



May 26, 2011

Margaret Glowacki
City of Seattle – DPD
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Seattle, WA 98124-4019

BY EMAIL: Margaret.Glowacki@seattle.gov

RE: Comments on 2011 Draft Shoreline Master Program
Dear Ms. Glowacki:

This letter provides comments from Vigor Shipyard (formerly Todd Pacific Shipyards) on the 2011 Draft Shoreline Master Program (SMP) distributed February 8, 2011. We appreciate the opportunity to comment on the draft SMP, as well as the opportunity to contribute to the SMP Citizens Advisory Committee (CAC). An appropriate and implementable SMP is critical to the continued health of Seattle's maritime industry, Seattle's overall economic health, as well as the health of our marine ecosystem.

The Vigor/Todd facility has been serving the marine industry since 1916. A Seattle icon, we are one of the most experienced and respected shipyards in the country, offering government and commercial customers broad expertise in new construction, conversion, and repair. Our experienced and highly skilled workforce has earned the reputation for being a full-service ship construction, conversion, and repair company. In Seattle alone, our dedicated union workforce averages more than 800 employees during the year.

We have set an example for environmental stewardship by proactively and comprehensively changing the way the business is operated. As a key member of the Seattle waterfront community and a highly productive waterfront industry, we understand that it is essential to protect the water quality of Elliott Bay and prevent pollution to ensure ecological value and prosperity for future generations. To reach these goals, we have implemented physical upgrades and instituted workplace requirements that extend well beyond the minimum regulatory requirements for environmental protection. Over the last eight years, we have been presented with 11 substantial awards for environmental excellence – from King County, the Coast Guard, the City of Seattle, the Association of Washington Businesses and others. A summary of our environmental efforts and awards can be found here:

http://vigorindustrial.com/companies/vigor_shipyards/environment_practices.php

There is no organization that understands better than we do the importance of the very careful balance between economic and environmental stewardship on the Seattle waterfront. We trust that as you consider our comments on the Draft SMP, you will not take our expertise and experience in this lightly. Following our review of the Draft SMP, we conclude that there are significant shortcomings and defects in the draft as written. The Draft SMP is unnecessarily complex and overly prescriptive – and it will NOT support us in working with you to achieve the goals for economic and environmental stewardship that we should share. *We recommend that DPD withdraw this draft, revisit the significant issues raised by the City's maritime industries, and redraft the plan.*

A thorough comment letter has been submitted by the Port of Seattle, and we completely support their conclusions and concerns. We have expressed our concerns at the CAC meetings, and will continue to participate as required. We would like to emphasize the following key issues – which must be addressed in a revised draft:

The SMP does not value and prioritize water-dependent uses as required by state law – As described in the Port of Seattle comment letter, the Draft SMP introduces new measures for environmental protections without appropriate emphasis on the equally important requirements of the State SMA to foster and support water-dependent uses. Revisions to the Urban Industrial zone requirements for piers, docks and wharves would make water-dependent uses and structures very difficult to operate, maintain and improve.

- The City needs to acknowledge and prioritize the importance of water-dependent maritime businesses to the regional economy, and support us in the development and maintenance of our essential facilities.

The SMP institutes a redundant layer of oversight which significantly increases costs and does NOT improve outcomes - In a number of ways the City is adding another layer of oversight and regulation on top of oversight and regulation already required by other public entities. For example, maintenance dredging is already regulated by State and Federal agencies (Dept of Ecology and Army Corps of Engineers). The draft SMP appears to require that the City review dredging plans as well as these other agencies – and requires dredging means and methods that are already addressed by the Corps of Engineers process. This is redundant oversight that significantly increases costs to the City, increases costs to businesses and which would not improve environmental outcomes. This is not just an issue with dredging. It also applies with reference to language on stormwater systems which are already regulated through the NPDES process, shoreline stabilization (Dept of Ecology) and others. The draft SMP should be amended to remove City review of issues already subject to State or Federal review and/or approval. If another agency has oversight the City's role should be limited to ensure property owners have obtained Federal or State approval.

- The City does not need to institute redundant regulations in one of the most environmentally regulated places in the country. Instead the City's role should be limited to ensuring that projects have obtained the required

approvals from other agencies in a check the box manner rather than attempting to do their own review.

- The City does not have the resources in place to handle more complex environmental issues that are already subject to regulation. Training staff on issues such as allowable turbidity in a dredging operation is a waste of DPD's time and budget.
- Given the City's budgetary constraints, the City needs to focus its resources on regulating things that are not already regulated.

The SMP contains inappropriate mitigation requirements that are not consistent with state law and regional practice - requiring an applicant to mitigate “all adverse impacts to adverse effects to ecological functions” (emphasis added; SMC 23.60.032(D), .034(B)(4) and .036(A)(4)) is more burdensome than requiring “no net loss of ecological functions” (SMC 23.60.152(A)). This standard is impractical and unachievable in the Urban Industrial shoreline areas – it requires shoreline developments to restore and enhance ecological functions instead of maintaining these functions per the “no net loss” policy. It also increases requirements for off-setting adverse impacts due to proposed development actions, adding mitigation requirements in excess of the existing SEPA threshold. Seattle is an ideal location for certain water dependent operations (deep draft cargo handling, cruise ship port calls, ship construction and repair, etc). Our combination of shoreside facilities and deepwater berths is rare in the Puget Sound. Some of these uses could be expanded in the future and bring additional jobs to the region. If there are Seattle-specific mitigation requirements that are difficult to meet, industry will want to go to areas in the Puget Sound outside of Seattle. The environmental impact of placing such operations in other locations within the Puget Sound could be much worse than the impacts of expansions to existing facilities or operations. We recommend that the City withdraw this emphasis on increased mitigation in the draft SMP revisions and adhere to the “no net loss” standard mandated under the state SMP rules.

- The SMP should not contain unreasonable requirements that will force maritime businesses to locate outside of Seattle city limits. Since the founding of Seattle, Elliott Bay has been recognized as the most appropriate location in the region for deep and medium draft maritime industry, providing vital jobs and services to the City. It is entirely inappropriate for the SMP to increase regional environmental and economic impacts by pushing Elliott Bay uses out of the Seattle City limits. That is what will happen if mitigation requirements within the Seattle City limits are significantly more stringent than other areas of the state.
- Since our facilities are already subject to mitigation requirements imposed by multiple state and federal agencies – review, clarify and *simplify* the Seattle SMP so that your role is to confirm that our work is consistent with regulatory standards in Puget Sound as applied by state and federal

agencies. Again, do not impose another unnecessary layer that will NOT produce results.

The definition of “water dependent use” on an individual structure basis is completely inappropriate - The definition as used in the draft SMP looks at individual structures rather than larger facilities. Water dependent businesses in the Urban Maritime, Urban Industrial or Urban Harborfront categories are integrated facilities rather than individual structures. A ferry terminal consists of piers, wharfs, and loading facilities, but also offices, maintenance sheds and passenger services (restaurants, gift shops, etc.). Likewise a shipyard has dry docks, piers, wharves, machines shops, offices, warehouse facilities, cafeteria, etc. that all work as an integrated whole. Under the current definition, it is possible that an application to build a warehouse – essential to our business - on a parcel designated for water dependent use could be denied since warehousing could be deemed to be not water dependent.

- The SMP needs to provide facility owners with flexibility to improve and/or configure water dependent facilities without having to be second guessed by City planners.
- The SMP should include a category for “water dependent facility” over which the 20% rule does not apply unless the essential use of the entire facility is changed.
- As a subset of this issue, the SMP must include a zoning provision that allows “water dependent facilities” to provide temporary housing for essential ship’s crew that need to be housed near a vessel for security and firefighting purposes. There are occasions when a vessel is undergoing repair and crew cannot be housed onboard, and yet they must be close to the vessel. In one case last year, it took our shipyard four months to get a zoning waiver from the City to accommodate US Navy personnel in the shipyard. This circumstance could apply to tug boat and other vessel crews as well.

The shoreline stabilization rules are too narrowly focused on protecting structures and not “facilities” – The SMP notes that no new shoreline stabilization is allowed unless the foundation of a primary structure located on the property will be undermined. Such a rule fails to take into account an industrial water dependent use where by a lay down area, storage areas or paved areas may play an integral role in the water dependent use. A paved container storage area or a paved shipyard area where major vessel components are stored could be undermined without adequate bulkheads or riprap. The simple fact that a building is not being undermined does not diminish the loss of use of the facility.

- The SMP should recognize that new stabilization should be allowed whenever the existing use of the property is impaired. Any references to primary structures or appurtenant structures as a measure of property impact should be removed.

The requirement for Geotechnical Study to demonstrate that soft solutions are not feasible is overly prescriptive - For water dependent urban industrial shoreline, the burden should be on the City to show that a soft solution for shoreline stabilization is a feasible alternative. If the City surveyed the water dependent businesses that currently exist along the urban industrial shoreline (excluding non-water dependent businesses), the City would quickly learn that soft solutions are highly unlikely to be feasible in these locations. The City is simply creating an additional consulting burden and cost to businesses. The Geotechnical studies will not result in greater use of soft solutions in these locations; they will simply result in increased use of consultants.

- We understand why this approach makes sense in other areas that don't have water dependent uses or are not industrial in nature, and agree with including this requirement in the SMP. However, water dependent facilities in the urban industrial shoreline should be exempt from this requirement.

The height restriction for urban industrial shoreline is unnecessary – Along much of the urban industrial shoreline, there are no views. Adding height restrictions above and beyond existing zoning rules is redundant and unnecessary. Increasing the height restriction to 100' or 120' could be beneficial as it could allow some industrial users to construct enclosed operations which would still accommodate the water dependent use. This would be an environmentally favorable outcome as it could move certain industrial activities indoors.

- The SMP should either remain silent on the issue of height restrictions or allow for greater than 80' along the Urban Industrial waterfront.

Additional restrictions on legally non-conforming structures do not improve environmental outcomes – Under the proposed SMP, the additional restrictions on the maintenance of existing legally non-conforming structures are overly burdensome on water dependent businesses and could result in a lack of maintenance rather than improved environmental conditions. The draft proposes to limit maintenance on such structures to 60% of market value over 5 years. With such a restriction in place an owner may be forced to neglect a structure and not repair it in order to avoid going over the threshold. Old, poorly maintained structures are more likely to have adverse environmental impacts than well maintained structures.

- The SMP should “grandfather” set backs, uses, heights and sizes of existing buildings that are part of a water dependent facility in the urban industrial shoreline. Repairs to such grandfathered structures should not be limited, but rather should be encouraged.

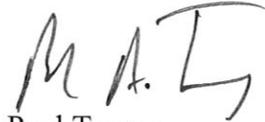
An overall comment on the Draft SMP is that it is WAY more detailed and complex than it needs to be. The proposed revisions are extraordinarily detailed and too prescriptive, impeding what should be your goals of improving the SMP and creating a successful implementation framework. Having extraordinarily detailed requirements risks the creation of unintended consequences that you can not in any way have the expertise or foresight to

VIGOR SHIPYARDS
MAY 26, 2011

predict – it will stifle practical, realistic solutions for development, construction and environmental mitigation throughout our shoreline environments. The Draft SMP includes excessively detailed prescriptions for protection and mitigation of shoreline resources, and insufficient emphasis on protection of water-dependent uses and developments – which are equally protected under state statute.

The Vigor/Todd facility truly models the balance of economic and environmental stewardship that is necessary for Seattle maritime industry. This comes from daily, focused, and extremely hard work and investment on both of these initiatives. We need the City's support to meet these goals, not additional hurdles. We appreciate your attention to our concerns, and look forward to a new draft and a second review period.

Sincerely,
Vigor Shipyards

A handwritten signature in black ink, appearing to read 'M.A.T.' with a stylized flourish at the end.

Paul Torrey
Director of Facilities and Commercial Affairs

cc: Marshall Foster, City of Seattle Planning Director
John Lockwood, Paul Torrey, Mike Marsh – Vigor Shipyards
Stephanie Jones Stebbins, Eric Hanson - Port of Seattle