

23.60.002 THRU 23.60.199				2nd Draft - Comments from LUA	(The Lake Union Association)
DRAFT #					
#2	#1	SECTION	LANGUAGE	PROBLEM	SOLUTION
1	new	23.60.027	<b>Ecological Mitigation &amp; Measuring Program</b>		
		D.2		a. Director's Rule appears to be a draft. (DR:XX-2008).	We question that a Director's Rule should hold sway over such an encompassing program. We suggest a public process that is part of the shoreline program to review all the details being considered related to environmental effects.
				b. There should be a column that represents price - or a range of pricing - in Tables 1 & 2 of the DR.	
				c. Mitigation funds may be costly to administer.	Consider using a State approved program already in place. (RCW 90.84)
				d. Insure funds are used for ecological mitigation and not beautification projects.	Consider using a State approved program already in place. (RCW 90.84)
				e. The proposed price per HU are too high. If we are reading it correctly, a 100x400' (40,000 SF) dry dock at \$6.76 per HU (\$0.26 x 26 HU) would cost \$270,400.00	Fostering water dependent uses is also a major goal of the SMA please reconsider the price structure to reflect that.
2		23.30.036	<b>Criteria for Shoreline variance permits</b>		
			"and also demonstrating that there is no reasonable use of the property without the variance."	Unforeseen reasons for a variance may not depend on no reasonable use at all and does not build in flexibility to keep our WD users.	Suggest striking "no reasonable use"; adding "no reasonable economic use" or substituting a Director's determination on use and public interest.
	new	B.3.			
		23.60.090	<b>Uses Standards</b>		
3	new	C.	<b>Principal/Accessory Uses</b>	Accessory uses should be allowed on both dry land and submerged, especially if there is little or no	Suggest adding the words "and submerged" to the sentence "...can be allowed on dry land [and submerged] if incidental to,..."

				dry land available.	
			<a href="#">WAC 273-26-241(3)(d)(ii)</a>		
			<a href="#">Nonwater-dependent commercial uses should not be allowed over water <u>except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.</u></a>		
<b>4</b>	4	<b>23.60.124</b>	<b>Non-Conforming (NC) Structures</b>	No grandfathering provisions	Replication should always be allowed.
		C.	Rebuild o.k. except over water then: D.2.	with whole page of subsection requirements.	Choose 23.60.124B for overwater structures.
		<b>The DPD response was incomplete - cut off from the page</b>			
		<a href="#">LUA Further Response: Thank you for the provisions to rebuild non-conforming structures. While a complete rebuild warrants mitigation (for credits or reductions), mitigation for a replacement or improvement on an original structure should only be applied for any increase/decrease (new net loss/gain) 23.60.124.D.1.</a>			
		<b>23.60.124</b>	<b>Nonconforming structures</b>		
<b>5</b>	7	D.2 a,b,c.	Limits portion of lot	We are awaiting GIS details, but believe that in UC most dryland areas are under 50'. To require 30' of setback in a 65' lot depth is unreasonable.	Give incentives to lower the footprint Those that are in UM/UI should have zero setback Views from waterfront residences should not be considered D.2.c.
		<b>DPD Response:</b>			
		<b>See new sections 23.60384 and 23.60.504 regarding small lots.</b>			
		<b>WAC requirements for views and there are exceptions for when view corridors are not allowed.</b>			
		<b>Continuing to evaluate exception for WD uses on submerged land.</b>			
		<b>Please provide a list of incentives that could be used.</b>			
		<b>LUA RESPONSE:</b>			
		<a href="#">Thank you for the new sections relating to small lots, please see our comments under those sections.</a>			
		<a href="#">We look forward to your thoughts on exceptions for WD uses on submerged land.</a>			
		<a href="#">Incentives to lowering the footprint could include: allowing a height increase for density; decreasing the view corridor; decreasing the setbacks; mitigation credits; decrease in public access requests... to start the list.</a>			
		<b>23.60.150</b>	<b>Development Standards</b>		
<b>6</b>	9	A.	<b>No net loss of ecological functions</b>	Throughout the draft does not recognize existing uses i.e. If a dry dock is moved from	Work with industry to revise and clarify .

				one location to another, there	
				is no net loss of functions, but	
				the code operates as if there is.	
		<b>DPD Response: Mitigation in the existing code and in the proposed code is the same and is assessed by comparing pre-project conditions with post-project conditions.</b>			
		<b>LUA RESPONSE: Suggest using the term "no new net loss" throughout the Code as well as "new adverse impacts" for clarification.</b>			
		<b>Clarification is still needed that existing structures that are not designed or constructed to achieve no net loss are not considered nonconforming structures for the purposes of 23.60.124.</b>			
<b>7</b>		<b>23.60.150</b>			
		K.	Pilings treated with creosote shall not be repaired to extend the life of the piling...	Language does not recognize situations where it is physically impossible to replace the piling nor the	Work with the industry and property owners to revise the language.
		<b>DPD RESPONSE: Section revised to allow sleaving of creosote piles when piles are under a building and provide incentives to remove these creosote piles during pier replacement.</b>			
		<b>LUA RESPONSE: We need for clarification on the definition of sleaving: does this mean cutting off that portion of the exposed piling that is damaged, putting on a sleeve frame and filling it with cement to "cap" it or does it mean sleaving the entire pile?</b>			
<b>8</b>	13	N.	Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage...	Businesses can have boom & oil spill pads available, but it is unclear how to mitigate. This provision leaves no room for use of third party providers	Work with the industry and property owners to revise the language.
		<b>DPD RESPONSE: Revised to allow third party however facilities should have the minimum equipment available even if a third party is used.</b>			
		<b>LUA RESPONSE: We believe "N" is now "R" and do not find the changes mentioned for third parties.</b>			
<b>9</b>	15	T.	Discharge of water... including heating or cooling systems shall not discharge water that is	Systems on board vessels can include heat pumps	Amend language Amend language to exclude all vessels.

			warmer than the ambient freshwater temperature...		
		DPD RESPONSE: 23.60.152.T was deleted.			
		<b>LUA RESPONSE: 23.60.172, Table A #9 lists heat exchangers, in-water/aquatic, allowed as a CU in the specified zone if located outside LW, LU &amp; SC</b>			
<b>10</b>	16	23.60.158	Standards for mitigation sequencing.	It is unclear when mitigation would be required and how it differs from current SEPA requirements.	Work with the industry and property owners to clarify and revise the language.
		DPD RESPONSE: Per 23.60.158.A. "For the purpose of this Chapter 23.60, mitigation is the action taken to prevent, minimize or replace the loss of ecological functions resulting from new development, shoreline modifications or uses,..."			
		"regarding SEPA, SEPA conditioning authority generally does not apply when a regulation addresses the impact. Legally, the City cannot condition a project beyond the impact it creates, regardless of whether more than one regulatory scheme provides conditioning authority. Section 158 states that is the extent of the mitigation authorized. The City customarily relies on (cites) all of its conditioning authority when conditioning a project.			
		<b>LUA RESPONSE: Thank you for the clarification. We have further questions regarding mitigation:</b>			
<b>10</b>	new	<b>A.1. a, c.</b>	"Substantially improving, replacing or rebuilding non-conforming uses or structures.	Assuming no trespass situations, we have all built under cover of permits for the codes at the time. It is extremely unsettling to be classified as nonconforming given the serious monetary consequences of mitigation.	On the one hand (23.60.124) we are being told that non conforming uses or structures are disfavored in the law and we should not be able to rebuild. On the other, we are being asked to pay substantial amounts of money to mitigate against <b>past</b> net losses. The Code should be clear that mitigation is for <b>new</b> net loss situations as it does in line b. Refer to WAC 173-27-080 for the ability to rebuild.
		<b>23.60.162</b>	<b>Standards for parking and loading zone requirements</b>		
<b>11</b>	new	<b>C.3</b>	Existing over water parking may be relocated over water if the relocation results in 20% reduction in parking area or...greater protection...	In a built environment such as the LWSC, reducing parking by 20% for a business is a hardship and unnecessary because of on-site movement.	Please delete the provision. A greater business incentive would be to increase parking by 20% if it provided greater ecological protection by relocating on site. Please see WAC 173-26-241(3)(k) Standards: Transportation and Parking ...Parking facilities in shorelines are not a preferred use and <u>shall be allowed only as necessary to support an authorized use...</u>

12	18	23.60.164	Public Access	Requiring public access on private property may destroy a fundamental attribute of property ownership in the ability to exclude others.	Work with property owners and land use attorneys to assure that the SMA Guidelines are being correctly interpreted. Work with property owners and land use attorneys to assure that the requirement to grant an easement is not a taking. It is suggested that the granting of public access have incentives rather than requirements attached to it.
				Please note that we commented on the Public Access issue under each zone in Draft 1.	
				For brevity's sake, we will eliminate those and respond only in this section as it applies to all zones.	
				DPD RESPONSE: The SMA identifies many important interests in using the shoreline, including using waterfront lots for water dependent uses and providing public access to the shoreline RCW 90.58.020	
				When the use on a waterfront lot is not the preferred water-dependent use, the public access purpose is implemented. This policy is set out in the WAC which the City is required to follow. WAC 98.58.100(1)	
				The public access requirements in the SMA and WAC are based on the Public Trust doctrine, which inherently applies to all property, including shoreline property. Thus, it is not a taking to prohibit property from being used in a manner that creates a nuisance, and it is not a taking to require property to be used consistent with the Public Trust doctrine; i.e., property that is being used for uses that are not water dependent and even uses in the water should achieve another Public Trust/SMA purpose of providing public access.	
				LUA RESPONSE:	
				At the end of this matrix, we have listed all the RCW's and WAC's that we found to be applicable to Public Access as well as our take on the Public Trust Doctrine for a reference point.	
				In everything that we read, the only WAC that spoke to public access on private property was WAC 173-26-221(4)(iii) Therefore, we would suggest that the word "new" be added to "marinas" in reference to Public Access requirements [as in "new marinas, except as exempted.." where found in the SMP.	
				Further we believe that having a minimum public access requirement that calls for specific dimensions and easements has been and will continue to be a detriment to the end goal. We would suggest having a list of possible public access components including view point and informational signage about the property. At minimum the easement requirement should be eliminated.	
				Alternatively, WAC 173-26-221(4)(d)(ii) allows for "a more effective public access system that can be achieved through alternate means, requirements, such as focusing public access at the most desirable locations, ...in lieu of uniform site-by-site public access requirements. "	
				Perhaps DPD should be looking at ways to substantially improve what we already have in place on public property, rather than placing the burden on private property in a piece-meal fashion.	
				Again, we would like to thank DPD for working with property owners with recognition of hardships on small lots.	
13	19	A.2	The minimum regulated public access shall consist of an improved walkway at	In many areas of the waterfront, there are no physical means of meeting these requirements.	Work with property owners to revise the language.

			lease 5' wide on an ease- ment 10' wide, leading from the street..directly to a a waterfront use area or to an area on the property...	Also, there is no provision that additional public access will not be required each time a permit is requested.	
		<b>DPD RESPONSE: The provisions of the Code allow alternatives to accommodate site restrictions, safety, use conflicts, etc. <u>and once the public access requirement for a site has been met more public access is not required.</u></b>			
		<b>Additionally, exceptions added so that recreational marinas with 35 -ft. or less of dry land are not required to provide public access.</b>			
		<b>LUA RESPONSE: We would respectfully ask that the above underlined.sentence be included in the Code for clarification.</b>			
		<b>The requirement for giving an easement for public access is an undue hardship and the word easement should be deleted.</b>			
		<b>We genuinely appreciate the accommodations made for those properties with little dry land.</b>			
<b>14</b>	21	<b>23.60.182</b>	Standards for Dredging C. Dredging...is necessary for assuring safe and efficient accommodation of existing navigational uses.	Existing navigational uses may be restricted because of the depth of the water.	Delete the word "existing".
		<b>DPD RESPONSE: This is a WAC requirement and the majority of what shorelines/water bodies in Seattle are an existing navigational use.</b>			
		<b>LUA RESPONSE: It is not the water bodies that currently exist that is the source of concern. It is the ability to look to the future and and be able to dredge for uses that do not now exist or do not presently exist at that site.</b>			
		<b>Also missing is the ability to dredge for maintenance reasons. Further, if there is no net loss, dredging should be allowed.</b>			
		<b>We also defer to and agree with the Port of Seattle's position on this section as it is a provision not used often by our members so far and the Port has far more experience with it.</b>			
		<b>MARINA STANDARDS - COMMERCIAL &amp; RECREATIONAL</b>			
	24	<b>23.60.200</b>			
<b>15</b>	33	B.7.	All buildings and open areas used for boat and/or trailer storage are required to be screened with natural existing vegetated buffers or planted landscaped areas.	Unclear purpose for WD use. Too broad a statement. May not be achievable in many areas.	Delete language
		<b>DPD RESPONSE: DPD continues to evaluate this standard.</b>			
		<b>LUA RESPONSE: We look forward to hearing your thoughts. Also, questions have been asked (1) if the buffer is meant to screen</b>			

		views from the water side into the storage or from the land side into the storage?, and (2) how are security issues to be handled?			
16	39	C.2.	Transient Moorage	Eliminates WD moorage	C.2. In public marinas; Restaurant should pay for any transient space.
		C.2.a.2.	...required at ..40 lf ...for each 1,000 lf of moorage space	income all year long	C.2. Eliminate "or other use not WDWR operates during eve/ weekend.
		<b>DPD RESPONSE: The intent of this provision is to accommodate transient moorage and this is good policy goal to help water dependent users of the City's shorelines. And the provision is only for larger marinas.</b>			
		E.2.a.	<b>LUA RESPONSE: Respectfully, if the words "if one or more of the following conditions apply:" were to be eliminated; then the word "and" added to the end of 2.a.1, then we would be in agreement.</b>		
		E.	Additional Standards for live-aboards		
			<b>23.60.200(G): Good placement and easily found in the Code.</b>		
			<b>23.60.204: House barges - separate issue</b>		
17	new		<b>23.60.214: Please explain "if the vessel is moored at a marina <u>for the particular type of vessel, ...</u>"; as it is not clear if marinas are being asked not to moor certain types of vessels or if this is a use inside the vessel issue.</b>		
		<b>23.60.204</b>	<b>Standards for house barges</b>		
18	49	A.	New house barges are prohibited.	The definition of house barges would include all vessels. It is also unclear why a vessel would be prohibited.	Work with the industry and property owners to clarify and revise the language.
		DPD RESPONSE: The definition of house barge will not include all vessels. This is a use issue and if a vessel is designed primarily as a place of residences with only the secondary ability to navigate then this use is just like a floating home and is required to be prohibited by the WAC 173-26-241(3)(j).			
		<b>LUA RESPONSE: WAC 173.26.241(3)(j) <u>Standards: Residential development.</u> New over-water residences, including floating homes are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.</b>			
		<b>With the above WAC in mind, we would suggest a clause for no new house barges upon the date of passage of this SMP by City Council.</b>			

19	51	D	Overboard Discharge	Prohibited	Amend language to black water discharges.
		now E			would require marina to add sewer connections.
			DPD RESPONSE: A sewage line would work but the requirement can be met by having a holding tank and having the holding tank pumped out.		
			LUA RESPONSE: Respectfully, consider phasing in grey water discharge restrictions to allow either sewer lines to be placed or the pump-out vessels to obtain new equipment for the additional holding capacities necessary. Also some house barges might need time to add sufficient tank size.		
			<b>23.60.310 Use in CW Environment</b>		
		A.	<b>Table for Section</b>		
20	new	C.12.b.	Sale or rental of large boats	See subsection 23.60.310.G	Amend the language to allow the sale of large boats and
		G.	Rental of large boats is allowed as a special use and the sale of large boats is prohibited.	Waterways in the LWSC are reserved for commerce and navigation. Not allowing use hurts our water dependent businesses.	the rental of large boats done without a special use permit to meet one of the SMA goals. Definitions state that a large boat is defined as larger than 16'
21	new	C.12.d.	Vessel repair, major	See subsection 23.60.310.H	Amend the language to allow major vessel repair to meet
		H.	Major vessel repair is prohibited, except as SCU for repair of historic ships...	Waterways in the LWSC are reserved for commerce and navigation. Not allowing use hurts our water dependent businesses.	one of the SMA goals.
			<b>23.60.382 URBAN COMMERCIAL (UC)</b>		
22	55	B.1.	Prohibited Uses are: Eating/drinking establishments,	Forbids most commercial uses.	Recognize and foster the already built commercial environment without penalties.
		now C.1	Entertainment uses, Custom & craft work, Sales & service, general and Offices		Clarify to encourage business uses; work with landowners create language fostering a 'mix of uses'.

		<b>DPD RESPONSE: These uses are allowed when another SMP goal is provided see response to comment #54.</b>			
		<b>LUA RESPONSE: We genuinely appreciate the flexibility shown in the changes.</b>			
		<b>Also we found some clerical errors: We think that C2.b - should cite 23.60.382.E [not D].</b>			
		<b>C2.b - should cite 23.60.382.E [not D].</b>			
		<b>C.4 and C.4.d refer to 23.60.382.B which no longer exists.</b>			
<b>23</b>	56	<b>B.2.</b>	<b>Requirements to meet</b>	Most buildings in UC are built	Revise the language so nonconforming structures are not
	now	<b>C.2</b>	<b>office use.</b>	over the water with less than	created.
				50' in lot depth - making	
				them nonconforming structures.	
				Most UC buildings require	Recognize that offices above the lowest floor help keep an
				non WD/WR uses to fill an	economy vibrant.
				economic reality.	
			Example:	It is unclear that an office for	Revise the Table to allow more uses and recognize WD/WR
				a tugboat use would be allowed.	office use for allowed businesses.
		<b>DPD RESPONSE: See updated use table that includes separate regulations for small lots overwater Sections 23.60.384 and 23.60.504</b>			
		<b>LUA RESPONSE: First, we believe that Office Use was inadvertently left out of 23.60.384.A and B and our original comment</b>			
		<b>specifically concerned office use in existing buildings that were built over the water.</b>			
		<b>Second, in 23.60.090, it states that "An accessory use that is prohibited as a principal use in a particular shoreline environment can be allowed</b>			
		<b>ON DRY LAND if incidental to, and necessary for, the operation of the principal use."</b>			
		<b>We would appreciate the clarification: would a tugboat service that needs an office in an over the water building be allowed or not</b>			
		<b>within this SMP?</b>			
		<b>23.60.382</b>			
<b>24</b>	59	B.3.d.5.	Saltwater moorage of	In the UC designation, this	Include the term freshwater; or eliminate the term saltwater.
			1,500 l.f. or greater	eliminates most of the users.	
		<b>DPD RESPONSE: This section is a list of options that provide better recreational use, public access or ecological enhancement in exchange for</b>			
		<b>allowing non-water dependent uses at a site. The provision for saltwater moorage is for recreational boaters on the Sound and not for</b>			
		<b>recreational boaters on Lake Union or the Ship Canal. Please explain why this has been a problem.</b>			
		<b>LUA RESPONSE: We are asking why this option is not being given to fresh water marinas in the LWSC?</b>			
<b>25</b>	64	<b>23.60.386</b>			
		A.	Height	There are four separate height	
			Maximum Height is	zones and the reasons are unclear.	Work with the landowners to clarify and amend the language.

			30' with exceptions	Height should be a minimum of	
				35' to allow for construction	
				of commercial ceiling heights.	
		<b>DPD RESPONSE: The 30-ft. height limit is for overwater structures and is part of the existing code and is intended to achieve both environmental protection and view requirements while balancing water-dependent uses.</b>			
		<b>LUA RESPONSE: We did indeed incorrectly read the Code that spoke to upland lots.</b>			
		<b>However, we are wondering if it is possible for the height on overwater structures to align with RCW 90.58.320 that allows for 35-ft.?</b>			
<b>26</b>	65	<b>23.60.388</b>			
		A.1	<b>Lot Coverage</b>		
			50% of submerged	Overreaching; is at odds with	Work with the landowners to clarify and amend the language.
			including structures,	fostering WD/WR uses.	
			floats & piers		
	66	A.2	50% of dry land	Overreaching exaction especially	Work with the landowners to amend the language to address
	67	C.1	65% of dry land	in conjunction with other	a legitimate public problem without being oppressive.
	68	C.2.	Single Family	lot setbacks & requirements.	
		<b>DPD RESPONSE: Existing code provision and is intended to achieve the balance for water-dependent uses, shoreline views and ecological protection.</b>			
		<b>LUA RESPONSE: We believe that the view corridors achieve shoreline views and the set-backs speak to ecological protection. We would still appreciate DPD working with landowners on this issue.</b>			
<b>27</b>	69	<b>23.60.390</b>	<b>Setbacks</b>		
		A.	15' setback for WD/WR use	Does not recognize narrow lot	Work with landowners to amend the language.
		B.	35' setback for non WD/WR	depth in most UC areas.	
			uses		
		<b>DPD RESPONSE: The regulations provide exceptions for small lots. New section for included that provides development standards for lots that have little or no dry land.</b>			
		<b>LUA RESPONSE: We appreciate the exception for small lots. Can you provide the new section number that speaks to this?</b>			
<b>28</b>	75	<b>23.60.394</b>	<b>View Corridors</b>		
		A.	...35% of the width of the lot	Overreaching. Most UC lots	Work with the landowners to revise the provision.
			shall be ...	have less than 50' in depth and	
				must give up 70' on a 200' width.	

		D.	...65% of the width of the lot shall be... Seaview Ave.	Overreaching. A 200' wide lot would give up 130' to views.	Work with the landowners to revise the provision.
		E.	...shall be reduced to 25% of the width of the lot if WD uses occupy more than 40% of the dry land area of the lot.	Does not recognize submerged land.	Use total lot coverage in all calculations. <b>Eliminate the words "dry land area" from the provision.</b>
<b>DPD RESPONSE: Subsection 23.60.394 A, D, and E are existing provisions. The SMA requires a conservation element to preserve "scenic vistas and aesthetics." RCW 90.58.1900(2)(f) The WAC states that public access includes views of the water. WAC 173-26-221(4)(d)(iv) implements this saying that SMP should have view corridors to minimize the impacts to existing views from public property (e.g. streets) and substantial numbers of residences; where there is an irreconcilable conflict between water dependent uses and maintaining views, the water dependent use gets priority. So requiring the view corridor meets the WAC requirement and subsection E addresses water dependent uses. The variance procedure is available when there is a hardship.</b>					
<b>LUA RESPONSE:</b>					
<b>1. 23.60.394 E, Our objection to this provision lays with the fracturing of the lot itself. Generally speaking, uses on the water are WD; therefore they should be recognized as such by including the amount of land they use in the calculation. In other words, for this purpose, the lot should be viewed as one unit.</b>					
29	76	<b>23.60.402</b>	<b>URBAN GENERAL (UG)</b>		
		A.	<b>Table for Uses</b>	Good flexibility for different uses; however boat moorage becomes a CU	Revise table to include moorage as an allowed WD use.
<b>DPD RESPONSE: Requested revision made.</b>					
<b>LUA RESPONSE: The copy that we have does not reflect the change.</b>					
		<b>23.60.408</b>	<b>Setbacks</b>		
30	78	B.	A shoreline setback of 35' from the OHW mark is required for uses that are not WD/WR.	Given that this zone has minor access to the water, requiring a setback unless WD/WR uses are in place is contradictory.	Work with the landowners to revise the provision.
<b>DPD RESPONSE: Comment is not clear on what makes the requirement contradictory. The SMP balances the need for water dependent uses, public access and shoreline protection. When a use is not water dependent then the goal of the shoreline environment is to meet one of the other SMP goals. A shoreline setback meets a minimal environmental protection goal.</b>					

		<b>LUA RESPONSE: This zone only exists in a limited area of the Ship Canal and achieves the SMP balance for non-water dependent uses via the Corps of Engineers bulkhead and vegetation setback and the Burke Gilman trail that fronts the water on both sides of the canal. Our point is that the goals of both public access and shoreline protection have already been met and the setting aside of more land is excessive.</b>		
		<b>UI</b>		
<b>30</b>	83	<b>23.60.490</b>	Shoreline Setbacks	
		A.	15' setback for WD/WR uses	In an industrial zone no setbacks should be required.
		B.	35' setback for open space	Work with landowners and the regulated businesses to revise the language.
		C.	50' setback for non WD/WR	
			Between the two setbacks	
			are development criteria.	
		<b>DPD RESPONSE: 15-ft. Is for the structure and is needed to protect shoreline slopes. The water-dependent use can occur within the 15-ft setback. The 35-ft open space setback will not apply to WD/WR industrial uses and the 60-ft shoreline setback is existing language and works as an incentive for WD/WR uses on industrial waterfront property.</b>		
		<b>LUA RESPONSE: We are asking that existing WD/WR structures do not become non-conforming by being in the 15' setback and that 23.6.490.C. would apply to new development only.</b>		
	86	<b>23.60.502</b>	<b>Urban Maritime</b>	
<b>31</b>	90	H.	Existing recreational marinas on waterfront lots are allowed to reconfigure ...but may not expand. Expansion includes additional over water coverage due to piers, floats, larger vessels, house barges, or floating homes or additional vessels or house barges. New recreational marinas are prohibited.	1. Recreational marinas are located in the UM zone because of historic use. Most could not accommodate commercial vessels due to vessel size or configuration of the marina. 2. It really should be a business decision as to whether recreational vessels are allowed. 3. There is enough confusion about commercial businesses doing work on recreational vessels.
				Delete this provision.
		<b>DPD RESPONSE: See revised Section 23.60.502 recreational marinas are allowed in the Lake Union and Ship Canal area.</b>		
		<b>LUA RESPONSE: Thank you for the revisions. We see a reference to "yacht boat and beach clubs" in 23.60.502D. Please consider changing the reference to recreational boats and yacht or beach clubs for clarity.</b>		



	WAC 173-26-221(4)(b) Local master programs shall:	
	(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while <u>protecting private property rights and public safety.</u>	
	(ii) <u>Protect the rights of navigation and space necessary for water-dependent uses.</u>	
	WAC 173-26-221(4){c}: Planning process to address public access. Local governments should plan for an integrated shoreline area public a access system... <u>The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.</u>	
	WAC 173-26-221(4)(d)(i): Standards: Based on the public access planning described in {c} of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address <u>public access on public lands.</u> The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural <u>shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.</u>	
	WAC 173-26-221(4)(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:	
	(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to <u>constitutional or other legal limitations</u> that may be applicable.	
	In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.	
	WAC 173-26-241(2)(a)(ii) <u>Principles:</u> Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary , to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, <u>and to protect property rights while implementing the policies of the SMA.</u>	
	WAC 273-26-241(3){c}(iv) <u>Standards: Boating facilities:</u> Provisions for public access in <u>new marinas</u> , particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).	
	WAC 273-26-241(3)(d)(i) <u>Standards: Commercial development:</u> Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:	
	(i) The use is part of a <u>mixed-use project</u> that includes water-dependent uses <u>and</u> provides a significant public benefit with respect to the SMA's objectives <u>such as providing public access and ecological restorations;</u> or	
	(ii) Nonwater-dependent commercial uses should not be allowed over water <u>except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.</u>	
	WAC 173-241(3)(f)(i) <u>Standards: Industry:</u> New non-water-oriented industrial development should be prohibited on shorelines except when:	
	(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the SMA's objectives such as providing public access and ecological restorations;	
	End of matrix for Lake Union Association.	