yard, side" means an area from the ground upward between the front yard (or front lot line if no front yard is required); and the rear yard (or rear lot line if no rear yard is required); and extending from a side lot line to a line on the lot, parallel to the side lot line, the horizontal depth of which is specified for each zone.

Youth Service Centers: See "Jails." A youth service center means youth detention facility, holding cells, courtrooms, classroom space, a gymnasium for detained youth, and related uses, including but not limited to administrative offices and meeting rooms.

(Ord. 124610, § 4, 2014; Ord. 124475, § 10, 2014; Ord. 122311, § 100, 2006)

23.88.020 - Land use interpretations

- A. Interpretations generally. A decision by the Director as to the meaning, application or intent of any development regulation in Title 23 or in Chapter 25.09, Regulations for Environmentally Critical Areas, as it relates to a specific property, or a decision by the Director upon review of a determination of consistency of a proposed project with a planned action ordinance, is known as an "interpretation." An interpretation may be requested in writing by any person or may be initiated by the Director. Procedural provisions and statements of policy are not subject to the interpretation process. A decision by the Director that an issue is not subject to an interpretation request is final and not subject to administrative appeal. A request for an interpretation, and a subsequent appeal to the Hearing Examiner if available, are administrative remedies that must be exhausted before judicial review of a decision subject to interpretation may be sought. An interpretation decision by the Director may affirm, reverse, or modify all or any portion of a Type I or Type II land use decision.
- B. Filing and Fees. Any request for interpretation shall be filed with the Director accompanied by the required fee. If a request for interpretation is included in an appeal to the Hearing Examiner of a related project decision, a copy shall be filed with the Director, accompanied by the applicable fee.
- C. Timing of Request.
 1. An interpretation that is not related to any pending project application may be requested at any time, by any person.
 2. If an interpretation relates to a project application requiring no public notice pursuant to the provisions of Chapter 23.76, the following rules govern the deadline by which the request for interpretation must be received by the Department in order for the interpretation to be applied to the pending permit application:
 - a. Any person may request an interpretation within fourteen (14) days after the date the project application is determined to be complete, provided that the interpretation will not apply to the project if the permit is ready to issue before or on the same day the interpretation request and fee are submitted to the Department.
 - b. The project applicant may request an interpretation more than fourteen (14) days after the project application is determined to be complete if he or she agrees in writing that the time limits required by SMC Section 23.76.005 shall be calculated from the day the interpretation is requested.
 3. If an interpretation relates to a project application requiring public notice pursuant to the provisions of Chapter 23.76, the following rules govern the deadline by which the request for interpretation must be received by the Department in order for the interpretation to be applied to the pending permit application:
 - a. Any person may request an interpretation prior to the end of the public comment period, including any extension, for the project application.
 - b. The project applicant may request an interpretation after the end of the public comment period and prior to publication of a land use decision or recommendation, if he or she agrees in writing that the time limits required by SMC Section 23.76.005 shall be calculated from the day the interpretation is requested.

- c. Notwithstanding the above deadlines, an appeal of a Type II decision or a request for further consideration of a Type III recommendation may include a request that the Director issue in writing his or her interpretation of specified code sections, combined with an appeal of such interpretation, provided that an interpretation regarding whether a use proposed under the related project application has been correctly classified may not be requested pursuant to this subsection (c). A request for interpretation made pursuant to this subsection (c) shall state with specificity:
 - (1) How the Director's construction or application of the specified code sections is in error; and
 - (2) How the requester believes those sections should be construed or applied.

The provisions of subsections D, E and F of this section shall not apply to interpretations requested pursuant to this subsection (c). The Director shall respond to the request by issuing an interpretation in the form of a memorandum to be filed with the Hearing Examiner at least five (5) calendar days before the hearing.

- D. Notice of Request for Interpretation. If an interpretation relates to a project application under consideration, and is requested by a person other than the applicant for that project, notice of the request for interpretation shall be provided to the permit applicant. If an interpretation relates to the provisions of Chapter 23.60 (Seattle Shoreline Master Program), notice of the request shall be provided to the Washington State Department of Ecology. If an interpretation is requested by a Major Institution as to whether a proposal constitutes a major or minor amendment to an adopted Major Institution Master Plan, notice of the request shall be provided to all members of the Citizens' Advisory Committee for that Major Institution.
- E. Notice of Interpretation. Notice of an interpretation shall be provided to the person requesting the interpretation, and to the applicant(s) for the specific project or projects to which the interpretation relates. If the interpretation relates to provisions of Chapter 23.60 (Seattle Shoreline Master Program), notice shall be provided to the Washington State Department of Ecology. If the interpretation is related to a project requiring public notice, the interpretation shall be published concurrently with other land use decisions relating to that project. Notice of any interpretation subject to appeal before the Hearing Examiner or the Shoreline Hearings Board shall be provided by Land Use Information Bulletin.
- F. Availability and Venue of Appeals.
 1. An interpretation that is unrelated to any specific project application, or is related to a Type III or IV decision, may be appealed by any person to the Hearing Examiner. Such an appeal shall be filed with the Hearing Examiner by five p.m. (5:00 p.m.) on the fourteenth calendar day following publication of the notice of the interpretation. When the last day of the appeal period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five p.m. (5:00 p.m.) on the next business day. The appeal hearing on an interpretation related to a Type III Master Use Permit shall be consolidated with the open record hearing on the project application and the appeal hearing for any related environmental determination. Interpretations related to Type IV decisions shall be appealable to the Hearing Examiner in accordance with SMC Section 23.76.052.
 2. An interpretation relating to a project application that does not require public notice shall not be subject to administrative appeal.

3. An interpretation relating to a Type II Master Use Permit shall be subject to the same appeal deadline as the related project decision, and may be appealed only if that project decision is appealed. The appeal of an interpretation shall be consolidated with the appeal of the related project decision. Interpretations related to projects that are appealed to the Hearing Examiner shall be appealable to the Hearing Examiner, and interpretations relating to project decisions that are appealed to the Shoreline Hearings Board shall be appealable to the Shoreline Hearings Board.

G. Appeals to Hearing Examiner, process and standard of review

1. The appeal of an interpretation, where permitted, shall be in writing and shall state specifically why the applicant believes the interpretation to be incorrect.
2. Appeals submitted to the Hearing Examiner shall be accompanied by payment of a filing fee as established in SMC Chapter 3.02.
3. The Hearing Examiner shall consider the appeal in accordance with the procedure established for hearing contested cases in the Administrative Code, Chapter 3.02 and the Hearing Examiner Rules of Practice and Procedure in effect at the time the appeal is made.
4. In the event of an appeal of an interpretation not related to a specific project application, such appeal shall be decided within fifteen (15) days of the close of the record before the Hearing Examiner.
5. Appeals shall be considered de novo, and the decision of the Hearing Examiner shall be made upon the same basis as was required of the Director. The interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant. The Hearing Examiner shall summarily dismiss an appeal without hearing which is determined to be without merit on its face, frivolous, or brought merely to secure a delay.
6. The Hearing Examiner may affirm, reverse or modify the Director's interpretation either in whole or in part or may remand the interpretation to the Director for further consideration. The decision of the Hearing Examiner shall be final and conclusive unless the decision is reversed or remanded on judicial appeal. Any judicial review must be commenced as provided by state law.

(Ord. 124378, § 99, 2013; Ord. 123963, § 34, 2012; Ord. 123649, § 66, 2011; Ord. 121477 § 65, 2004; Ord. 121476 § 27, 2004; Ord. 118181 § 8, 1996; Ord. 118012 § 58, 1996; Ord. 112522 § 17(part), 1985; Ord. 110793 § 76, 1982; Ord. 110381 § 1(part), 1982.)

Case—Mandamus will not issue to compel the City to abate a violation which comes to light through the interpretation process. **Carkeek v. Seattle**, 53 Wn.App. 277, 766 P.2d 480 (1989).

This section does not preclude a lawsuit by neighbors who opposed issuance of a permit and had no reason or opportunity to seek interpretation of the code. **Kates v. Seattle**, 44 Wn.App. 754, 723 P.2d 493 (1986).

25.05.680 - Appeals

Appeal provisions in SEPA are found in RCW 43.21C.060, 43.21C.075, 43.21C.080, 43.21C.420, and WAC 197-11-680. The following provisions attempt to construe and interpret the statutory and administrative rule provisions. In the event a court determines that code provisions are inconsistent with statutory provisions or administrative rule, or with the framework and policy of SEPA, the statute or rule will control. Persons considering either administrative or judicial appeal of any decision that involves SEPA are advised to read the statutory and rule sections cited above.

A. Master Use Permits and Council Land Use Decisions.

1. For proposals requiring a Master Use Permit under SMC Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, for which the Department of Construction and land use or a non-City agency is the lead agency, SEPA appeal procedures shall be as provided in Chapter 23.76.
2. For proposals requiring Master Use Permits or Council Land Use Decisions for which a City department other than the Department of Construction and land use is lead agency and is a project proponent or is funding a project and where the City department chooses to conduct SEPA review prior to submitting an application for the Master Use Permit or Council Land Use Decision:
 - a. The following agency environmental determinations shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection:
 - i. Determination of Nonsignificance (DNS);
 - ii. Adequacy of the Final EIS as filed in the SEPA Public Information Center.
 - b. An appeal shall be commenced by filing of a notice of appeal with the Office of the Hearing Examiner no later than five (5:00) p.m. the fourteenth day following the filing of the decision in the SEPA Public Information Center or publication of the decision in the City official newspaper, whichever is later; provided that when a fourteen (14) day DNS comment period is required pursuant to this chapter, appeals may be filed no later than the twenty-first day following such filing or publication. The appeal notice shall set forth in a clear and concise manner the alleged errors in the decision. Upon timely notice of appeal the Hearing Examiner shall set a date for hearing and send notice to the parties. Filing fees for appeals to the Hearing Examiner are established in Section 3.02.125.

B. Decisions Not Related to Master Use Permits or Council Land Use Decisions.

1. The following agency decisions on proposals not requiring a Master Use Permit shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection:
 - a. Determination of Nonsignificance.
 - b. Adequacy of the final EIS as filed in the SEPA Public Information Center. Notice of all decisions described in this subsection shall be filed promptly by the responsible official in the City's SEPA Public Information Center.

2.

An appeal shall be commenced by the filing of a notice of appeal with the office of the Hearing Examiner no later than the fifteenth day following the filing of the decision in the SEPA Public Information Center or publication of the decision in the City official newspaper, whichever is later; provided that when a fourteen (14) day DNS comment period is required pursuant to this chapter, appeals may be filed no later than the twenty-first day following such filing or publication. The appeal notice shall set forth in a clear and concise manner the alleged errors in the decision. Upon timely notice of appeal the Hearing Examiner shall set a date for hearing and send notice to the parties. Filing fees for appeals to the Hearing Examiner are established in Section 3.02.125.

3. Appeals shall be considered de novo and limited to the issues cited in the notice of appeal. The determination appealed from shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party. The Hearing Examiner shall have authority to affirm or reverse the administrative decisions below, to remand cases to the appropriate department with directions for further proceedings, and to grant other appropriate relief in the circumstances. Within fifteen (15) days after the hearing, the Hearing Examiner shall file and transmit to the parties written findings of fact, conclusions of law, and a decision.
4. The Hearing Examiner is authorized to promulgate rules and procedures to implement the provisions of this section. The rules shall be promulgated pursuant to Chapter 3.02 of this code.
5. If the agency has made a decision on a proposed action, the Hearing Examiner shall consolidate any allowed appeals of procedural and substantive determinations under SEPA with any hearing or appeal on the underlying City action. For example, an appeal of the adequacy of an EIS must be consolidated with a hearing or appeal on the agency's decision or recommendation on the proposed action, if both proceedings are allowed by ordinance.

C. Judicial Appeals.

1. SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.
2. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those which do not (non-SEPA issues). If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within such time period. If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals must be commenced within the time period specified by RCW 43.21C.080.
3. If the proposal requires more than one (1) governmental decision that will be supported by the same SEPA documents, then RCW 43.21C.080 still only allows one (1) judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.
4. If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.
5. For the purposes of this subsection, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in Chapter 4.16 RCW.

D.

RCW 43.21C.420 bars certain SEPA appeals if the City has elected to adopt optional elements of the City's Comprehensive Plan or development regulations pursuant to RCW 43.21C.420. Unless an ordinance enacting or amending the Comprehensive Plan or development regulations expressly recites that it is being adopted pursuant to the authority of RCW 43.21C.420, RCW 43.21C.420 does not affect the availability of appeals. If RCW 43.21C.420 applies to a non-project EIS as described in RCW 43.21C.420, then unless the City Council by ordinance establishes a different time frame for submitting a complete application for purposes of RCW 43.21C.420 (5) with respect to that EIS, the time frame is 24 hours following the date of issuance of the final EIS.

E. Official Notice of the Date and Place for Commencing a Judicial Appeal.

1. Official notice of the date and place for commencing an appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the underlying governmental action. The notice shall include the time limit for commencing an appeal, the statute or ordinance establishing the time limit and where an appeal may be filed.
2. Notice is given by:
 - a. Delivery of written notice to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and
 - b. Following the agency's normal methods of notice for the type of governmental action taken.
3. Written notice containing the information required by subsection E1 of this section may be appended to the permit, decision documents, or SEPA compliance documents or may be printed separately.
4. Official notices required by this subparagraph shall not be given prior to final agency action.

(Ord. 123913, § 51, 2012; Ord. 119096 § 35, 1998; Ord. 118794 § 59, 1997; Ord. 118181 § 9, 1996; Ord. 118012 § 63, 1996; Ord. 117789 § 14, 1995; Ord. 114090 § 1, 1988; Ord. 114057 § 1(part), 1988; Ord. 112522 § 20(part), 1985; Ord. 111866 § 1(part), 1984.)

Exhibit 4

1 Chapter 23.32. In the event that any of the boundaries on the Official Land Use Map conflict
2 with the criteria of WAC 173-22-040 as amended or with lands held in trust for Indian Tribes,
3 the criteria or the laws for Indian trust lands shall control.

4 B. All property located within the Shoreline District is subject both to the standards of the
5 applicable zone and to the requirements imposed by this Chapter 23.60A and any other overlay
6 district except as provided in Section 23.60A.016.

7 **23.60A.012 Inconsistent development prohibited**

8 No development shall be undertaken, no shoreline modification shall be made, and no
9 use, including a use that is located on a vessel, shall be established in the Shoreline District
10 unless the Director has determined that it is consistent with the policy of the Shoreline
11 Management Act and the regulations of this Chapter 23.60A. This restriction applies even if no
12 shoreline substantial development permit is required.

13 **23.60A.014 Liberal construction**

14 A. This Chapter 23.60A is exempted from the rule of strict construction, and it shall be
15 liberally construed to give full effect to the objectives and purposes of RCW 90.58, the State
16 Shoreline Management Act. The standard in this Chapter 23.60A that is most restrictive applies.

17 B. This Chapter 23.60A shall not be used when construing other chapters of this Title 23
18 except for actions in the Shoreline District or as stated in subsections 23.60A.016.B and
19 23.60A.016.C.

20 **23.60A.016 Regulations supplemental**

21 A. The regulations of this Chapter 23.60A are superimposed upon and modify the
22 underlying zones in the Shoreline District. The regulations of this Chapter 23.60A supplement
23 other regulations of this Title 23 as set out in subsections 23.60A.016.B and 23.60A.016.C.

24 B. Uses and shoreline modifications. To be allowed in the Shoreline District, a use or a
25 shoreline modification must be allowed in both the shoreline environment, the underlying zone
26 and any other overlay district in which it is located.



1 C. Development Standards

2 1. A development, shoreline modification, or use in the Shoreline District shall
3 meet the development standards of Chapter 23.60A, the underlying zone and any other overlay
4 district in which it is located. In the case of irreconcilable conflicts between the regulations of
5 Chapter 23.60A and the underlying zone or overlay district, Chapter 23.60A applies, except as
6 provided in this subsection 23.60A.016.C.

7 2. The height limit for a structure in the Shoreline District is the lower of the
8 height limits provided in the shoreline environment, the underlying zone, or overlay district,
9 except in the Urban Harborfront (UH) Environment, where the shoreline height limit controls.

10 3. The floor area ratio (FAR) of the underlying zone may not be exceeded,
11 regardless of whether the maximum height and lot coverage allowed in the applicable shoreline
12 environment can be achieved.

13 4. Yards and/or setbacks of the underlying zone may be reduced or waived for
14 lots subject to view corridor requirements, in accordance with Section 23.60A.170, and to
15 preserve buffers and riparian management areas in environmentally critical areas as allowed in
16 Section 23.60A.156.

17 5. Within the Shoreline District, submerged lands are not counted in calculating
18 lot area for purposes of minimum lot area.

19 6. Measurements in the Shoreline District are regulated in this Chapter 23.60A,
20 Subchapter XVII, Measurements.

21 7. Seattle Construction Limit Line

22 a. Established. There is established along the shores of Lake Union and
23 waters in the vicinity thereof in the City, a "Seattle Construction Limit Line." The Seattle
24 Construction Limit Line is as shown on the Official Land Use Map Chapter 23.32.

25 b. Unlawful Construction--Exceptions. It is unlawful to erect, construct or
26 maintain any building or structure outward from the shores of Lake Union beyond the Seattle
27



1 Construction Limit Line, except such buildings or structures as are expressly authorized by the
2 laws of the United States or State of Washington; provided, any residential structure located in
3 whole or in part beyond the Seattle Construction Limit Line prior to December 18, 1968, is
4 allowed as a nonconforming structure and is regulated pursuant to Section 23.60A.124.

5 D. Nothing in this Chapter 23.60A changes the legal effect of existing approved Major
6 Institution Master Plans adopted pursuant to Chapter 23.69 or Ordinance 121041.

7 **23.60A.018 Non-regulated actions**

8 Except as specifically provided otherwise, the regulations of this Chapter 23.60A do not
9 apply to the operation of boats, ships and other vessels designed and used for navigation, other
10 than moorage of vessels and uses on vessels unrelated to navigation; nor to the vacation and
11 closure, removal or demolition of buildings determined by the Director to be unfit for human
12 habitation pursuant to the Seattle Housing Code; nor to correction of conditions found by the
13 Director to be in violation of the minimum standards of Chapters 22.200, et seq., of the Seattle
14 Housing Code; nor to the demolition of a structure pursuant to an ordinance declaring it to be a
15 public nuisance and providing for summary abatement; nor to actions taken pursuant to
16 environmental excellence program agreements entered into under RCW 43.21K.

17 **23.60A.020 Permits and exemptions**

18 A. Shoreline substantial development permit required

19 1. A shoreline substantial development permit is required prior to undertaking
20 any development unless the Director determines the development is not substantial development
21 or has issued an exemption under this Section 23.60A.020. Development does not include
22 demolition, except when the Director determines that such demolition will have a major impact
23 upon the character of the shoreline.

24 2. Criterion for requiring a shoreline substantial development permit

25 a. "Substantial development" means any development for which the total
26 cost or fair market value exceeds \$6,416, as adjusted under RCW 90.58.030(3)(e), or any

- 1 3. The permittee has secured the permit with false or misleading information; or
- 2 4. The permit was issued in error.

3 B. The determination that a permit should be rescinded or suspended shall be made
4 following a public hearing by the Director. Notice of the hearing shall be mailed to the permittee
5 not fewer than 15 days prior to the date set for the hearing and be included in the Land Use
6 Information Bulletin. The notice shall specify the basis for the hearing.

7 **23.60A.082 Enforcement**

8 Procedures for investigation and notice of violation, compliance, stop work orders,
9 emergency orders, and the imposition of civil penalties for the violation of any requirements of
10 this Chapter 23.60A shall be as specified in Chapter 23.90, Enforcement of the Land Use Code,
11 and in Chapter 23.91, Citations-Hearings-Penalties, except as provided otherwise in this Chapter
12 23.60A.

13 **Subchapter III: General Provisions**

14 **Part 1 Use Standards**

15 **23.60A.090 Identification of principal and accessory uses**

16 A. In all shoreline environments all uses on waterfront lots are prohibited over water as a
17 principal or accessory use unless the use is allowed or allowed as a special use, a shoreline
18 conditional use or a Council conditional use in the shoreline environment where the use is
19 proposed and the use is:

- 20 1. Boat moorage, off-loading goods from boats, dry-docks, swimming platforms,
21 uses on vessels authorized under Sections 23.60A.214 and 23.60A.215, or other use components
22 that by their nature require an over water location to operate;
- 23 2. Railroad, rail transit, streets, bridges and tunnels that reasonably need to cross
24 water that is regulated in this Chapter 23.60A; or

1 3. Allowed, allowed as a special use, allowed as a shoreline conditional use or
2 allowed as a Council conditional use as a use overwater in the specific regulations for the type of
3 use or for the shoreline environment.

4 B. Any principal use allowed, allowed as a special use, allowed as a shoreline conditional
5 use, or allowed as a Council conditional use in a specific shoreline environment may be an
6 accessory use using the same process as if the use were the principal use, unless the use is
7 prohibited as an accessory use in the shoreline environment. For the purposes of this subsection
8 23.60A.090.B, water-based airports, heliports, and helistops shall not be considered to be
9 accessory to a principal use and are allowed pursuant to the applicable shoreline environment.

10 C. A use that is prohibited as a principal use in a particular shoreline environment may be
11 allowed as an accessory use on dry land if incidental to and necessary for the operation of a
12 principal use that is allowed, allowed as a special use, allowed as a shoreline conditional use, or
13 allowed as a Council conditional use in the specific shoreline environment, using the same
14 process as the principal use, unless the use is prohibited as an accessory use in the shoreline
15 environment. For purposes of this subsection 23.60A.090.C, water-based airports, heliports, and
16 helistops shall not be considered to be accessory to a principal use and are allowed pursuant to
17 the applicable shoreline environment.

18 D. Standards for accessory uses

19 1. Accessory uses shall be located on the same development site as the principal
20 use, except as provided in subsection 23.60A.090.D.2.

21 2. Accessory uses may be located off site if:

22 a. The accessory use is allowed as a principal use in the shoreline
23 environment applicable to an adjacent development site, the accessory use may be located on
24 that adjacent development site; or

25 b. The accessory use is parking and the parking is proposed to be located
26 within 800 feet of the development site where the principal use is located; and
27

1 1) The parking is located in a new or existing parking structure or
2 at an existing surface parking area; and

3 2) Additional and enhanced public access is provided
4 commensurate with the area of parking that would have otherwise occurred on the site;

5 3) Ecological restoration and enhancement in the form of a
6 decrease in the amount of impervious surface and an increase in the amount of native vegetation
7 is provided commensurate with the area of parking that would have otherwise occurred on the
8 site; and

9 4) Existing surface parking is removed within the Shoreline
10 District or the area of new or existing parking is reduced in the Shoreline District.

11 **23.60A.092 Temporary development, shoreline modifications and uses**

12 A. Development, shoreline modification limited to floats, and uses that will occur for four
13 weeks or less may be exempt from obtaining a shoreline substantial development permit as
14 provided in Section 23.60A.020; developments that are exempt shall comply with the Shoreline
15 Management Act and the standards and provisions of this Chapter 23.60A.

16 B. Development or Uses for Up to Six Months

17 1. The Director may approve a permit for a development, shoreline modification
18 or use for a time period of up to six months if the development, shoreline modification, or use
19 complies with the standards and provisions of this Chapter 23.60A, except as provided in
20 subsection 23.60A.092.B.2, and the following standards:

- 21 a. Does not include the erection of a permanent structure;
22 b. Does not cause or contribute to permanent adverse impacts to ecological
23 functions and mitigates any temporary adverse impacts to ecological function;
24 c. Does not remove or harm native vegetation; and
25 d. If new impervious surface is created, this surface is removed and
26 planted with native vegetation at the end of the temporary use.



1 D. In mitigating impacts from tunnels, including entry ways to and exit ways from
2 tunnels and accessory structures, impacts shall be addressed in the following sequence:

3 1. The route of the tunnel and accessory structures shall be sited in locations that
4 have the least possible adverse effect on unique or fragile shoreline features; and

5 2. Adverse impacts to views of the water from waterfront parcels shall be
6 minimized.

7 **23.60A.198 Standards for drive-in businesses**

8 Drive-in businesses are not allowed on waterfront lots in the Shoreline District. Drive-in
9 businesses may be allowed on upland lots in the Shoreline District subject to the provisions of
10 the underlying zone and other special districts.

11 **23.60A.199 Standards for intakes and outfalls**

12 A. Intakes and outfalls shall be designed and constructed to prevent the entry of fish.

13 B. Intakes and outfalls shall be located, designed, constructed, and managed to prevent
14 erosion and threats to slope stability, including the use of appropriate energy dissipation at the
15 discharge end.

16 C. In mitigating impacts from intakes and outfalls, impacts shall be addressed as follows:

17 1. Intakes and outfalls and appurtenant structures shall be sited in the locations
18 that have the least possible adverse effect on unique or fragile shoreline features; and

19 2. Mitigating impacts on ecological functions includes, but is not limited to,
20 impacts from modification or obstruction of water circulation and flow and disturbance of
21 intertidal, sub-tidal, or shallow water habitat.

22 **23.60A.200 Standards for marinas, commercial and recreational**

23 A. In shoreline environments where commercial marinas and recreational marinas are
24 allowed or allowed as a special use or a shoreline conditional use, they shall comply with the
25 standards in the applicable shoreline environment and this Section 23.60A.200.

26 B. General standards. When new marinas are established or when substantial
27 development occurs at an existing marina the following development standards apply:
28



1 1. Marina operators shall develop a best management practices (BMPs) document
2 for marina tenants. This document shall, at a minimum, address the requirements of subsections
3 B.2 through B.5 of Section 23.60A.200. Moorage agreements shall include the BMPs document
4 and a section in the document that states that by signing the moorage agreement the tenant has
5 read and agrees to comply with the BMPs.

6 2. Marina owners shall require owners and operators of vessels moored in
7 recreational marinas or commercial marinas shall use BMPs to minimize impacts on the aquatic
8 environment. The BMPs include the following:

9 a. Using non-toxic cleaners and other products used on vessels that drain
10 into the water;

11 b. Limiting the amount of gray water produced by minimizing water use;

12 c. Disposing of sewage at pump-out stations or through a pump-out
13 service;

14 d. Disposing of garbage, food scraps, waste material and recyclables into
15 the appropriate on-land receptacles;

16 e. Storing all outside materials in a secure manner so that they do not enter
17 the water because of wind or wave action;

18 f. Not using herbicides, pesticides or fertilizers; and

19 g. Using a double containment system when using products on the vessel
20 to contain any spills in the second receptacle and prevent the products from entering the water.

21 3. Marinas shall be operated and managed in a manner to preserve water quality
22 pursuant to Title 22, subchapter VIII, Stormwater Code, and to protect the public health. The
23 Director shall adopt a rule establishing model BMPs based on Department of Ecology's
24 Resource Manual for Pollution Prevention in Marinas May 1998, Revised 2009 Publication
25 #9811 as a minimum standard.

26 4. Non-commercial slip-side vessel maintenance is limited to:
27
28



1 a. Interior vessel repair and cleaning, replacement of running gear and
2 other cleaning and repair activities excluding hull scraping and painting, which is prohibited.

3 b. Twenty-five percent of the exterior of the vessel above the deck at any
4 one time; exterior work involving paint, varnish and other toxic substances below the deck is
5 prohibited. The Director may establish appropriate BMPs based on Department of Ecology's
6 Resource Manual for Pollution Prevention in Marinas May 1998, Revised 2009 Publication
7 #9811 in a Director's Rule.

8 5. Marinas shall provide restrooms connected to the sewer system for use by any
9 patron of the marina facility. At a minimum, the facilities are required to include one toilet and
10 one washbasin. The Director shall determine the need for additional facilities to provide
11 reasonable hygiene based on the number of slips, percentage of live-aboard slips, and the number
12 of transient moorage slips within the marina.

13 6. Marinas having either more than 3,500 linear feet of moorage or slips large
14 enough to accommodate vessels larger than 20 feet in length shall provide a sewage pump-out
15 facility or the best available method of disposing of sewage wastes.

16 7. In Lake Washington and the Puget Sound overwater projections, boat lifts, and
17 areas used for vessel moorage shall be located a minimum distance of 30 feet waterward from
18 the OHW mark or in a minimum water depth of 8 feet, whichever is less to the extent reasonable.
19 In Lake Union and Portage Bay overwater projections, boat lifts, and areas used for vessel
20 moorage shall be located a minimum distance of 15 feet waterward from the OHW mark or in a
21 minimum water depth of 8 feet, whichever is less to the extent reasonable.

22 8. Marinas shall be designed to prevent water stagnation and the need for
23 dredging by creating two openings at the opposite ends so that water and sediment moves
24 through the marina to the extent reasonable.

25 9. Piers shall be oriented with currents or prevailing winds to prevent trapping
26 surface debris and oily residue to the extent reasonable.

27 10. Standards for piers and floats are provided in Section 23.60A.187.
28



1 C. Additional general development standard for new marinas. New marinas shall be
2 located in areas that have a flushing rate of at least 30 percent per 24 hours. If a flushing rate of
3 30 percent per 24 hours is not achievable because water flow is controlled by the operation of the
4 Hiram M. Chittenden Locks the flushing rate shall be 30 percent per 24 hours to the extent
5 reasonable.

6 D. Additional general development standards for new recreational marinas

7 1. Public access for new recreational marinas is required as follows:

8 a. Marinas with a dry land lot depth of less than 35 feet are exempt from
9 the requirement to provide public access under this subsection 23.60A.200.D;

10 b. Marinas providing less than 2,000 linear feet of moorage space and
11 containing only water-dependent or water-related principal uses are exempt from the requirement
12 to provide public access under this subsection 23.60A.200.D.

13 c. For a marina providing less than 9,000 linear feet of moorage space, the
14 minimum public access is an improved walkway 5 feet wide on an easement 10 feet wide leading
15 to an area located at the marina's water frontage, which shall be 10 feet wide and shall provide
16 10 feet of water frontage for every 100 feet of the marina's water frontage.

17 d. For a marina providing 9,000 or more linear feet of moorage space, the
18 minimum public access is an improved walkway 5 feet wide on an easement 10 feet wide leading
19 to a public walkway 5 feet wide on an easement 10 feet wide located along the entire length of
20 the marina's water frontage.

21 e. Easements are not required for publicly owned marinas.

22 2. Transient Moorage. Recreational marinas shall provide transient moorage as
23 follows:

24 a. When a new recreational marina is established or substantially
25 improved it shall provide transient moorage for recreational vessels at the rate of 40 linear feet of
26 transient moorage space for each 1,000 linear feet of non-transient moorage space in the marina
27 if either:



1 1) The marina provides 9,000 or more linear feet of non-transient
2 moorage; and

3 2) The marina is part of a development that includes a restaurant or
4 other use that is not water-dependent or water-related and that operates during evening and
5 weekend hours; or

6 3) The marina is owned, operated, or franchised by a governmental
7 agency for use by the general public.

8 b. The Director may waive the requirement for transient recreational
9 moorage if the Director finds adequate transient moorage already exists within ¼ mile of the
10 marina.

11 c. Transient moorage for commercial vessels may be required as part of a
12 recreational marina providing more than 9,000 linear feet of moorage if the site is within ¼ mile
13 of commercial facilities generating unmet commercial transient moorage demand. Transient
14 moorage for commercial vessels shall be provided at the rate of 100 linear feet of transient
15 moorage space for each 2,000 linear feet of non-transient moorage space.

16 E. Additional general development standards for commercial marinas. Commercial
17 marinas providing more than 9,000 linear feet of moorage shall provide transient moorage for
18 commercial vessels at the rate of 50 linear feet of transient moorage space for each 1,000 linear
19 feet of non-transient moorage space if the site is within ¼ mile of commercial facilities
20 generating unmet commercial transient moorage demand.

21 F. Commercial and recreational marinas may provide moorage for vessels used as live-
22 aboard vessels if the marina meets the following standards, in addition to the general
23 development standards in subsections 23.60A.200.A through 23.60A.200.D:

24 1. The live-aboard vessel is the type of vessel allowed to be moored at the
25 commercial or recreational marina; and

26 2. The marina provides shower facilities connected to a sanitary sewer that are
27 adequate to serve the number of live-aboard vessels moored at the marina.



1 b. If Table A for 23.60A.482 or text of Section 23.60A.482 states that a
2 use is required to be water-dependent or water-related, a use that does not have the required
3 attribute is prohibited.

4 3. Regulations for specific shoreline modifications are set out in Sections
5 23.60A.172 through 23.60A.190.

6 B. Uses on upland lots

7 1. All uses allowed, allowed as a special use or allowed as a shoreline conditional
8 use on waterfront lots are allowed on upland lots.

9 2. Uses prohibited on waterfront lots are regulated on upland lots by the
10 underlying zones and are allowed, allowed as a shoreline conditional use, or prohibited as
11 provided in the underlying zones, except for the following uses; these uses are prohibited on
12 upland lots:

13 a. Transportation uses that are prohibited on waterfront lots; except for
14 cargo terminals and passenger terminals;

15 b. Utility uses that are prohibited on waterfront lots except for:

16 1) Solid waste management that are not water-dependent or water-
17 related excluding solid waste transfer stations; and

18 2) Recycling uses that are not water-dependent or water-related.

19 c. High Impact uses that are water-related; and

20 d. Heavy manufacturing uses, including the extraction and mining of raw
21 materials.

22
23 **Table A for 23.60A.482**
Uses in the UI Environment

Use	Waterfront Lots
A. AGRICULTURAL AND FOREST PRACTICE	
A.1. Aquaculture	CU
A.2. Other agricultural and forest practice uses	X
B. CEMETERIES	X
C. COMMERCIAL USES	



**Table A for 23.60A.482
 Uses in the UI Environment**

Use	Waterfront Lots
C.1. Commercial uses WD/WR	P
C.2. Eating and drinking establishments	See subsection 23.60A.482.C
C.3. Entertainment uses	See subsection 23.60A.482.E
C.4. Food processing and craft work uses	See subsection 23.60A.482.C & D
C.5. Laboratories, research and development	See subsection 23.60A.482.D
C.6. Offices	See subsection 23.60A.482.D
C.7. Sales and services, general	See subsection 23.60A.482.C
C.8. Sales and services, heavy	See subsection 23.60A.482.C & D
C.9. Other commercial uses not WD/WR	X
D. HIGH-IMPACT USES	WD/WR
E. INSTITUTIONAL USES	
E.1. Colleges	WD/WR
E.2. Institute for advanced study	WD/WR
E.3. Vocational or fine arts schools	WD/WR
E.4. Yacht boat and beach clubs	See subsection 23.60A.482.F
E.5. Other institutional uses	X
F. LIVE-WORK UNITS	X
G. MANUFACTURING USES	See subsection 23.60A.482.C & D
H. PARKS AND OPEN SPACE USES	
H.1 Shoreline park and open space	P
H.2 General park and open space	X
I. PUBLIC FACILITIES	see Section 23.60A.207
J. RESEARCH USES, Aquatic Scientific, Historic, Cultural and Educational	See Section 23.60A.210
K. RESIDENTIAL USES	X
L. RESTORATION AND ENHANCEMENT USES	See Section 23.60A.211
M. STORAGE USES	
M. STORAGE USES	
M.1. Mini-warehouses	See subsection 23.60A.482.D
M.2. Storage, outdoor	See subsection 23.60A.482.D
M.3. Warehouses	See subsection 23.60A.482.C, 23.60A.482.D and 23.60A.482.G
N. TRANSPORTATION FACILITY USES	
N.1. Bridges and tunnels	P
N.2. Cargo terminals	WD/WR
N.3. Moorage	
N.3.a. Boat moorage	
N.3.a.1. Commercial marina	P
N.3.a.2. Recreational marina	See subsection 23.60A.482.F
N.3.b. Dry boat storage	P
N.4 Navigational locks	X



**Table A for 23.60A.482
 Uses in the UI Environment**

Use	Waterfront Lots
N.5. Parking	
N.5.a. Parking, principal use	X
N.5.b. Parking, accessory use	P
N.6. Passenger terminal	WD/WR
N.7. Rail transit facilities	P
N.8. Transportation facilities, air	
N.8.a. Airports, land-based	X
N.8.b. Airports, water-based	SU
N.8.c. Heliports	X
N.8.d. Helistops	X
N.9. Vehicle storage and maintenance	X
N.10. Tugboat services	P
N.11. Railroads	P
N.12. Streets	P
O. UTILITY USES	
O.1. Communication utilities, minor	See subsection 23.60A.482.H
O.2. Communication utilities, major	X
O.3. Power plants	X
O.4. Recycling	WD/WR
O.5. Sewage treatment plants	See subsection 23.60A.482.I
O.6. Solid waste management	WD/WR
O.7. Utility service uses	See subsection 23.60A.482.J
P. UTILITY LINES	P

KEY

CU = Shoreline Conditional Use

P = Allowed by permit

SU = Special Use

WD = Allowed for water-dependent uses; prohibited otherwise

WR = Allowed for water-dependent uses; prohibited otherwise

X = Prohibited

C. Limited commercial, storage and manufacturing uses

1. The following uses are allowed if they are water-dependent or water-related or if they meet the standards of subsections 23.60A.482.C.2, 23.60A.482.D, or 23.60A.482.G, and are prohibited otherwise:

a. Eating and drinking establishments, limited to an area equal to no more than 2,500 sq ft and not located within the Duwamish Manufacturing/Industrial Center.



1 the footprint of the structure located in the shoreline setback within the Shoreline District within
2 the same geographic area as the site is provided.

3 **23.60A.576 View corridors in the UR Environment**

4 A. A view corridor or corridors of not less than 35 percent of the width of the lot shall be
5 provided and maintained on all waterfront lots and on any upland through lot in the UR
6 Environment separated from a waterfront lot designated CM, CR, or CP by a street or railroad
7 right-of-way.

8 B. View corridors are not required for single-family dwelling units.

9 **23.60A.578 Regulated public access in the UR Environment**

10 A. Private property. Public access shall be provided and maintained on privately owned
11 waterfront lots for the following developments, except as modified by subsection this

12 **23.60A.578.A:**

13 1. Residential developments containing more than four units with more than 75
14 feet of shoreline, except if located on saltwater shorelines where public access from a street is
15 available within 600 feet of the proposed development;

16 2. Uses on privately owned waterfront lots that abut Lake Union with a front lot
17 line of less than 100 feet in length, measured at the upland street frontage generally parallel to
18 the water edge, that abut a street or waterway providing public access, are not required to provide
19 public access;

20 3. Marinas, except as provided in subsection 23.60A.200. D; and

21 4. Development and uses that are not water-dependent, or that are not water-
22 related as defined in Section 23.60A.944, "Water-related use" #1.

23 B. Utilities. Regulated public access shall be provided on utility-owned or controlled
24 property within the Shoreline District.

25 **Subchapter XVI Definitions**

26 **23.60A.900 Definitions generally**



1 A. For the purpose of this Chapter 23.60A, certain words and phrases are defined. The
2 definitions established in this Subchapter XVI are in addition to definitions contained in Chapter
3 23.84A, which are also applicable to this Chapter 23.60A and to the definitions in Chapter 25.09,
4 which are incorporated by reference in Section 23.60A.156. In the event that a definition in this
5 Chapter 23.60A differs from a definition of the same term in Chapter 23.84A, the definition in
6 this Chapter 23.60A shall apply in the Shoreline District.

7 B. Except as provided in subsection 23.60A.900.A, words or phrases used in this Chapter
8 23.60A shall be interpreted so as to give them the meaning they have in common usage.

9 **23.60A.902 Definitions -- "A"**

10 "Aquatic noxious weeds" means aquatic noxious weeds as defined in RCW 17.26.020.

11 "Aquatic rotovator" means a rotary tiller that has underwater rototiller-like blades used to
12 uproot aquatic plants.

13 "Artificial reef" means a submerged human-made structure developed for the purpose of
14 enhancing recreational diving or creating habitat for marine life.

15 "Average grade level" means the calculation determined by averaging the elevations at
16 the center of all exterior walls of the proposed building or structure. In the case of structures to
17 be built over water, average grade level shall be the elevation of ordinary high water in
18 freshwater and mean higher high water in marine waters..

19 **23.60A.904 Definitions -- "B"**

20 "Best available science" means the science and technical information requirements
21 described in WAC 173-26-201(2)(a).

22 "Best management practices" means actions or techniques that have consistently shown
23 results superior to those achieved with other means and that are taken to avoid, minimize and
24 reduce the impacts to habitat ecological functions.

25 "BMP." See "Best management practices"

26 "Boat or Beach Club." See "Yacht club."
27
28



1 "Boat moorage" means a recreational or commercial marina or moorage accessory to a
2 residential use.

3 "Boat yard." See "Vessel repair, minor."

4 "Boating facility, multifamily" means a system of piers and floats designed to moor
5 vessels to serve residential development of 5 or more units.

6 "Bottom barrier" means sheets of material, composed of synthetic or natural fibers, used
7 to cover and kill plants growing on the bottom of a water body by depriving plants of sunlight.

8 "Breakwater" means a protective structure built offshore to protect harbor areas,
9 moorages, navigation, beaches or bluffs from wave action.

10 "Bridge" means a structure carrying a path, street, railway or rail transit over water,
11 including necessary support and accessory structures.

12 "Bulkhead" means a retaining wall constructed parallel to the shore whose primary
13 purpose is to hold or prevent sliding of soil caused by erosion or wave action or to protect the
14 perimeter of a fill.

15 **23.60A.906 Definitions -- "C"**

16 "Cargo terminal" means a "transportation facility" use in which quantities of goods or
17 container cargo are stored without undergoing any manufacturing processes, transferred to other
18 carriers, or stored outdoors in order to transfer them to other locations. Cargo terminals may
19 include accessory warehouses, railroad yards, storage yards, and offices.

20
21 "Central Waterfront Landmark Area" means all lots from the southerly edge of Pier 54 to
22 the northerly edge of Pier 59 along Seattle's downtown waterfront.

23 "Critical Root Zone" means the area on the ground surrounding a tree that is one and one-
24 half times the maximum diameter of the tree's canopy or 20 times the DBH, whichever is
25 greater.

26 "CM" means the Conservancy Management shoreline environment.

27 "CN" means the Conservancy Navigation shoreline environment.
28



1 "Commercial use" means the following uses:

- 2 -- Animal shelters and kennels;
- 3 -- Eating and drinking establishments;
- 4 -- Entertainment uses;
- 5 -- Food processing and craft work uses;
- 6 -- Laboratories, research and development;
- 7 -- Lodging;
- 8 -- Medical services;
- 9 -- Offices;
- 10 -- Sales and service uses, automotive;
- 11 -- Sales and services, general;
- 12 -- Sales and service uses, heavy;
- 13 -- Sales and services, marine.

14 "Conditional use" means a use identified in this Chapter 23.60A as requiring specific
15 approval by either Ecology (shoreline conditional use) or the City Council (Council conditional
16 use).

17 "Conservancy shoreline environments" means the Conservancy Management,
18 Conservancy Navigation, Conservancy Preservation, Conservancy Recreation and the
19 Conservancy Waterway shoreline environments.

20 "Constructed" means the process of creating or undertaking development including but
21 not limited to construction of structures, associated site work, installation of on-site utilities, and
22 re-establishment of disturbed areas.

23 "CR" means the Conservancy Recreation shoreline environment.

24 "Critical area." See "Environmentally critical area."

25 "CP" means the Conservancy Preservation shoreline environment.

26 "Custom craft work" in addition to the definitions in subsection 23.60A.84. A custom
27 craftwork in the Shoreline District includes wooden boat building and is a water-related use.

28



1 "CW" means the Conservancy Waterway shoreline environment.

2 **23.60A.908 Definitions -- "D"**

3 "DBH" means tree diameter at breast height and is the method to measure the size of a
4 tree.

5 "Development" means a use consisting of the construction or exterior alteration of
6 structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals;
7 bulkheading; driving of piling; placing of obstructions; or any project of a permanent or
8 temporary nature that interferes with the normal public use of the surface of the waters overlying
9 lands subject to this Title 23 at any water level.

10 "Development site, waterfront" means a waterfront lot or lots on which a proposed
11 development will occur.

12 "Development standards" means regulations pertaining to the physical modification of
13 the environment for development, a shoreline modification, or a use, including the size and
14 location of structures in relation to the lot.

15 "Development, Substantial." See "Substantial development."

16 "Director" means the Director of the Department of Planning and Development.

17 "DNR" means Washington State Department of Natural Resources.

18 "Dock" means an artificial side of a harbor or bank of a river for mooring ships, also
19 described as a shipping or loading platform.
20

21 "Dredging" means the removal or displacement of sand, silt, gravel, or other submerged
22 materials, from the bottom of water bodies, riparian watercourses, or natural wetlands. Support
23 activities and operations, including but not limited to the collection and transfer of dredged
24 materials, are included in this definition. Dredging does not include removal of riprap and
25 incidental grading when shoreline stabilization is replaced if the water depth does not increase
26 when compared to pre-project conditions. The placement of dredged materials into water bodies,
27
28



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22 activities and operations, including but not limited to the collection and transfer of dredged
23 materials, are included in this definition. Dredging does not include removal of riprap and
24 incidental grading when shoreline stabilization is replaced if the water depth does not increase
25 when compared to pre-project conditions. The placement of dredged materials into water bodies,
26
27
28



1 riparian watercourses or natural wetlands is "fill" and regulated under Sections 23.60A.172 and
2 23.60A.184.

3 "Dry land" means land at an elevation above the line of ordinary high water in freshwater
4 or mean higher high water in marine water.

5 "Dry boat storage" means a "parking and moorage" use, in which space on a lot on dry
6 land, either open or inside a structure, is rented or sold to the public or to members of a yacht,
7 boat or beach club for the purpose of storing boats.

8 "Dry dock" means any method or mechanism by which a vessel can be removed from
9 the water for the purpose of viewing, working on or painting the underwater portions of the
10 vessel. Dry docks include:

11 "Marine railway dry dock" means a place where a vessel is tied to a carriage
12 which is then pulled out of the water on an inclined railway usually with winches. The rails are
13 spaced far enough apart to provide stability of the carriage with a vessel on it.

14 "Floating dry dock" means a strong decked barge that is submerged by filling it
15 with water. A vessel is floated over the submerged barge which is then pumped out to lift the
16 barge deck clear of the water with the vessel sitting high and dry. The wing walls provide enough
17 flotation to prevent sinking all the way to the bottom.

18 "Synchrony-lift dry dock" means a stiffened deck or barge like structure that is
19 lifted out of water by lifting mechanisms such as winches or jacks operating synchronously.

20 "Travel-lift" means a motorized device like a lumber carrier which drives over
21 water on two adjacent docks straddling the water. A boat in the water between the two docks is
22 raised out of the water by straps attached to winches. The travel lift then drives to an upland site
23 to set the boat down on blocks on land.

24 "Duwamish" means the area of the Duwamish River from the south city limits north to
25 South Massachusetts Street on the east side and Southwest Florida on the west side, and
26 including Harbor Island and the East and West Duwamish Waterways.

27 **23.60A.910 Definitions -- "E"**

28



1 "Lot, upland through" means an upland lot wholly or partly within the Shoreline District
2 that extends between a street, highway, or arterial right-of-way on the upland side and a street,
3 highway, arterial, railway right-of-way, or government-controlled property on the waterfront
4 side.

5 "Lot, waterfront" means a lot any portion of which is offshore of or abuts upon the
6 ordinary high water mark or mean high water mark and any other lot or parcel partially or
7 entirely within the Shoreline District that is not separated from the water by a street, arterial,
8 highway, railroad right-of-way, or government-owned or controlled property that prevents access
9 to and use of the water. Vacation or relocation of a legal right-of-way after March 17, 1977, shall
10 convert a lot that was an upland lot because of the existence of such right-of-way into a
11 waterfront lot.

12 For purposes of determining the appropriate use and development standards applicable to
13 developments in railroad or street rights-of-way, the railroad or street right-of-way shall be
14 considered to be a waterfront lot unless separated from the water by another railroad or street
15 right-of-way.

16 **23.60A.926 Definitions -- "M"**

17 "Manufacturing" means the following uses as defined in Chapter 23.84A, Definitions, as
18 of the effective date of this ordinance:

- 19 -- Light manufacturing;
- 20 -- General manufacturing;
- 21 -- Heavy manufacturing.

22 "Marina" means both marina, commercial and marina, recreational.

23 "Marina, commercial" means a use in which a system of piers, buoys, or floats is used to
24 provide moorage for:

- 25 1. Sale, or rent usually on a monthly or yearly basis, for commercial vessels,
26 where commercial vessels occupy 75 percent or more of the moorage;
- 27 2. Commercial vessels moored for the operation of commercial businesses; or



1 3. Commercial or recreational vessels undergoing repair by commercial
2 businesses. Minor vessel repair, haul-out, dry boat storage, tugboat dispatch offices, and other
3 services are also often accessory to or associated with the use.

4 "Marina, recreational" means a use, in which a system of piers, buoys, or floats is used to
5 provide moorage for sale or rent, usually on a monthly or yearly basis. Recreational vessels
6 occupy 75 percent or more of the moorage. Minor vessel repair, haul-out, dry boat storage and
7 other services are also often accessory to or associated with the use.

8 "Marine service station" means a marine sales and service use in which fuel for boats is
9 sold to boats in the water and in which accessory uses, including but not limited to towing or
10 minor vessel repair, may also be provided.

11 "Master Program." See "Shoreline Master Program."

12 "May" means the action is acceptable, provided it conforms to the provisions of this
13 Chapter 23.60A.

14 "Mean higher high water (MHHW)" means the tidal elevation determined by averaging
15 the higher of each day's two high tides at a particular location over recorded history.

16 "Mean lower low water (MLLW)" means the 0.0 tidal elevation determined by averaging
17 the lower of each day's two low tides at a particular location over recorded history.

18 "Mechanical harvesting and cutting" means the partial removal or control of aquatic
19 plants with the use of mechanical harvesters that cut and collect aquatic plants, and mechanical
20 cutters that only cut aquatic plants.

21 "MHHW." See "Mean higher high water."

22 "Mitigation" means the action taken to minimize, rectify, reduce or eliminate adverse
23 impacts over time and/or compensate for the loss of ecological functions resulting from new
24 development or use, or from maintaining, repairing or altering existing development or use that
25 creates new adverse impacts to ecological functions, or from substantially improving, replacing
26 or rebuilding a nonconforming development. Loss of ecological functions may be due to, but not
27 limited to, location, design, construction and management of the development or use.



1 Mitigation sequencing means the steps taken to avoid, minimize, rectify, reduce or
2 eliminate adverse impacts over time and/or compensate for the loss to ecological functions, as
3 specified in subsection 23.60A.158.B.1, so that mitigation achieves no-net-loss to ecological
4 functions.

5 "MLLW." See "Mean lower low water."

6 "Moorage, covered" means a pier and pier structures or system of floating or fixed
7 access-ways covered with a roof, to which boats on water may be secured.

8 "Moorage, open wet" means an uncovered pier and pier structures or system of floating
9 or fixed access-ways to which boats on water may be secured.

10 "Moorage, transient" means moorage available to the public, generally for a fee, on a
11 short-term basis. Transient moorage may be available on an hourly, daily or weekly basis.

12 "Mudflat" means a coastal wetland consisting of fine-grained silt or organic matter that
13 is covered at high tide and exposed at low tide.

14 **23.60A.928 Definitions -- "N"**

15 "Native vegetation" means a species that has occurred within the City limits of Seattle
16 since the 18th century AD based on the science and technical information requirements
17 described in WAC 173-26-201(2)(a) or best professional judgment.

18 "Natural area" means an area that is predominately vegetated with native or wild-
19 growing vegetation.

20 "Navigational aid" means a structure used to guide or position ships and boats or to warn
21 of navigational hazards, including but not limited to buoys, beacons, and light towers.

22
23 "No net loss of ecological functions" means no degradation to habitat, including the
24 habitat forming processes, after project impacts and mitigation for the project impacts occur.

25 "Non-native aquatic species" means species for which Seattle is not within their natural
26 range or within their natural dispersion area or species that have been brought to Seattle from
27 another region, state or country.



- 1 -- Transportation facilities, air;
- 2 -- Tugboat services; and
- 3 -- Vehicle storage and maintenance.

4 "Tree" means a self-supporting woody plant characterized by one main trunk or, for
5 certain species, multiple trunks, that is recognized as a tree in the nursery and arboricultural
6 industries.

7 "Tugboat services" means a transportation facility use that consists of moorage for more
8 than one tugboat and dispatch offices, except that facilities that include barge moorage and
9 loading and unloading facilities for barges as well as tugboat moorage are not tugboat services
10 and are classified as cargo terminals.

11 **23.60A.940 Definitions -- "U"**

12 "UC" means the Urban Commercial shoreline environment.

13 "UG" means the Urban General shoreline environment.

14 "UH" means the Urban Harborfront shoreline environment.

15 "UI" means the Urban Industrial shoreline environment.

16 "UM" means the Urban Maritime shoreline environment.

17 "UR" means the Urban Residential shoreline environment.

18 "Urban shoreline environments" means the Urban Commercial, Urban General, Urban
19 Harborfront, Urban Industrial, Urban Maritime and Urban Residential shoreline environments.

20 "USACE" means U.S. Army Corps of Engineers.

21 "Use" means a purpose for which land or a building is designed, arranged or intended, or
22 for which it is occupied or maintained, let or leased. For purposes of this Chapter 23.60A, uses
23 include shoreline modifications and utility lines.

24 "Use, accessory" means a use that is incidental and intrinsic to the function of a principal
25 use and is not a separate business establishment unless a home occupation.

26 "Use, principal" means any use, whether a separate business establishment or not, that
27 has a separate and distinct purpose and function from other uses on the lot.

28



1 "USEPA" means U.S. Environmental Protection Agency.

2 "Utilities" means the following uses:

- 3 -- Communication utility major or minor;
- 4 -- Utility service uses;
- 5 -- Solid waste management;
- 6 -- Recycling;
- 7 -- Sewage treatment plant; and
- 8 -- Power plant.

9 "Utility lines" means pipes, cables or other linear conveyance systems used to transport
10 power, water, gas, oil, wastewater or similar items. Utility lines include outfalls and intakes.

11 **23.60A.942 Definitions -- "V"**

12 "Vegetation cover" means the total area covered by vegetation multiplied by the fraction
13 of the real cover that exists as based on vertical observation, or estimation.

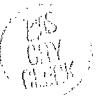
14 "Vegetation management" means any action that involves plant materials, including
15 removing and replacing plant material with other plants or other ground surface coverage that is
16 pervious or impervious or planting plant materials where no plants existed.

17 "Vehicle storage" vehicle storage does not include movable equipment used onsite that is
18 not routinely driven on a public right-of-way.

19 "Vessel" means ships, boats, barges, or any other floating craft that are designed and used
20 for navigation and do not interfere with the normal public use of the water, including historic
21 ships that do not have means of self-propulsion and steering equipment.

22 "Vessel repair" means a marine sales and service use that is either major or minor, (see
23 "vessel repair, major" and vessel repair, minor") and does not include routine maintenance of a
24 vessel that may lawfully occur while a boat is moored at a permanent location.

25 "Vessel repair, major" means a shipyard facility in which vessels are built, dry docked
26 painted and/or repaired and that primarily handles vessels 65 feet or longer and is a marine sales
27 and service use.



1 **23.60A.032 Criteria for special use approvals**

2 A. The shoreline special use process is used for uses or shoreline modifications that are
3 identified as requiring special use approval in a particular environment.

4 B. The Director may approve or conditionally approve a special use if the Director finds
5 the applicant has demonstrated:

6 1. The proposal complies with standards in Section 23.60A.030.

7 2. The proposed use will not interfere with normal public use of public shorelines;

8 3. The proposed use of the site and design of the project are compatible with other
9 allowed uses within the area;

10 4. The proposed use can achieve no net loss of ecological functions except when
11 the applicant obtains a variance from this requirement under subsection 23.60A.036.C;

12 and

13 5. The public interest suffers no substantial detrimental effect.

14 **23.60A.034 Criteria for shoreline conditional use permits**

15 A. The shoreline conditional use process may be used if either:

16 1. A use or shoreline modification is listed in this Chapter 23.60A as requiring
17 shoreline conditional use approval; or

18 2. A use or shoreline modification is not identified in the shoreline environment
19 where it is proposed to be located and is allowed in the underlying zone.

20 B. The Director may approve or approve with conditions a shoreline conditional use
21 application if the Director finds the applicant has demonstrated that the proposed use or shoreline
22 modification:

23 1. Complies with the criteria in WAC 173-27-160 and the Shoreline Policies in
24 the Comprehensive Plan;

25 2. Complies with standards in Section 23.60A.030;



1 3. Complies with all additional shoreline conditional use criteria in this Chapter
2 23.60A for the specific use or shoreline modification listed as a shoreline conditional use; and

3 4. Can achieve no net loss of ecological functions, unless the applicant obtains a
4 variance from this requirement under subsection 23.60A.036.C.

5 C. The Director's decision shall be transmitted to Ecology, which may approve the
6 decision, or take further action to amend conditions, or deny the application.

7 **23.60A.036 Criteria for shoreline variance permits**

8 A. Except as provided in subsection 23.60A.036.B and 23.60A.036.C, in specific cases
9 the Director, with the approval of Ecology, may authorize a shoreline variance from bulk,
10 dimensional, and performance standards of this Chapter 23.60A if the Director finds that the
11 applicant has demonstrated that the request:

12 1. Complies with WAC 173-27-170 and the Shoreline Policies in the
13 Comprehensive Plan;

14 2. Complies with standards in Section 23.60A.030;

15 3. Complies with any additional criteria set out in this Chapter 23.60A for
16 granting a variance; and

17 4. Can achieve no net loss of ecological functions, unless a variance from this
18 requirement is granted under subsection 23.60A.036.C.

19 B. Determinative standards. Standards relating to the characteristics of uses or shoreline
20 modifications that are determinative of whether the uses or modifications are allowed, allowed as
21 special uses, allowed as shoreline conditional uses, or prohibited in the use sections of each
22 environment or in standards for specific uses are not subject to variance, except as follows:

23 1. An applicant may apply for a variance from height, bulk and scale standards.

24 2. An applicant may apply for a variance from other characteristics of uses or
25 shoreline modifications by complying with the applicable variance standards of this Chapter

Exhibit 5

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OFFICE OF
HEARING EXAMINER

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

FOSS MARITIME COMPANY, a Washington
Corporation,

Foss,

vs.

CITY OF SEATTLE, DEPARTMENT OF
PLANNING AND DEVELOPMENT, a
Municipal Corporation,

Respondent,

Hearing Examiner File No. 5-15-001

AMENDED AND RESTATED
NOTICE OF APPEAL
(Code Interpretation No. 15-001)

I. APPELLANT INFORMATION

A. Foss

Appellant is Foss Maritime Company ("Foss"). Foss's address is 1151 Fairview Avenue
N., Seattle, WA 98109; 206-281-3800 (telephone); email: pstevens@foss.com.

B. Respondent

Respondent City of Seattle, Department of Planning and Development, is the municipal
corporation and department that made the decision that is subject to this appeal.

1 **C. Authorized Representatives**

2 Foss's authorized representatives are John C. McCullough, McCullough Hill Leary P.S.,
3 701 Fifth Avenue, Suite 6600, Seattle, WA 98104, 206-812-3388 (telephone), 206-812-3389
4 (facsimile), jack@mhseattle.com; and David R. West, Garvey Schubert Barer, 1191 2nd Avenue,
5 18th Floor, Seattle, WA 98101, 206-464-3939 (telephone), 206-464-0125 (facsimile),
6 DrWest@gsblaw.com.
7

8 **II. DECISION BEING APPEALED**

9 The decision being appealed is the issuance of an interpretation by the Director
10 ("Director") of the Department of Planning and Development ("DPD" or "Department") "in
11 response to general questions it has received regarding a proposal to moor an exploratory drilling
12 rig and two accompanying tugboats at the Port of Seattle's (Port's) Terminal 5 facility" (DPD
13 Interpretation No. 15-001, herein the "Interpretation"). The Interpretation purports to interpret
14 certain rights of use under Projects 9404118 and 9404124 (among others) issued to the Port of
15 Seattle, as applicant, for the property located at Terminal 5 (2701 26th Avenue SW) in Seattle
16 (the "Permit"). The Interpretation is attached as Exhibit 1.
17
18

19 This Amended and Restated Notice of Appeal is filed in addition to the Notice of Appeal
20 filed in this matter by Foss on May 13, 2015.
21
22

23 **III. APPEAL INFORMATION**

24 **A. Foss's Interest in Interpretation**

25 Foss is a company engaged in maritime logistics and transportation, including movement
26 of cargo, in Puget Sound, the west coast of the United States, Alaska and Hawaii, the United
27

1 States east and Gulf coasts, and nations on the Pacific Rim. Foss is headquartered in Seattle. On
2 February 9, 2015, Foss entered into a lease with the Port of Seattle to utilize Terminal 5 as a
3 marine cargo terminal (the "Lease"). The Lease is in effect; Foss is currently occupying
4 Terminal 5 and is paying rent to the Port in accordance with the Lease. Pursuant to the Lease,
5 Foss intends to provide a variety of services (the "Operations") to Shell Offshore, Inc. ("Shell")
6 and its contractors in support of the Arctic drilling program of Shell and its relevant affiliates.
7 The Operations intended to occur at Terminal 5 pursuant to the Lease are more fully described in
8 Foss's submission to DPD dated April 8, 2015, which is attached hereto as Exhibit 2, and the
9 Port's submissions to DPD dated April 3, 2015 and April 6, 2015, which are attached hereto as
10 Exhibit 3. In summary, those services will include receiving and storing goods, cargo,
11 equipment, supplies, stores, provisions and other materials at Terminal 5; loading and unloading
12 goods, cargo, equipment, supplies, stores, provisions and other materials on to and off of vessels
13 associated with the Operations, for those vessels to use and to transport to other locations;
14 temporary moorage of vessels; and other related activities, including standard routine "run and
15 maintain" activities.

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19 In reliance on the Lease, the existing permits for Terminal 5 and the City's historic
20 interpretation of cargo terminal uses, Foss has invested substantial amounts of money in
21 improvements to Terminal 5; has incurred substantial costs to prepare for the Operations; and has
22 contracted with third parties (including labor unions) to provide support. The Interpretation
23 adversely affects Foss because it is intended to interfere impermissibly with Foss's use of
24 Terminal 5 for the Operations and pursuant to the rights of Foss under its Lease and established
25 uses at Terminal 5 and because Foss will suffer substantial economic losses if it is prevented
26
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1 from performing the Operations. Foss is therefore significantly affected by and interested in the
2 matter appealed.

3 **B. Factual Background**

4 Certain factual allegations are set forth in the Interpretation. Foss contends many of those
5 allegations are inaccurate, incomplete and/or misleading, and disputes them. Foss will present
6 testimony and evidence in the appeal regarding the actual facts associated with the matters that
7 are the subject of this appeal. These facts will include, but are not limited to, the following:
8

- 9 • When the opportunity to host the Operations for Shell at Terminal 5 appeared, Foss met
10 with the City to review the proposal in advance of any legal commitments. The City
11 expressed no legal issues with the Operations being conducted at Terminal 5.
- 12 • Thereafter, the Port and Foss entered into the Lease for cargo terminal use at Terminal 5.
13 The Port's and Foss's understanding of the scope of that specific use is summarized in
14 detailed submissions that the Port and Foss provided to the City in response to the City's
15 inquiry. See Exhibits 2 & 3. The City has historically shared the same interpretation of
16 the scope of a cargo terminal use, as reflected in permitting decisions on Port projects
17 presented in the Port's submission. The intended Operations are entirely consistent with
18 the City's historical interpretation and implementation of a "cargo terminal" use.
- 19 • In addition to its historical implementation of the "Cargo Terminal" use, DPD had
20 previously agreed that the specific intended Operations are consistent with the permitted
21 use in the context of a land use decision. To prepare the site for the Operations, the Port
22 was required to replace bollards to which vessels used in the Operations would be
23 moored. The Port applied for a shoreline exemption for that bollard work. As part of the
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1 City's consideration of that request, the City investigated the proposed use. The Port
2 provided information describing the intended activities (i.e., the Operations) and the City
3 approved the shoreline exemption. Neither the City nor any other party appealed that
4 decision or challenged DPD's conclusion in that decision that the Operations were
5 consistent with the permitted use.
6

- 7 • In apparent response to political controversy about the Operations, the City undertook yet
8 a third review regarding whether the Operations are consistent with the approved cargo
9 terminal use. In this connection, DPD initiated the inquiry that culminated in the
10 challenged Interpretation.
11
- 12 • The Interpretation specifically objects to the moorage of one of two drilling rigs and two
13 tug boats "during winter months." The Interpretation concludes that the Operations are
14 consistent with the category of "transportation use," but concludes that the Operations are
15 not consistent with the cargo terminal use, contrary to DPD's historical implementation
16 of the Land Use Code and its past decisions related to this specific matter.
17

18 **C. Issues and Objections**

19 The Interpretation erroneously concludes that certain uses of Terminal 5 do not constitute
20 permissible "cargo terminal uses" under the Land Use Code. Specific objections to the
21 Interpretation include but are not limited to the following:
22

- 23 / • The Interpretation misconstrues the allowable scope of principal and accessory uses
24 associated with a "cargo terminal," as that term is defined in SMC 23.84A.046, SMC
25 23.60.906 and SMC 23.60A.906.
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- 1 2 • The Operations, properly defined, fall within the definition of “cargo terminal,” as
2 that term is defined in SMC 23.84A.046, SMC 23.60.906 and SMC 23.60A.906.
- 3 3 • The Interpretation misconstrues the allowable scope of principal and accessory uses
4 associated with a “cargo terminal,” as that term has been implemented and enforced
5 by the Department in the past. Among other things, the Interpretation fails to
6 acknowledge that the Operations will necessarily involve the storage of quantities of
7 goods without undergoing any manufacturing process, followed by the transfer of
8 those goods to carriers in order to transfer them to other locations. Additionally, the
9 Department has historically interpreted the “cargo terminal” use to include:
10 layberthing; provisioning, equipping and outfitting of vessels; and standard routine
11 run and maintenance activities.
- 12 4 • In the alternative, the Operations constitute moorage, which is a legally permissible
13 use at Terminal 5 under current Code and existing approvals.
- 14 5 • The Interpretation misconstrues the allowable scope and nature of accessory uses
15 under SMC 23.84A.040, SMC 23.60.940 and SMC 23.42.020, as well as the Code
16 generally.
- 17 6 • The Interpretation improperly determines that the Operations do not, in the
18 alternative, constitute an allowable accessory use at Terminal 5.
- 19 7 • The Interpretation fails to recognize that the City previously approved by permit the
20 use under which the Operations will be conducted, which permits were not timely
21 appealed or reversed. To the extent the Interpretation seeks to modify rights granted
22 under such permits, the Interpretation is barred as untimely. Such permits include the
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1 shoreline exemption approved by the City for the replacement of mooring bollards at
2 Terminal 5 necessary to accommodate the Operations. The City failed to appeal this
3 and other permits authorizing the Operations as a permitted use and is now legally
4 time-barred from challenging the legality of the Operations under the Land Use Code.
5

- 6 8 • Even if the Operations are not consistent with the permitted principal use, then the
7 Operations are a legally permissible non-conforming use under Chapter 23.42 SMC.
8 9 • The right to proceed with the Operations is a right vested under the Land Use Code
9 and state law under prior permits issued relating to Terminal 5.
10 10 • The Interpretation is based on a set of factual assumptions that are variously
11 inaccurate and/or incomplete.
12 11 • The Department failed to comply with the procedural requirements of law, including
13 the requirements of SMC 23.88.020, in issuing the Interpretation.
14 12 • The Interpretation is based only on the hypothetical set of “facts” assumed in the
15 Interpretation. However, these “facts” are only assumptions and conjecture. As such,
16 the validity of the Interpretation is limited by those facts as may be proven at hearing.
17 In addition, the Director lacks authority under SMC 23.88.020 to construe or apply
18 the Interpretation so that it would be applicable to a set of facts materially different
19 from those assumed in the Interpretation, as is the case here.
20 13 • Since the issuance of the Interpretation, the Director has issued further amendments
21 and/or modifications of the Interpretation without complying with the procedural
22 requirements of SMC 23.88.020.
23
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1 14 • Upon information and belief, the Department intends to expand the scope or meaning
2 of the Interpretation to cover uses and activities at Terminal 5 not addressed in the
3 Interpretation, without the issuance of a new interpretation. The Interpretation is
4 limited to its express terms. Any effort by the Department to expand *ex post facto* the
5 scope of the Interpretation is improper and illegal. For example, the Interpretation
6 only applies to over-wintering activities at Terminal 5 (as described in the
7 Interpretation) and not to other activities to be undertaken by Foss pursuant to the
8 Lease.
9

10
11 15 • The Interpretation erroneously determines that the Director does not have authority to
12 interpret or define unlisted principal and accessory uses under the Shoreline Master
13 Program, Chapter 23.60 SMC.
14

15 16 • The Interpretation represents a case of arbitrary, selective, discriminatory and
16 inconsistent interpretation and enforcement of the Land Use Code. Even though the
17 Operations are consistent with other activities that the City has historically allowed as
18 a cargo terminal use, the Interpretation singles out the specific activities of a specific
19 customer for different and discriminatory treatment without any basis in the Land Use
20 Code.
21

22 17 • The Interpretation is erroneous, improper and illegal because it is based not on the
23 Land Use Code and applicable facts, but on political and policy considerations lying
24 outside the Land Use Code. Such policy considerations lie properly within the
25 legislative process conducted by City elected officials, but are improper
26 considerations for the Interpretation. As such, the Interpretation represents an attempt
27
28

1 by the City's administrative authority to "legislate" new policy and regulations, in
2 violation of Chapter 23.88 SMC, the City Charter and state law.

3 18 • To the extent that the Interpretation purports to regulate activities occurring on
4 vessels, the Interpretation exceeds the Department's authority and jurisdiction. For
5 example, and not in limitation, the Interpretation improperly suggests that the scope
6 of permitted uses at Terminal 5 under the Land Use Code should be determined by the
7 use and/or activities of the vessels when at sea.

9 19 • The Interpretation improperly attempts to interfere in the discharge by the Port of its
10 rights and duties to operate such maritime facilities under the Shoreline Management
11 Act, the Seattle Shoreline Master Program, state law and the Washington State
12 Constitution.

13 20 • Foss hereby incorporates by reference as if set forth in full herein the issues and
14 objections on appeal set forth in the Notice of Appeal filed by the Port of Seattle in
15 this matter on May 15, 2015.
16
17

18 IV. RELIEF REQUESTED

19 Foss requests that the Hearing Examiner provide the following relief:

20 a. Reverse the Interpretation and determine that the Operations are a permitted
21 principal and/or accessory use under the Land Use Code and/or existing permit approvals at
22 Terminal 5;

23 b. Reverse the Interpretation and determine that the Operations are a permitted
24 principal and/or accessory use at Terminal 5 otherwise pursuant to applicable law;
25
26
27

1 c. Require that modifications or amendments to the Interpretation comply with the
2 procedural requirements of SMC 23.88.020;

3 d. In the alternative, remand the Interpretation with direction to the Department to
4 reconsider the Interpretation in light of facts proven at hearing relating to the Operations;
5

6 e. In the alternative, remand the Interpretation with direction to the Department to
7 reconsider the Interpretation based solely on the Code and the applicable facts proven at hearing,
8 and without reference to improper policy or other considerations not relevant under SMC
9 23.88.020;

10 f. In the alternative, remand the Interpretation for the purpose of issuing a new
11 interpretation in a manner consistent with the procedural requirements of the law, including
12 without limitation SMC 23.88.020;
13

14 g. Permit discovery regarding the issues in this appeal; and

15 h. Grant such other relief as the Hearing Examiner deems just and proper.
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1 DATED this 21st day of May, 2015.

2 FOSS MARITIME

3
4 By: 

5 Paul E. Stevens

6 MCCULLOUGH HILL LEARY, P.S.

7
8 By: 

9 John C. McCullough, WSBA # 2740

10 Attorneys for Foss

11 GARVEY SCHUBERT BARER

12
13 By: 

14 David R. West, WSBA #13680

15 Donald B. Scaramastra, WSBA #21416

16 Daniel J. Vecchio, WSBA #44632

17 Attorneys for Foss Maritime Company

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27
28 NOTICE OF APPEAL

MCCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600

Seattle, WA 98104

206.812.3388

206.812.3389 fax

Exhibit 6

Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

How to Legalize a Use Not Established by Permit

Updated October 8, 2014

Seattle's Land Use Code specifies the type of development or "use" allowed on property in different zones in the city. Examples of different types of uses are single family homes, multifamily residences, office buildings, and warehouses. The Land Use Code requires that all uses of land be established by permit.

This Tip explains how to legalize a use not previously established by a permit issued by the Seattle Department of Planning and Development (DPD) or its predecessor, the Building Department. In many cases, a use not previously established by permit will be considered a "nonconforming" use. This Tip further explains what a nonconforming use is, and when a nonconforming use can become recognized as legal through the DPD permit process.

Establishing Nonconforming Uses

An existing use is called a "nonconforming use" if it would not be permitted in its location by current land use laws, but it has been in continuous operation since a time when it was permitted by applicable laws. If a use not allowed under the current zoning commenced under permit, or a permit for the use has been granted and has not expired, or substantial progress has been made toward construction of a structure to be occupied by the use, then DPD recognizes the use as "established" in our records, and therefore legally nonconforming.

Sometimes, a use has been ongoing for a certain period of time but has never been legally established by permit. If that use is permitted outright under current zoning, and meets all current Seattle Municipal Code (SMC) standards, the owner may apply for and obtain a use permit by the same procedures that apply to new uses. If the use is not permitted outright

under current zoning or does not meet some other SMC regulation, the use may still be "established" as a "legally nonconforming" use if it commenced at a time when it met applicable zoning and other regulations, and has continued to the present time, even if it does not meet all present regulations.

Establishing a Use for the Record

DPD calls the procedure detailed in the previous paragraph "establishing a use for the record," and this Tip is primarily concerned with applications to establish this type of use and the criteria for issuing permits that recognize such uses.

A typical example of the need to establish a use for the record is a situation in which property is zoned for single family residences only, but a triplex structure is located on it. The triplex is nonconforming because the present zoning is limited to single family residences. The structure also may not meet the present Seattle Building Code (SBC) because, for example, it lacks a sprinkler system or one-hour fire wall required for new multifamily structures.

If a permit exists for this triplex in DPD records, and the use has not been discontinued, then it is recognized as a legally established nonconforming use. However, if there is no permit, or the available permits describe the structure as a single family residence, then DPD cannot recognize the triplex use as legal unless the owner first demonstrates that the triplex was put on the lot when zoning and other regulations such as the SBC would have allowed it, and that the structure has been used continuously as a triplex since that time. If DPD accepts this demonstration, then a permit can be issued recognizing the triplex as an established use.

Recent Residential Code Changes

In 2001, the Seattle City Council adopted changes to the conformity regulations that now allow a nonconforming residential use, such as a triplex in a single family zone, to be established for the record if the use predates July 24, 1957, even if the use was not per-



mitted under Seattle's original zoning code of 1923. This new provision applies only to residential uses. Nonresidential uses, such as a commercial office in a single family zone, that predate 1957 must still meet the requirements of the 1923 code or predate zoning regulations. Also, this new code provision does not apply within the Shoreline Overlay District or within any of the Industrial zones.

NOTE: An alternative to establishing a use not established by permit may be to apply for an accessory dwelling unit (ADU) permit instead, if you are the owner and occupant of a single family residence and you wish to legalize one additional dwelling unit.

Why Apply for a Permit to Establish a Use?

There are several situations in which you might wish to demonstrate that a use of property not established by permit is a legal land use:

- You may have applied for a permit to change or expand the use, and a routine check of DPD records shows that the use claimed for the structure does not have a permit. (**NOTE:** There are limits on changes to or expansions of nonconforming uses.)
- You may wish to sell a building as a duplex or triplex, but the most recent permit shows a single family residence.
- You may find that the use is permitted under present zoning, but it is advantageous to show that it commenced prior to the beginning of modern SBC requirements on Jan. 1, 1976, or prior to the effective date of other codes affecting land use, such as the Shoreline Master Program or the State Environmental Policy Act (SEPA).
- You may simply have discovered that there are no City records for the triplex use you always thought you had, and you want to clear up any title, tax assessment, or other problems that may result from maintaining a use not established by permit.

Criteria for Establishing Use

A permit to establish a use from a certain date in the past can only be issued if the criteria and documentation discussed below are met and proper site plan and structural drawings are provided. If the use to be established is a dwelling unit, then the DPD inspection process must verify that applicable standards of the Housing and Building Maintenance Code (HBMC) and/or SBC are met (if the use commenced after Jan 1, 1976).

The fact that a use has existed for a long time does not necessarily mean that it can now be established by permit. The use must either be something that can be approved under present City codes or something that could have been authorized at its present location in the past and has existed since that time.

Unless a use can be established under the present Land Use Code and other present codes, an applicant must demonstrate the following before a permit can be issued:

- That the use was commenced at or prior to a time when it could have been lawfully established either by construction or conversion under the Zoning Ordinance or Land Use Code then in effect. For example, density, parking, and open space must meet standards of the Zoning Ordinance or Land Use Code provisions in force at the time establishment of the use can be proved.

If discretionary approval—such as a conditional use, variance, or environmental review—would have been required for establishment of the use at the time its establishment can be proved, then proof that such approval was given must be submitted. In addition to official documents from the authorizing agency, extraneous documentation that the official document was obtained will be accepted. For example, minutes of a Board of Public Works meeting in which the use was discussed and approved or a notation on a City property record card indicating approval will be accepted in lieu of the permit document itself.

The requirement for environmental review became effective in 1976. The requirement for shoreline review became effective in 1974.

If the nonconforming use is residential and predates July 24, 1957, and is not located in the Shoreline Overlay District or any of the Industrial zones, then the use may be legalized for the record based on documentation showing that it was in existence prior to July 24, 1957, and has remained in continuous use since that time. Legalization of residential uses prior to July 24, 1957, is also subject to the inspection process described below. The documentation presented is subject to the standards discussed in the subsection on documentation of existence of use, beginning on page 3 of this Tip, just as are uses postdating July 24, 1957.

- That the use has been in existence continuously, with no interruption that would constitute aban-

donment or discontinuance of a nonconforming use under the provisions of either former or current land use regulations.

- In the case of dwelling units, that the minimum standards for habitable dwellings in the HBMC in effect at the time of application are met. If the dwelling unit was created prior to Jan. 1, 1976—or if it was created after Jan. 1, 1976, and a zoning Notice of Violation (NOV) has been issued regarding it—then site inspection is required by DPD inspectors to determine if minimum HBMC standards are met. If inspection shows that minimum standards are not met, then repairs must be made before a permit will be issued establishing the use. If electrical work is needed to satisfy HBMC standards, an electrical permit can be issued prior to issuance of the use permit if zoning approval is granted.
- For all structures, that minimum applicable SBC standards for fire and life safety are met as set forth in Section 104. If the use to be established was created within a structure after Jan. 1, 1976, all SBC standards must be met for the year in which the use first legally commenced. Review by a building plans examiner, and inspection by a building inspector, are required for all uses to be established to a date after Jan. 1, 1976.

Example of the Significance of Dates for Establishing Uses

To understand the importance of dates when establishing a use, consider this example of trying to establish for the record a nonconforming duplex on a lot now zoned for single family residences. To do this, you will need to show that the duplex use has existed since a time when the property was zoned to allow duplexes, or that the duplex use predates July 24, 1957.

Because there have been a number of different zoning ordinances in effect since Seattle was originally zoned in 1923, the year from which you must prove the duplex existed will vary. The most significant dates are 1923, 1947, 1957 and 1982, because substantial rezones and significant code changes affecting most of the city occurred in those years. Another significant date is 1988, when density standards for the multifamily zones removed in 1982 were reimposed. As noted previously, Jan. 1, 1976, is significant as the date after which complete SBC review is required.

Finally, if the use you are trying to prove commenced in your structure before the property was annexed

into the city of Seattle, the date of annexation may be the critical date to which you must prove your use. Significant annexations occurred in north Seattle, in particular, between 1942 and 1954. For many residential nonconforming uses, the critical date is now July 24, 1957, as this date now applies to all residential uses commenced prior to that date and not located in the Shoreline Overlay District or in any of the Industrial zones.

For example, if the duplex use is shown to have started in 1950, then a permit can be issued once the structure is certified by inspection to be in compliance with minimum HBMC standards. If the use began in 1960, but could not have been permitted under the zoning for the property until 1982, then a permit cannot be issued until a full review under 1982 SBC standards and inspection by a building inspector has been completed. A HBMC inspection would not be required unless necessary to clear a zoning Notice of Violation (NOV) issued on the property.

Documenting Existence of a Use

To prove that your use was established at a time when it would have been legal, you must submit documentation that the use was in existence prior to whatever the critical date for the property is. For example, if your use could only have been legally established prior to 1947, tax assessment records from 1975 will not provide sufficient proof. The standard of proof required by DPD is a preponderance of evidence. In other words, your documentation must show that it is more probable than not that the use in question existed prior to the critical date.

The first step in gathering information about establishing a use is to determine what zoning was in effect at the time your building was constructed or the use began, and when zoning changes later occurred.

If establishing your use for the record appears to be required, the land use planner will refer you to the Public Resource Center (PRC), located directly across from the ASC on the 20th floor of Seattle Municipal Tower. PRC staff will research maps showing past zoning and annexation information, if applicable. If you decide to apply for a permit, you will also need to review the available permit history for your structure in the DPD Microfilm Library (part of the PRC).

For general information, call the ASC at (206) 684-8850 or contact the PRC at PRC@seattle.gov or (206) 684-8467 (voice mail only).

Examples of records that DPD will accept as documentation of the existence of a use are:

- **Occupancy listings** from the Polk Directory or Reverse Telephone Directories. The Seattle Public Library, Central Branch, located at 1000 Fourth Ave., has copies of the Polk reverse directories dating from 1939. Qwest, the telephone company, also has a reverse directory. To submit reverse directory information as proof of use, make copies of the pages showing the occupants of your property at several-year intervals beginning at the time you wish to establish the occupancy.
- **Business and/or licensing records.** Obtain licensing records from the Washington State Department of Licensing and Consumer Affairs, (206) 684-8484; they can document a business use.
- **County records** showing the previous permitted use if the property was formerly not part of the City of Seattle. Very few of these records are actually now available, but the information number for King County zoning is (206) 296-6655.
- **Tax assessment records.** Records from 1972 to the present can be obtained from the King County Assessor, King County Administration Building, 500 Fourth Ave., (206) 296-7300. Tax records prior to 1972 must be obtained from the Washington State Archives Puget Sound Branch, located in Bellevue, (425) 564-3940. To obtain tax records you will need the tax account number and the legal description of the property. These records often date back as far as 1937, and they can provide detailed history—such as dates of construction of buildings—to even earlier dates.
- **Sewer hookups.** Dates of hookups are important. Sewer records can be obtained from the Seattle Department of Transportation's Street Use Section, (206) 684-5253.
- **Signed written statements** from persons having no financial interest in the property and who are not relatives of the applicant or property owner. Notarization is not required.
- **Other evidence** that DPD's Director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to: photographs; U.S. Census reports; and signed written statements of experts such as engineers, architects, or building professionals, testifying to the age of a structure or its fixtures, such as kitchen equipment. In some cases, a DPD inspection may be necessary to make a final determina-

tion of the age of a structure. An inspection of this type is generally made by a Building Inspector.

It is your responsibility to furnish at least two different types of documentation from the sources listed above. DPD, in its discretion, may require further documentation, if the documentation you have submitted does not demonstrate the existence of the use from a time when it was permitted outright, or fails to show continuous, uninterrupted maintenance of the use. DPD may, in some cases, accept only one type of documentation from the sources listed above if that documentation is particularly persuasive. Any number of signed written statements, however, are not sufficient by themselves to document the existence of a use.

Please also note that if you or a prior owner have ever applied for and been granted permits for work inconsistent with the use you are now seeking to establish, DPD may deny your application. For example, if you have applied to establish a legally nonconforming duplex for the record in a single-family zone, we will deny the application if prior permits which identified the building as a single-family residence have been issued for additions to the structure in question.

If you disagree with our analysis of the documentation presented, or our analysis of the applicable Zoning Ordinance or Land Use Code, you may choose to request a formal interpretation of the Land Use Code under Seattle Municipal Code (SMC) Section 23.88.020. If, for any reason, your application cannot be granted, further maintenance of the use not established by permit may subject you to enforcement action according to standard DPD procedures.

Applying for a Permit

You can apply for a permit online through our DPD Project Portal, <http://web6.seattle.gov/dpd/eplan/>. You can also apply in person at the DPD Applicant Services Center (ASC), located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave., (206) 684-8850.

In order to schedule an application intake appointment, you will need to fill out a Preliminary Application, available on DPD's website at www.seattle.gov/dpd/toolsresources/ or by calling (206) 684-8850.

Before you come for your intake appointment, you will be expected to complete the Use For the Record Information Worksheet attached to this Tip. This worksheet contains space for providing basic information about your property, including address and legal description, the presently permitted use, why you are

applying for a permit to establish a use not previously established by permit, and basic zoning history.

At your intake appointment, you will be asked to submit the Use For the Record Information Worksheet, a copy of the white property record card for the property, a copy of the most recent permit establishing a use, and a copy of the zoning Notice of Violation (NOV), if one has been issued on your property. The property record card and permit can be obtained from the DPD Microfilm Library (located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave.). Please check with microfilm staff to be sure the most recent permit actually establishes a use and has been given final approval by DPD.

You will also need to submit the supporting documentation you have gathered to prove existence of the use at a time when it was legal under zoning, and two or three sets of plans as follows:

- For uses that commenced **prior** to Jan. 1, 1976, two sets of plans meeting plan quality standards as set forth in Tip 106, including:
 1. Appropriate cover sheet.
 2. Plot plan showing configuration of on-site parking and, for all structures, measurements showing location of the structure on the site.
 3. For structures, floor plans showing all rooms, doors, windows, stairs, common areas, and kitchen and bathroom facilities.
 4. Highlighting of dwelling unit(s) to be established.
- For uses that commenced **after** January 1, 1976, three sets of plans meeting plan quality standards as set forth in Tip #106, including:
 1. Appropriate cover sheet.
 2. Plot plan showing configuration of on-site parking and, for all structures, measurements showing location of the structure on the site.
 3. For structures, floor plans showing all rooms, doors, windows, stairs, common areas, and kitchen and bathroom facilities.
 4. For structures, a copy of the original building floor plans (if available from DPD microfilm library), as reference document.
 5. Highlighting of dwelling unit(s) to be established, on original plans and on application plans.

If you have questions about the application process, visit the ASC and ask to speak to a land use planner.

If you have questions about plan preparation, visit the ASC to talk to a permit specialist, or send us your question at <http://web6.seattle.gov/dpd/LUQnA/?Type=1>.

If you have questions about development standards, the zoning history of your property, or about what documentation will be useful to support your application, contact Public Resource Center (PRC) staff on the same floor as the ASC or call them at (206) 684-8467.

Inspection Procedures

1. Housing and Building Maintenance Code (HBMC) Inspection

If you are establishing a dwelling unit or units for the record, a DPD inspector will conduct a site inspection to determine compliance with minimum standards of the HBMC under the following circumstances:

- use commenced **prior** to Jan. 1, 1976 (regardless of whether the compliance service center has an active zoning notice of violation on the property)
- use commenced **after** Jan. 1, 1976, and the compliance service center has an active zoning notice of violation on the property

In this situation, your plans must also conform to the SBC in effect at the time the use is both in existence and first could have been legally established.

It is your responsibility to arrange for the required inspection. If your use can be approved under applicable zoning, the land use planner who analyzes the zoning issue will refer your application for the HBMC inspection or SBC review, as needed. Where an HBMC inspection is required as described above, a permit establishing a dwelling unit for the record will not be issued by DPD until after the inspector has determined that the subject structure is in compliance with the HBMC.

If violations of the HBMC are noted, they must be corrected prior to issuance of a permit except. However, if correction of violations requires a building permit or electrical permit, we will issue the use permit after application is made for the appropriate building permit or electrical permit.

In cases where you are establishing some use other than a dwelling unit, a site inspection may be required as part of the determination of compliance with the appropriate Zoning Ordinance or Land Use Code, to determine conformity of the site to plans submitted and to the HBMC if applicable. You will receive a letter explaining why such an inspection is required. Any violations noted must be corrected before a use permit will be issued.

For uses commenced prior to Jan. 1, 1976, final approval of the use permit will be given by the land use planner who reviewed your application for compliance with the appropriate Zoning Ordinance or Land Use Code.

2. Building Code Review and Inspection

If you are establishing for the record a use that is located within a structure (this applies to most uses other than parking lots and outdoor storage), a building plans examiner will review your plans to determine compliance with the SBC effective on the date the use first could have been legally established, and a site inspection will be conducted by a building inspector under any of these circumstances:

- the use commenced **after** Jan. 1, 1976, and the compliance service center has **no active zoning NOV** related to the use issue.
- the use commenced **after** Jan. 1, 1976, and the compliance service center **has an active zoning NOV** on the property. In this situation, an HBMC inspection is also required prior to completion of the "establish use for the record" approval.
- the use commenced **prior** to Jan. 1, 1976, **is not a dwelling unit**, and the land use planner determining compliance with the appropriate Zoning Ordinance or Land Use Code concludes that there is **insufficient information** on the plans submitted to determine that minimum standards under Section 104 of the SBC have been met.

Where a SBC review is required, a permit establishing a use for the record will not be issued by DPD until after the building plans examiner has determined, based on the plans submitted, that your structure is in compliance with the SBC.

If no corrections to the plans are required, the use permit will be issued after plan approval, subject to final approval on a site inspection by a building inspector. If corrections to the plans are required, these corrections must be made prior to issuance of a permit. Once the plans have been approved, the permit may issue as a combination use and building permit, if alterations to your structure are required to bring it into compliance with the SBC. Final approval will be made on a site inspection by a building inspector.

For non-residential uses, the land use planner or building plans examiner may, as part of the determination of compliance with the appropriate Zoning Ordinance or Land Use Code, request site inspection of the property by a DPD inspector to determine con-

formity of the site to plans submitted and to the HBMC if applicable. Any violations noted must be corrected before a use permit will be issued.

Fees

The permit fee to establish use for the record is 1.5 times the DPD Base Fee. (If construction is included, the fee will include both a permit fee and a plan review fee based on the cost of construction. See Director's Rule 1-2014, *Implementation of the Fee Subtitle, Building Valuation Data.*) For all establish use of the record permits, a two hour minimum fee (at the land use hourly rate) will be charged. Additional land use hours will be charged hourly.

This fee is subject to possible change every January when a new Fee Ordinance is adopted by the City Council. Fees for additional research, plan checking, or other services performed by DPD may also be assessed as set forth in the Fee Ordinance, as required for each individual project. The HBMC inspection is incorporated into the standard fee, but additional charges will be made for SBC review and any building permit that needs to be issued to bring a structure into compliance with the SBC.

For an up-to-date fee listing visit DPD's website at www.seattle.gov/dpd/codesrules/codes/fees/ or contact the Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave., PRC@seattle.gov, (206) 684-8467.

Access to Information

Links to electronic versions of **DPD Tips**, **Director's Rules**, and the **Seattle Municipal Code** are available on the "Tools & Resources" page of our website at www.seattle.gov/dpd. Paper copies of these documents are available from our Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. in downtown Seattle, (206) 684-8467.

USE FOR THE RECORD INFORMATION SHEET

Date _____

Instructions to Applicant:

- 1. Complete all applicable lines not within boxes.
- 2. Bring info sheet to your appointment.

<i>DPD USE ONLY</i>
Project No. _____

Site Property: Address _____

Legal Description _____

This property is currently in use as: *(if dwelling units, include the number of units)*

The property has been in this use since (year): _____

I want to establish the above use because:

1. I have received a notice of violation (NOV) from Housing & Zoning Enforcement.

Violation # _____

3. Other: _____

Applicant Name _____

Address _____

Phone _____

Email _____

TO BE COMPLETED BY A LAND USE TECH IN THE DPD PUBLIC RESOURCE CENTER

ZONING HISTORY

<u>From</u>	<u>To</u>	<u>Zoning</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<u>Last Established Legal Use</u>	<u>Permit Number</u>	<u>Issued Date</u>
_____	_____	_____

Researched by Land Use Tech: _____ (name) _____ (date)

Exhibit 7

SEATTLE.GOV City Services Departments Staff Directory About Seattle City Contacts



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Department of Planning and Development

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Shaping and protecting Seattle's built and natural environment

Diane Sugimura, Director

LAND USE INFORMATION BULLETIN

Search Notices

Bulletin Home

Start date: 5/7/2015

Project #: 3020324

End date: 5/14/2015

Area: [input]

Address: [input]

Application notices Decision notices Appeal hearing notices Other land use notices Search

Bulletin Date	Project Number	Address	Type	Area
05/07/2015	3020324		Notice of Interpretation	

1 notices found

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Framework Version: 2.11.0.11 Application Version: 2.2.0.0



May 07, 2015

Seattle Department of Planning and Development

Land Use Information Bulletin

A Twice-Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings, and Appeals
www.seattle.gov/dpd

Other Land Use Notices

Notice of Interpretation

Area: Address:

Project: 3020324 Zone: Notice Date: 05/07/2015

Interpretation No. 15-001

Address: 2701 - 26th Avenue SW (Terminal 5)

Project No. 3020324

Planner: Andrew McKim - (206) 684-8737

This interpretation was generated by the Department of Planning and Development in response to general questions it has received regarding a proposal to moor an exploratory oil-drilling rig and two accompanying tugboats at the Port of Seattle's Terminal 5 facility, during times of the year when the rig is not in use in the Arctic. The question raised was whether this activity would be consistent with the established use of the property as a cargo terminal, or whether a permit to establish a different use is required. The interpretation concludes that the proposed activity cannot be recognized as a cargo terminal use based on the standards and definitions in the code. An additional use permit would be required for seasonal moorage at the Terminal 5 of a drilling rig and accompanying tugboats.

HOW TO APPEAL THE INTERPRETATION

Appeal of the Interpretation may be submitted through 5:00 p.m. **May 21, 2015** and must be accompanied by a \$85.00 filing fee in a check payable to the City of Seattle. The appeal must state specifically why the appellant believes the Interpretation is incorrect. The appeal must be sent to:

City of Seattle
Hearing Examiner
700 5th Avenue, Suite 4000
P.O. Box 94729
Seattle, WA 98124-4729

I-15-001 (3020324)
NOTICE OF INTERPRETATION &
REPORT SENT 5/7/15 BG

ENVIRONMENTAL REVIEW SECTION*
DEPARTMENT OF ECOLOGY
PO BOX 47703
OLYMPIA WA 98504-7703
(emailed copies to
separegister@ecy.wa.gov)

LINDA STYRK
MANAGING DIRECTOR, MARITIME DIV
PORT OF SEATTLE
P O BOX 1209
SEATTLE WA 98111-1209

35
4
Andy
JOE BURCAR
WASHINGTON STATE DEPT OF
ECOLOGY
ENVIRONMENTAL REVIEW SECTION
P O BOX 47703
OLYMPIA WA 98504-7703

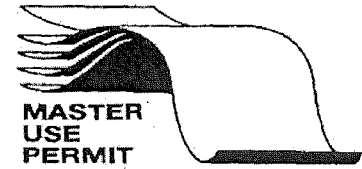
PATRICK J SCHNEIDER
FOSTER PEPPER PLLC
1111 THIRD AVE - SUITE 3400
SEATTLE WA 98101-3299

PAUL F GALLAGHER, VICE PRES
TERMINAL SERVICES
FOSS MARITIME COMPANY
1151 FAIRVIEW AVE N
SEATTLE WA 98109

Seattle Department of
Planning and Development

D. M. Sugimura, Director

May 7, 2015



Notice of Interpretation

Interpretation No. 15-001

Address: 2701 26th Avenue SW (Terminal 5)
Project No. 3020324

Planner: Andrew McKim – (206) 684-8737

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Seattle, WA 98124-4729

INTERPRETATION INTENTIONALLY OMITTED

Exhibit 8



Inside the Legislature

- * Find Your Legislator
- * Visiting the Legislature
- * Agendas, Schedules and Calendars
- * Bill Information
- * Laws and Agency Rules
- * Legislative Committees
- * Legislative Agencies
- * Legislative Information Center
- * E-mail Notifications
- * Civic Education
- * History of the State Legislature

Outside the Legislature

- * Congress - the Other Washington
- * TVW
- * Washington Courts
- * OFM Fiscal Note Website



WACs > [Title 173](#) > [Chapter 173-27](#) > [Section 173-27-160](#)

[173-27-150](#) << [173-27-160](#) >> [173-27-170](#)

WAC 173-27-160

No agency filings affecting this section since 2003

Review criteria for conditional use permits.

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](#). In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW [90.58.020](#) and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

[Statutory Authority: RCW [90.58.140](#)(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-160, filed 9/30/96, effective 10/31/96.]

Exhibit 9

1 ~~LU254~~ **LUG56** Encourage economic activity and development ~~((of water dependent uses))~~ by
2 supporting the retention and expansion of existing water-dependent and water-related
3 businesses on waterfront lots. ~~((and planning for the creation of new developments in areas now~~
4 ~~dedicated to such use.~~

5
6 ~~LU252~~ Allow a multi-use concept of development, provided that the major use is water de-
7 pendent and that it provides public access to the shoreline yet maintains the economic viability
8 of the use.))

9
10 ~~((economic development policies))~~

11
12 ~~LU254~~ **LU267** ~~((254 Concentrate industrial and commercial shoreline uses by supporting))~~ Support the
13 retention and expansion of existing conforming water-dependent and water-related businesses,
14 and ~~((planning for))~~ anticipate the creation of new water-dependent and water-related
15 development ~~((s))~~ in areas now dedicated to such use.

16
17 ~~LU255~~ **LU268** Identify and designate appropriate land adjacent to deep water for industrial and
18 commercial uses that require such condition ~~((, such as industry or commerce))~~.

19
20 ~~LU256~~ **LU269** Provide regulatory and non-regulatory incentives for property owners to include
21 public amenities and ecological enhancements on private property.

22
23 ~~LU257~~ **LU270** ~~((257 Citywide))~~ Identify and designate appropriate land for water-dependent business
24 and industrial uses as follows: ~~((objectives for different types of water dependent businesses~~
25 ~~and industries:))~~

26 1. Cargo Handling Facilities:
27



1 a. Reserve space in deep water areas with adequate vessel maneuvering
2 areas~~((backup space))~~ to permit the Port of Seattle and other marine industries to remain
3 competitive with other ports.

4 b. Work with the Port of Seattle to develop a long-range port~~((harbor))~~ plan in
5 order to provide predictability for property owners and private industry in the Duwamish and
6 in Elliott Bay.

7 2. Tug & Barge Facilities: Retain Seattle's role as the Gateway to Alaska and ensure
8 ample area is designated for uses that serve~~((maintain space for))~~ Puget Sound and Pacific
9 trade.

10 3. Shipbuilding, Boat Building & Repairs: Maintain a critical mass of facilities in
11 Seattle in order to meet the needs of the diverse fleets that visit or have a home port in Seattle,
12 including fishing, transport, recreation and military vessels.

13 4. Moorage: Meet the long-term and transient needs of ~~((all of Seattle's))~~ ships and
14 boats, including fishing, transport, recreation and military. ~~((Locate))~~ Support long-term
15 moorage in sheltered areas close to services, and short-term moorage in more open areas.
16 Support the efficient use of Fishermen's Terminal, ~~((the))~~ Shilshole Bay Marina and other
17 public moorage facilities. ~~((Reduce the))~~ Protect commercial and recreational moorage from
18 displacement ~~((of commercial moorage by recreational moorage))~~ by encouraging the full use
19 of submerged lands for recreational moorage in areas less suited for commercial moorage and
20 less sensitive to environmental degradation. Require large recreational marinas to provide
21 some commercial transient moorage as part of their facilities.

22 5. Recreational Boating: Maintain diverse opportunities for recreational boaters to
23 access the water.~~((Seattle's unofficial status as a "boating capital."))~~ Allow a variety of boating
24 facilities, from launching ramps for small "car top" or "hand-carried" boats to major marinas.
25 Encourage recreational moorage by providing both long-term and short-term moorage at
26 marinas and short-term moorage at cultural and recreational sites.~~((Provide long-term~~
27
28



1 ~~recreational moorage for residents and sufficient short-term moorage close to cultural and~~
2 ~~recreational centers for visitors.))~~

3 6. Passenger Terminals: Maintain and expand the opportunity for ~~((residents and~~
4 ~~visitors))~~ convenient travel by ship to local and distant ports for residents and visitors.
5 Encourage ~~((more))~~ passenger-only ferries on the Central Waterfront.

6 7. Fishing Industry: Maintain a critical mass of support services including boat building
7 and repair, moorage, fish processors, and supply houses to ~~((permit))~~ allow Seattle fishermen to
8 continue to service and have a home-port for their vessels in Seattle waters. Recognize the
9 importance of the local fishing industry in supplying local markets and restaurants. Recognize
10 the economic contribution of distant-water fisheries to Seattle's maritime and general
11 economy.

12
13 LU271 Allow multi-use developments including uses that are not water-dependent or water-
14 related where the demand for water-dependent and water-related uses is less than the land
15 available or if the use that is not water-dependent is either limited in size, provides a benefit to
16 existing water-dependent and water-related uses in the area or is necessary for the viability of
17 the water-dependent uses. Such multi-use development shall provide shoreline ecological
18 restoration, which is preferred, and/or additional public access to the shoreline to achieve other
19 Shoreline Master Program goals.

20
21 shoreline recreation ((goals))

22
23 LUG57((53)) Manage and optimize publicly owned shorelines that are suitable for public
24 recreation ~~((to optimize their potential)).~~



1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of **DPD Motion to Dismiss Claims**
3 with the Seattle Hearing Examiner using its e-filing system.

4 I also certify that on this date, a copy of the same document was sent to the following
5 parties listed below in the manner indicated:

6 John C. McCullough (X) email @ jack@mhseattle.com
7 McCullough Hill Leary P.S.
8 701 Fifth Avenue, Suite 6600
9 Seattle, WA 98104-7006
10 *Attorneys for Appellant*
11 *Foss Maritime Co.*

9 David R. West (X) email @ drwest@gsblaw.com
10 Donald B. Scaramastra (X) email @ dscaramastra@gsblaw.com
11 Daniel J. Vecchino (X) email @ dvecchio@gsblaw.com
12 Garvey Schuber Barer
13 1191 - 2nd Avenue, 18th Floor
14 Seattle, WA 98101-2939
15 *Attorneys for Appellant*
16 *Foss Maritime Co.*

13 Traci Goodwin (X) email @ goodwin.t@portseattle.org
14 Senior Port Counsel
15 Port of Seattle
16 P. O. Box 1209
17 Seattle, WA 98111-1209
18 *Attorneys for Appellant*
19 *Port of Seattle*

17 Patrick J. Schneider (X) email @ schnp@foster.com
18 Foster Pepper PLLC
19 1111 Third Ave., Suite 3400
20 Seattle, WA 98101-3299
21 *Attorneys for Appellant*
22 *Port of Seattle*

20 the foregoing being the last known address of the above-named parties.

21 Dated this 15th day of June, 2015, at Seattle, Washington.

22 
23 TRUDY JAYNES