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Date: July 25, 2019

Subject: SMP Amendment - Determination of Initial Concurrence

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Brief Description of Proposed Amendment

The City of Seattle (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence as part of a locally initiated SMP amendment outside the statutory periodic review schedule requirements of RCW 90.58.080(4). The City has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules prior to local adoption. The City proposes amendments to clarify the definition of “vessel” and make other associated clarifications as contained in *Council Bill (CB) 119471 – As Amended 6.19.2019*. This is intended to clarify going forward that existing inoperable recreational vessels, such as a power vessel with a broken engine, would still be classified as a “vessel” under the City’s SMP and not reclassified as a “structure” that could potentially request to be verified as a “Floating On-Water Residence” (FOWR) and expanded or replaced to further accommodate residential amenities.

FINDINGS OF FACT

Need for Amendment

The City’s comprehensive update to their SMP went into effect in 2015. The City’s SMP regulates four types of floating residences: (1) floating homes, (2) house barges, (3) Floating on Water Residences (FOWRs), and (4) Vessels Containing Dwelling Units (VDUs). The SMP also provides minimum standards for marinas offering liveaboard moorage on vessels, but does not regulate normal operation of vessels when not moored within the City. The City has identified the amendment through CB 119471 as intended to respond to a 2016 City Hearing Examiner decision that found an inoperable trawler was not a vessel for the purpose of the SMP and could be eligible for verification as a FOWR. The City found that this decision has, over time, increased the number of floating residences in the City’s shoreline by making some inoperable vessels eligible for FOWR status. Consequently, this interpretation increases the potential number of FOWRs beyond what was contemplated as part of the City’s 2015 Comprehensive SMP Update and provides the potential for conversion of “vessels” designed and historically used for navigation to a floating residential use that can be expanded or replaced as a FOWR. While the Shoreline Management Act Guidelines (WAC 173-26-241(3)(j)(iv)(a) prohibit new over-water

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residences, it also recognizes the value of existing over-water residential communities and requires that local governments accommodate these established floating residences within their SMPs. Therefore, the City is proposing to amend their SMP's definition of "house barge" and "vessel" to further clarify important distinctions between these two definitions and the definition of a FOWR. The amendment also intends to clarify characteristics of a "vessel" as: "generally capable of self-propulsion" or capable through the intended design of the vessel, independent of the state of repair of components of the vessels such as a inoperable engine or torn sail, that when maintained satisfies the intent of the phrase "... designed and used for navigation" in WAC 173-27-030 or similarly capable of being used as a means of transportation across the water, which is distinct from a House Barge or FOWR that by definition (within the SMP) are designed or used primarily as a residence.

SMP Provisions to be Changed by the Amendment as Proposed

SMC 23.60A.204 Floating structures and standards for house barges

Subsection B.3.d— edits proposed to replace the word "vessel" with "house barge".

SMC 23.60A.900 Definitions

Subsection 23.60A.916 "house barge" definition is modified to remove the term "vessel".

"House barge" means a ~~vessel~~ structure that floats on water and is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.

Subsection 23.60A.942 "vessel" definition is expanded and the term "house barge" is removed.

"Vessel" means ships, boats, barges, or any other floating craft that are designed for navigation in order to transport people or goods over water, and are used for or capable of being used for navigation, and do not interfere with the normal public use of the water, ~~including~~. A vessel is considered capable of being used for navigation even if it is not used for navigation due to actions or inactions of the vessel owner(s) or due to conditions affecting the use of the vessel for navigation, which include, but are not limited to, broken engines, lack of an engine, hull damage, physical modifications, or missing sails. Vessel also means historic ships that do not have means of self-propulsion and steering equipment and house barges.

Amendment History, Review Process

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on April 1st and continued through May 1st 2019. A joint local/state public hearing was held on May 1, 2019 at 9:30 am at Seattle City Hall.

The City provides additional information on this amendment process via the Council Bill (CB) 119471 webpage (<https://seattle.legistar.com/LegislationDetail.aspx?ID=3875335&GUID=3E0BF10C-4BEA-450A-AB97-F5DC58618C1F&Options=Advanced&Search>). Ecology also posted public comment, public hearing, and proposed amendment information on its website at <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Seattle>. The City and Ecology provided notice of the joint comment period and public hearing to local and state interested parties on or before April 1, 2019. The comments were received by the City throughout the process.

The City included a copy of comments received during the 2018 SEPA determination process and provided responses. Comment from the Maritime Community and Floating On-Water Residence

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Community were summarized and responded to by Seattle Department of Construction and Inspection (SDCI) staff.

The City also provided copies of comments received by City staff or Councilmembers after the formal joint comment period. Most were in opposition to the definition change and in support of Lake Union Liveaboard Association (LULA) request to delay amendment of the definitions until a later SMP update. Some of the commenters were also in support of amendment 2 to CB 119471 which added Section 4 to the bill affirming that nothing in this ordinance alters the status of FOWRs that have received prior verification from the City.

The City provided their Initial Submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via email on June 20, 2019 and the submittal was determined to be complete. This began Ecology's review and initial determination.

Summary of Ecology Review

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following topics were identified as relevant to Ecology's final decision on the proposed amendments to the City's SMP. Findings are provided specific to each topic identified:

Vessel Definition

Ecology finds that the City's SMP is authorized by the applicable SMP Guideline requirements and the Shoreline Management Act; therefore the most applicable vessel definition is provided in WAC 173-27 (Shoreline Management Permit and Enforcement Procedures). WAC 173-27-030(18) provides that a "vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water. The City proposes the following "vessel" definition:

"Vessel" means ships, boats, barges, or any other floating craft that are designed for navigation in order to transport people or goods over water, are used for or capable of being used for navigation, and do not interfere with the normal public use of the water. A vessel is considered capable of being used for navigation even if it is not used for navigation due to actions or inactions of the vessel owner(s) or due to conditions affecting the use of the vessel for navigation, which include, but are not limited to, broken engines, lack of an engine, hull damage, physical modifications, or missing sails. Vessel also means historic ships that do not have means of self-propulsion and steering equipment.

Ecology finds that the City's proposed vessel definition is consistent with WAC 173-27-030(18) while providing additional locally necessary clarifications.

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Seattle's SMP provides a distinction between Floating Homes, Floating On-Water Residences, House Barges, and Vessels containing dwelling units:

- Standards for floating homes and floating home moorages can be found in Section 23.60A.202
- Standards for floating on-water residences can be found in Section 23.60A.203
- Standards for floating structures and house barges can be found in Section 23.60A.204
- Standards for residences other than floating homes, FOWRs, house barges, and vessels containing dwelling units can be found in Section 23.60A.206
- Standards for vessels containing dwelling units can be found in Section 23.60A.214

Ecology finds that the proposed vessel definition must be considered in context with the following other City of Seattle floating structure definitions:

"Floating home" means a structure designed as a dwelling unit constructed on a float that is moored, anchored or otherwise usually secured in waters, and is not a vessel, even though it may be capable of being towed.

"Floating on-water residence" means any floating structure, other than a floating home, that is designed or used primarily as a residence, has detachable utilities, and is the subject of a lease or sublease at a marina, or whose owner or predecessor in interest had an ownership interest in a marina, as of July 1, 2014. See RCW 90.58.270. For the purpose of this definition, a structure will be considered "designed primarily as a residence" if it contains a dwelling unit.

"House barge" means a structure that floats on water and is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.

"Live-aboard vessel" means a vessel that is used as a single-family dwelling unit for more than a total of 30 days in any 45 day period or more than a total of 90 days in any 365 day period; or the occupant or occupants identify the vessel or the facility where it is moored as the residence for voting, mail, tax, or similar purposes. Marinas may define "live-aboard use" more narrowly than the above definition, but not more broadly.

"Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts artificially joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, including fences, walls, signs, piers, floats and drydocks, but not including poles, flower-bed frames and other minor incidental improvements, or vessels.

"Vessel" means ships, boats, barges, or any other floating craft that are designed for navigation in order to transport people or goods over water, are used for or capable of being used for navigation, and do not interfere with the normal public use of the water. A vessel is considered capable of being used for navigation even if it is not used for navigation due to actions or inactions of the vessel owner(s) or due to conditions affecting the use of the vessel for navigation, which include, but are not limited to, broken engines, lack of an engine, hull damage, physical modifications, or missing sails. Vessel also means historic ships that do not have means of self-propulsion and steering equipment.

Ecology finds that structures do not include vessels and a FOWR is defined as structures, not a vessel within the City's current SMP and in RCW 90.58.270 (6) (b) and the SMP Guidelines at WAC 173-26-020 (18) (a). Therefore City's proposed clarification appear to increase the internal consistency of this SMP and is consistent with the applicable state regulations under the SMA.

Section 23.60A.204 provides that,

Floating structures, including vessels that do not have a means of self-propulsion and steering equipment and that are designed or used as a place of residence, with the exception of house barges authorized under subsection 23.60A.204.B and floating on-water residences authorized under Section 23.60A.203, shall be regulated as floating homes pursuant to this Chapter 23.60A.

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Ecology finds that Section 23.60A.204.A above already addresses that inoperable vessels that are designed or used as a place of residence are something other than floating on-water residences. Ecology also finds that, consistent with the City's stated intent of this proposed amendment and SMC 23.60A.204.A, the proposed definition change clarifies that even broken vessels used as a place of residence are not automatically or by default floating on-water residences because they could still be vessels containing dwelling units.

Consistency with Chapter 90.58 RCW

The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). The proposed amendment has been reviewed specifically for compliance with WAC 173-26-201(1)(c) process to prepare and amend shoreline master programs approval criteria.

INITIAL DETERMINATION

After review by Ecology of the complete record submitted, Ecology has determined that the City proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Next Steps

- Proceed with local adoption. We anticipate being able to approve your SMP Amendment promptly after formal submittal is provided consistent with WAC 173-26-110.