



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** March 13, 2015

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

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

**Subject:** Council Bill (C.B.) 118311 – Shoreline Master Program Update

**Background**

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

Legislative History

In January 2013, the Council passed [Ordinance 124105](#), which was an initial step in updating the City's SMP. Local SMPs are subject to review and approval by the Department of Ecology (DOE). DOE accepted the City's SMP update for review in August 2013. In February 2014, the state legislature amended the SMA to clarify the regulatory status of existing floating on-water residences.<sup>1</sup> Specifically, RCW 90.58.270 now provides:

(6)(a) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(b) For the purpose of this subsection, "floating on-water residence" means any floating structure other than a floating home, as defined under subsection (5) of this section, that: (i) is designed or used primarily as a residence on the water and has detachable utilities; and (ii) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

In May 2014, DOE issued [findings and conclusions](#) and a conditional approval of the City's SMP. The conditional approval includes [required changes](#) and [recommended changes](#). Required changes include amendments related to floating on-water residences. If a jurisdiction accepts required changes, the SMP is approved by DOE. A jurisdiction may propose alternatives to the required changes. If, after review, DOE determines that the alternatives are consistent with the purpose and intent of the required changes and the

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<sup>1</sup> [Engrossed Substitute Senate Bill 6450](#).

SMA, the SMP is approved. If the alternatives are determined not to be consistent with the purpose and intent and the SMA, the SMP may be rejected.<sup>2</sup>

In January 2015, the Mayor submitted and the Council introduced Council Bill (C.B.) 118311, which responds to DOE's conditional approval and includes alternatives to the required and recommended changes primarily related to floating home regulation. PLUS held a public hearing on C.S. 118311 on March 3, 2015.

### Living in Floating Structures

The SMA prohibits new residential uses over water, unless there is a compelling reason that promotes SMA policies. For the purposes of the SMP, other than live-aboard vessels, there are three types of floating structures that can be used as dwelling units: floating homes, house barges, and floating on-water residences.

1. "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.<sup>3</sup> There are approximately 480 floating homes in the City's Shorelines
2. "House barge" means a vessel that is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.<sup>4</sup> There are 34 registered house barges in the City's shorelines.
3. "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 has 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.<sup>5</sup> There are approximately 115 structures in the City's shorelines that may qualify as floating on-water residences.

All three types of floating structures share a similar regulatory status. Specifically, their history is acknowledged and they are allowed to be maintained. However, development regulations generally limit proliferation or expansion.

The Lake Union Live-aboard Association (LULA) is an organization which includes house barge owners, floating on-water residence owners, and marina owners and operators who provide moorage for house barges and floating on-water residences primarily in Lake Union, the Ship Canal and Portage Bay. LULA actively participated in the Council process for Ordinance 124105 and a facilitated stakeholder process that followed passage of the ordinance.

This memorandum discusses potential amendments to the C.B. 118311. Most amendments are proposed by the LULA. Two amendments correct Department of Planning and Development drafting errors. Amendments are categorized as follows:

- I. Consent agenda amendments that may be offered by the PLUS Chair as a package,
- II. Other amendments that have been proposed by LULA, and
- III. Proposed amendments under assessment by staff for consistency with DOE's approval.

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<sup>2</sup> [RCW 90.58.090](#).

<sup>3</sup> Ordinance 124105 at 23.60A.912.

<sup>4</sup> C.B. 118311 at 23.60A.916.

<sup>5</sup> C.B. 118311 at 23.60A.912.

Development Standard Category	Specific Development Standard	Amendments Suggested by the Lake Union Live-aboard Association Suggested LULA amendments shown in red. Changes or deletion proposed by staff are shown in green with track change.	Discussion
<b>I - CONSENT AGENDA AMENDMENTS</b>			
1. Addition Of House Barges To The List Of Over Water Uses That Can Be Approved.		<p><b>23.60A.090 Identification of principal and accessory uses</b></p> <p>A. In all shoreline environments all uses on waterfront lots are prohibited over water as a principal or accessory use unless the use is allowed or allowed as a special use, a shoreline conditional use, or a Council conditional use in the shoreline environment where the use is proposed and the use is:</p> <p style="text-align: center;">* * *</p> <p>3. <u>Floating home moorages, floating homes, house barges, and floating on-water residences authorized under Section 23.60A.202, 23.60A.204, and 23.60A.203; or</u></p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to amend the bill to add house barges to the list of residential uses that may be allowed over water. Arguably this change is not needed because house barges are defined as “vessels” for the purposes of the SMP. Vessels, in and of themselves, are generally not regulated as uses or structures.</p> <p>Specifically, as proposed, house barge “means a vessel that is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.”<sup>6</sup></p> <p>Nonetheless, inclusion of house barges may be a useful clarification as they are one of the few ways residential uses may exist over water and are generally regulated similarly to floating homes and floating on-water residences.</p>
2. Standards Applicable To Floating On-Water Residences	a. Railings	<p><b>23.60A.203 Standards for floating on-water residences</b></p> <p style="text-align: center;">***</p> <p>C. Maintenance and repair, remodeling, relocation, expansion, rebuilding, and replacement</p> <p>1. Floating on-water residences legally established pursuant to subsection 23.60A.203.D are regulated as a conforming use, and relocation, repair and maintenance, remodeling, expansion, and replacement are allowed subject to the following standards:</p> <p style="text-align: center;">* * *</p> <p>c. Open railings may be added <del>around</del> to existing exterior spaces and stairs to access these spaces, but if the top of the railing exceeds the height limits in subsection 23.60A.203.C.1.e, the maximum height of the railing is 36 inches.</p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to clarify that open railings may be added to existing exterior spaces and not just around existing exterior spaces. Such an amendment may be a useful clarification and does not implicate a zone of interest for SMP compliance.</p>
	b. Relocation	<p><b>23.60A.203 Standards for floating on-water residences</b></p> <p style="text-align: center;">***</p> <p>C. Maintenance and repair, remodeling, relocation, expansion, rebuilding, and replacement</p> <p>1. Floating on-water residences legally established pursuant to subsection 23.60A.203.D are regulated as a conforming use, and relocation, repair and maintenance, remodeling, expansion, and replacement are allowed subject to the following standards:</p> <p style="text-align: center;">* * *</p> <p>d. Relocation is allowed, and owners should update the floating on-water residence verification</p>	<p>The SMP establishes that floating on-water residences can relocate to other moorages within the City provided that they update DPD.</p> <p>LULA proposes to add language clarifying that failure to update the Department of Planning and Development (DPD) would not be a violation of the SMP that would jeopardize a floating on-water residence’s legal status.</p> <p>The City’s interest is in ensuring that there is not a proliferation of new, illegal floating on-water residences. That interest is accomplished by having a verification system that allows the City to track the location of legally established floating on-water residences.</p>

<sup>6</sup>C.B. 118311 at 23.60A.916.

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		<p>within 60 days. Failure to update relocation is <del>not</del> a violation of this Chapter 23.60A that is subject to the enforcement process in Chapter 23.90 <del>and but</del> does not forfeit the owner's right to maintain a floating on-water residence.</p> <p style="text-align: center;">* * *</p>	<p>That interest could be accomplished by modifying LULA's proposed amendment as shown. Changed language would maintain the City's interest in tracking the location of floating on-water residences while clarifying that the penalty for not updating verification would not impair an ownership interest.</p>
	c. Verification	<p><b>23.60A.203 Standards for floating on-water residences</b></p> <p style="text-align: center;">***</p> <p>D. Verification of a floating on-water residence</p> <ol style="list-style-type: none"> <li>1. Each floating on-water residence shall be verified by the Director, and the owner shall pay a one-time fee to receive a verification number <del>plate</del>. The fee shall be established by the Director to recover the reasonable costs of the program for issuing a verification number <del>plates</del>. Owners of a floating on-water residence allowed pursuant to subsection 23.60A.203.B may apply to the Director for verification or may wait until the Director asks for verification information. If a floating on-water residence is not verified, the Director may require the owner to submit verification information and pay the required fee.</li> <li>2. Verification shall constitute legal establishment of a floating on-water residence pursuant to the requirements of subsection 23.60A.203.B and the definition of floating on-water residence in Section 23.60A.912.</li> <li>3. A house barge authorized under Section 23.60A.204 may submit verification and be regulated as a floating on-water residence rather than a house barge.</li> <li>4. If an owner disputes the Director's denial of verification as a floating on-water residence, the owner may appeal the Director's determination to the hearing examiner, in conformance with the hearing examiner rules, within 30 days of date the Director's determination was mailed. The appeal shall be conducted de novo, and the City shall have the burden of showing by a preponderance of the evidence that the decision of the Director was correct. Nothing in this Section 23.60A.203 precludes the City from enforcing this code under Chapter 23.90 if there is no timely appeal to the hearing examiner or following a decision of the hearing examiner upholding the City's denial of floating on-water residence verification.</li> <li>5. The owner shall display the verification number <del>plate</del> issued by the DPD on the pier and landward side of the floating on-water residence in numbers at least 3 inches high in a location legible from the pier, or on the side most commonly used for access from the pier, or if public access to the pier is not available then on a side visible from the water.</li> <li>6. Failure to verify a floating on-water residence or to correctly display a verification number plate is a violation of this Chapter 23.60A that is subject to the enforcement process in Chapter 23.90 and does not forfeit the owner's right to maintain a floating on-water residence.</li> <li>7. Verification is transferable between owners but is not transferable to another floating on-water</li> </ol>	<p>The SMP establishes a verification system for legally established floating on-water residences. The proposed system includes payment of a fee, estimated to be about \$100, and issuance of a plate that must be displayed on the floating on-water residence. Verification legally establishes the use. Verifications would be transferable to new owners.</p> <p>Among other things, LULA objects to the use and display of plates and proposes that owners be allowed to choose their own style of numbering, provided that some minimum legibility standard is met.</p> <p>A verification system is necessary to ensure that illegal floating on-water residences do not proliferate. However, as a regulatory choice the Council could consider alternatives to DPD's proposed system.</p>

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		<p>residence, except for a replaced floating on-water residence as provided in subsections 23.60A.203.C.1.f and 23.60A.203.C.1.g.</p> <p style="text-align: center;">* * *</p>	
3. Standards Applicable To House Barges	a. Verification	<p><b>23.60A.204 Floating Structures and ((S)) standards for house barges</b></p> <p style="text-align: center;">***</p> <p>B. For the purposes of this Chapter 23.60A, house barges are only <del>((permitted))</del> <u>allowed</u> under the following conditions:</p> <p style="text-align: center;"><u>3. Verification</u></p> <p style="padding-left: 40px;"><u>a. Each house barge must be verified by the Director, and owners shall pay a one-time fee to receive a verification number <del>plate</del>. The fee shall be established by the Director to recover the reasonable costs of the program for issuing a verification number <del>plates</del>. Owners of house barges authorized by this Section 23.60A.204 may apply to the Director for verification or may wait until the Director asks for verification information. If a house barge is not verified pursuant to this subsection 23.60A.204.C, the Director may require the owner to submit verification information and pay the required fee.</u></p> <p style="padding-left: 40px;"><u>b. If an owner disputes the Director’s denial of verification as a house barge under this Section 23.60A.204, the owner may appeal the Director’s determination to the hearing examiner, in conformance with the hearing examiner rules, within 30 days of date the Director’s determination was mailed. The appeal shall be conducted de novo, and the City shall have the burden of showing by a preponderance of the evidence that the decision of the Director was correct. Nothing in this Section 23.60A.204 precludes the City from enforcing this code under Chapter 23.90 if there is no timely appeal to the hearing examiner or following a decision of the hearing examiner upholding the City’s denial of house barge verification.</u></p> <p style="padding-left: 40px;"><u>c. The owner of a house barge that complies with the requirements of subsections 23.60A.204.B.1 and 23.60A.204.B.2 may choose to have the house barge verified and regulated as a floating on-water residence under Section 23.60A.203 instead of under this Section 23.60A.204.</u></p> <p style="padding-left: 40px;"><u>d. The owner shall display the verification number <del>plate</del> issued by the DPD on the pier and landward side of the vessel, <del>in numbers at least 3 inches high in a location legible from the pier,</del> or on the side most commonly used for access from the pier, or if public access to the pier is not available then on a side visible from the water.</u></p> <p style="padding-left: 40px;"><u>e. Failure to verify an authorized house barge or correctly display a verification number <del>plate</del> is a violation of this Chapter 23.60A that is subject to the enforcement process in Chapter 23.90 and does not forfeit the owner’s right to maintain an authorized house barge.</u></p> <p style="padding-left: 40px;"><u>4. A house barge verification number is transferable between owners but is not transferable to another</u></p>	See 2.c above.

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		<p><u>house barge, except to a house barge that has been replaced as provided in subsection 23.60A.204.C.</u></p> <p style="text-align: center;">* * *</p>	
	b. Railings	<p><b>23.60A.204 Floating Structures and ((S)) standards for house barges</b></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><u>C. Maintenance and repair, remodeling, relocation, expansion, rebuilding, and replacement</u></p> <p style="text-align: center;"><u>1. House barges authorized under subsection 23.60A.204.B are regulated as a conforming use, and maintenance, repair, remodeling, relocation, expansion, rebuilding, and replacement are allowed subject to the following standards:</u></p> <p style="text-align: center;">* * *</p> <p style="text-align: center;">c. Open railings may be added to <del>around</del> existing exterior spaces and stairs to access these spaces, but if the top of the railing exceeds the height limits in subsection 23.60A.204.C.1.e, the maximum height of the railing is <u>36 inches.</u></p> <p style="text-align: center;">* * *</p>	See 2.a above.
	c. Relocation	<p><b>23.60A.204 Floating Structures and ((S)) standards for house barges</b></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><u>C. Maintenance and repair, remodeling, relocation, expansion, rebuilding, and replacement</u></p> <p style="text-align: center;"><u>1. House barges authorized under subsection 23.60A.204.B are regulated as a conforming use, and maintenance, repair, remodeling, relocation, expansion, rebuilding, and replacement are allowed subject to the following standards:</u></p> <p style="text-align: center;">* * *</p> <p style="text-align: center;">d. Relocation is allowed, and owners should update the <del>floating on-water residence house barge</del> verification within 60 days. <u>Failure to update relocation is not a violation of this Chapter 23.60A that is subject to the enforcement process in Chapter 23.90 and but does not forfeit the owner's right to maintain a floating on-water residence.</u></p> <p style="text-align: center;">* * *</p>	See 2.b above.
4. Definitions		<p><b>23.60A.912 Definitions -- "F"</b></p> <p style="text-align: center;">* * *</p> <p style="text-align: center;"><u>"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 <del>has or predecessor in interest had</del> 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.</u></p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to amend the definition of floating on-water residences to change the verb tense related to ownership status. Their concern is that the current language could be read to exclude a cohort of sellers.</p> <p>The proposed language as amended clarifies that the definition of floating on-water residence can be met if a previous owner had an ownership interest.</p>



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5. DPD Drafting Errors	a. Add numbers to complete a cross-reference	<p><b>23.60A.202 Standards for ((F))floating homes and floating home moorages</b></p> <p style="text-align: center;">***</p> <p style="padding-left: 40px;">B. Standards for floating home moorages and sites</p> <p style="text-align: center;">***</p> <p style="padding-left: 80px;">3. Existing floating home moorages and sites</p> <p style="padding-left: 120px;">a. Total water coverage of floating home moorages, including all piers, shall not be increased above 45 percent of the submerged area or the currently existing coverage, whichever is greater, including the floating home, <u>except as provided in subsection 23.60A.202.B.3.e;</u></p> <p style="padding-left: 120px;">b. The area of an existing floating home site shall not be reduced below 2,000 square feet or the currently existing area, whichever is less, <u>except as provided in subsection 23.60A.202.B.3.e;</u></p> <p style="text-align: center;">***</p>	DPD proposes to amend the standards applicable to floating homes to correct a drafting error by providing a complete cross reference.
	b. Correct use standards for office on upland lots in the Urban Maritime Environment	<p><b>23.60A.503 Uses allowed on upland lots in the UM Environment</b></p> <p style="text-align: center;">***</p> <p style="padding-left: 40px;">B. Certain commercial uses and institutional and residential uses</p> <p style="padding-left: 80px;">1. Office uses within the Lake Union area are allowed <del>as a shoreline conditional use</del>; and</p> <p style="padding-left: 80px;">2. Institutional uses that are not water-dependent or water-related and residential uses are allowed as a shoreline conditional use, if located in structures designated as Landmarks, pursuant to Chapter 25.12, Landmark Preservation.</p> <p style="text-align: center;">***</p>	<p>DPD proposes to amend the use standards for upland lots in the Urban Maritime (UM) environment to clarify that office uses do not require a shoreline conditional use approval.</p> <p>Ordinance 124105 did not establish development standards for upland lots in the UM environment. DOE's required changes to the SMP included use standards for such lots. Those standards establish that office uses are allowed without a conditional use. A drafting error would make it such that conditional use approval is required. The proposed amendment corrects that error.</p>

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<b>II - OTHER AMENDMENTS</b>			
6. Delegation To The DPD Director To Promulgate Best Management Practices (BMPs).		<p><b>23.60A.155 Best management practices for over-water uses and structures</b></p> <p style="text-align: center;">* * *</p> <p>B. The Director by Director’s Rule may <del>establish alternative best management practices to implement the requirements of Section 23.60A.155 or may add or</del> clarify best management practices to minimize impacts on the aquatic environment based on the science and technical information described in WAC 173-26-201(2)(a) and consistent with RCW 90.58.270(5) and 90.58.270(6). The Director shall consult with the Floating Homes Association, Lake Union Liveaboard Association, and affected stakeholders concerning interpretation and enforcement of best management practices when adopting a rule.</p> <p style="text-align: center;">* * *</p> <p><b>23.60A.187 Standards for piers and floats and overwater structures</b></p> <p style="text-align: center;">* * *</p> <p>B. Owners of piers and floats shall require moorage users at residential or non-residential moorage to use best management practices <u>set out in Section 23.60A.155</u> to minimize impacts on the aquatic environment. <del>The Director may establish appropriate best management practices to implement the requirements of this subsection 23.60A.187.B by Director’s Rule. (( The best management practices include the following.))</del></p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to amend the SMP to strike language that is interpreted as delegating broad authority to the DPD Director to promulgate Best Management Practices (BMPs).</p> <p>Like most department directors, the DPD director is authorized to promulgate rules interpreting the Seattle Municipal Code and to establish standards consistent with the scope of delegation provided by ordinance.<sup>7</sup> Director’s Rules are promulgated subject to notice and comment requirements in the City’s Administrative Code.<sup>8</sup></p> <p>The definition of BMPs in the SMP limits the scope of delegation. Specifically, the SMP defines BMPs as “actions or techniques that have consistently shown results superior to those achieved with other means and that are taken to avoid, minimize and reduce the impacts to habitat ecological functions.”<sup>9</sup> Thus, any rule promulgated by the Director must be consistent with that definition. The SMP requires consultation with LULA for BMP rulemaking.</p> <p>However, as a regulatory choice the Council could establish BMPs by ordinance. Such an action would be subject to the typical hearing and notice requirements associated with land use legislation and would be subject to approval by DOE.</p> <p>Proposed amendments by LULA do not, in and of themselves, deprive the DPD Director of rulemaking authority for BMPs.</p>
7. Standards Applicable To New Marinas Or Marinas Undergoing Substantial Development	a. Location of Moorages in Marinas	<p><b>23.60A.200 Standards for marinas, commercial and recreational</b></p> <p style="text-align: center;">* * *</p> <p>B. General standards. When new marinas are established or when substantial development occurs at an existing marina the following development standards apply:</p> <p style="text-align: center;">* * *</p> <p><del>6((7)).</del> In Lake Washington and the Puget Sound overwater projections, boat lifts, and areas used for vessel <u>and floating on-water residence</u> moorage shall be located a minimum distance of 30 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less to the extent reasonable. In Lake Union and Portage Bay overwater projections, boat lifts, and areas used for vessel <u>and floating on-water residence</u> moorage shall be located a minimum distance of 15 feet waterward from the OHW mark or in a minimum water depth of 8 feet, whichever is less to the extent</p>	<p>To ensure no net loss of ecological function, such as fish passage, the SMP requires that moorages in new marinas or marinas that undergo substantial development be located a certain distance from the shore or in a minimum depth of water.</p> <p>These standards are especially important in the Ship Canal, Lake Union, and Portage Bay because the ecological function of reaches in those waterbodies is significantly impaired.</p> <p>LULA is concerned that over time such limitations would reduce the number of moorages available for house barges and floating on-water residences.</p> <p>The proposed amendment is unlikely to be consistent with DOE’s conditional approval.</p>

<sup>7</sup> [Seattle Municipal Code \(SMC\) Section 3.06.040.](#)

<sup>8</sup> [SMC Ch. 3.02.](#)

<sup>9</sup> C.B. 118311 at 23.60A.904.



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		<p>reasonable.</p> <p style="text-align: center;">* * *</p> <p><b>23.60A.200 Standards for marinas, commercial and recreational</b></p> <p style="text-align: center;">* * *</p> <p>F. Commercial and recreational marinas may provide moorage for vessels used as live- aboard vessels <u>and floating on-water residences</u> if the marina meets the following standards, in addition to the general development standards in subsections 23.60A.200.A through 23.60A.200.D:</p> <p>1. The live-aboard (<del>vessel</del>) is the type of vessel <del>or floating on-water residence</del> allowed to be moored at the commercial or recreational marina; <u>or a house barge or floating on-water residence</u> and</p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to clarify development standards applicable to commercial and recreational marinas that provide moorage for house barges or floating on-water residences.</p> <p>As previously described, house barges are defined as a type of vessel for the purposes of the SMP. Consequently, the proposed amendment may not be needed.</p> <p>Additionally, the proposed amendment introduces potentially ambiguous language that could be interpreted as allowing the location of house barges and floating on-water residences in commercial marinas when other development standards may prohibit location in commercial marinas.</p>
8. Establishing Use	a. Floating On-water Residences	<p><b>23.60A.203 Standards for floating on-water residences</b></p> <p style="text-align: center;">***</p> <p>B. For purposes of this Chapter 23.60A, a floating on-water residence is allowed only if it:</p> <p>1. Was legally established as a floating on-water residence prior to July 1, 2014; to be legally established it must have been <u>designed or</u> used as a dwelling unit within <u>Washington State</u> <del>the City</del> prior to July 1, 2014.</p> <p>2. Was moored pursuant to a lease or ownership interest at a marina, as defined by Section 23.60A.926, within <u>Washington State</u> <del>the City</del> prior to July 1, 2014.</p> <p style="text-align: center;">***</p>	<p>RCW 90.58.270 categorizes legally established floating on water residences as conforming uses for the purposes of the SMA. Because there is not an existing statewide regulatory framework for floating on-water residences, an existing structure can only be legally established if it meets local development standards applicable to such structures prior to July 1, 2014.</p> <p>The proposed amendment interprets state law as establishing a framework that legalizes all structures meeting the definition established by the statute. That interpretation may not be consistent with the legislature’s intent. Specifically, ESHB recites:</p> <p style="text-align: center;"><i>The legislature, therefore, intends to: preserve the existence and vitality of current, floating on-water residential uses; establish greater clarity and regulatory uniformity for these uses; and respect the well-established authority of local governments to determine compliance with regulatory requirements applicable to their jurisdiction. (Italics added)</i></p>
	b. House Barges	<p><b>23.60A.204 Floating Structures and <del>(S)</del> standards for house barges</b></p> <p style="text-align: center;">***</p> <p>B. For purposes of this Chapter 23.60A, house barges are only <del>((permitted))</del> <u>allowed</u> under the following conditions:</p> <p>1. <u>The <del>(H)</del> house barge <del>((permits))</del> was moored at a recreational marina in the City before July 1990.</u></p> <p>2. <del>((— a.)) A permit for the house barge <del>((, which is transferable between owners but not transferable to another house barge, has been))</del> <u>was secured from the <del>((Department of Planning and Development))</del> <u>DPD</u> <u>verifying that the</u></u></del></p>	<p>LULA proposes to strike language that requires that house barges must have been continuously used as a residence since the use was originally established. This requirement is not new. Existing SMP language requires that house barges be continuously used as residences to maintain their legally non-conforming regulatory status.</p> <p>Removing the language may allow previously registered house barges for which a residential use has lapsed to be reestablished.</p>

Development Standard Category	Specific Development Standard	Amendments Suggested by the Lake Union Live-aboard Association Suggested LULA amendments shown in red. Changes or deletion proposed by staff are shown in green with track change.	Discussion
		<p><del>house barge existed and was used for residential purposes within the City before July 1990</del><del>(in June 1990)) and has been continuously used since that time</del><del>((thereafter as provided in subsection 23.60A.204.C.2)).</del></p> <p style="text-align: center;">* * *</p>	
9. Definitions	a. Residential use	<p><b>23.60A.934 Definitions -- "R"</b></p> <p style="text-align: center;">* * *</p> <p>"Residential use,"(;) except for <u>vessels, house barges, and floating on-water residences</u> containing dwelling units (<del>"live-aboard use"</del>) as defined in Section 23.60A.908,<del>((924))</del> means the following uses:</p> <ul style="list-style-type: none"> <li>-- Accessory dwelling unit;</li> <li>-- Adult family homes;</li> <li>-- Artist's studio/dwelling;</li> <li>-- Assisted living facility;</li> <li>-- Caretaker's quarters;</li> <li>-- Congregate residences;</li> <li>-- Detached accessory dwelling unit;</li> <li>-- Floating home;</li> <li>-- Mobile park home;</li> <li>-- Multifamily residences;</li> <li>-- Nursing homes; and</li> <li>-- Single-family dwelling units.</li> </ul> <p style="text-align: center;">* * *</p>	<p>LULA proposes to add house barges and floating on-water residences to the list of uses that are excepted from the definition of residential use. However, for the purposes of the SMP, residential use is a characteristic of both.</p> <p style="text-align: center;">Specifically, floating on water residence is defined as “ any floating structure, other than a floating home, that is designed or used primarily as a residence...” And, house barge is defined as “a vessel that is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.”</p> <p>The proposed amendment introduces potentially ambiguous language that could lead to an interpretation whereby greater use flexibility might be conferred on house barges and floating on-water residences.</p>
	b. Water-dependent use	<p><b>23.60A.944 Definitions -- "W"</b></p> <p style="text-align: center;">* * *</p> <p>"Water-dependent use" means a use that cannot exist in other than a waterfront location and is dependent on the water by reason of the intrinsic nature of its operations. The following uses are included:</p> <p style="text-align: center;">Ferry and passenger terminals, marine construction and repair, aquaculture, cargo terminal for marine commerce or industry, boat launch facilities, moorage, <u>sale or rental of large boats,</u> tour boats, cruise ships, tug and barge operations, recreation that provides physical access to the water, limnological or oceanographic research facilities that require the use of the adjacent water for its operation. Water-dependent use includes businesses that receive or transport 50 percent or more product or material used in the business via the water adjacent to such business. <u>The following uses and similar uses are not water-dependent: offices, eating and drinking establishments, catering services, non-marine sales and</u></p>	<p>LULA proposes to clarify that water-dependent uses do not include residential uses on land. LULA notes that the entire section could be struck as the proposed addition is a recommended, but not required, by DOE.</p> <p>That clarification could potentially be confusing as it might lead to a converse interpretation that residential uses on water are water-dependent, which they are not.</p>

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		<p>service, lodging, adult care centers, child care centers, religious facilities, hospitals, and residential uses <u>on land</u>.</p> <p style="text-align: center;">* * *</p>	
<b>III - PROPOSED AMENDMENTS UNDER ASSESSMENT</b>			
10. Other Uses	a. Floating On-water Residences	<p><b>23.60A.203 Standards for floating on-water residences</b></p> <p>A. Uses</p> <p>1. Floating structures that contain dwelling units and vessels that contain dwelling units shall be regulated as floating homes pursuant to Section 23.60A.202, with the exception of floating on-water residences that comply with this Section 23.60A.203, house barges that comply with Section 23.60A.204, residences allowed under Section 23.60A.206, and vessels that comply with Section 23.60A.214.</p> <p style="color: red;"><del>2. Locating other uses on floating on-water residences authorized pursuant to this Section 23.60A.203 is prohibited.</del></p> <p style="text-align: center;">* * *</p>	<p>LULA proposes to strike language that would limit the ability of floating structures containing dwelling units to have other uses, such as accessory home occupations, like a law office. LULA argues that use regulations for each shoreline environment provide sufficient limitations on allowable over water uses.</p> <p>Proposed amendments are under review by staff to determine whether they are consistent with DOE’s conditional approval and the SMA.</p>
	b. House Barges	<p><b>23.60A.204 Floating structures and <del>((S))</del>standards for house barges</b></p> <p>A. Floating structures</p> <p style="text-align: center;">* * *</p> <p style="color: red;"><del>2. Locating other ((nonwater dependent)) uses over water on house barges authorized under subsection 23.60A.204.B((on floating structures, including vessels that do not have a means of self propulsion or steering equipment,)) is prohibited((unless specifically permitted on house barges or historic ships by other sections of this Chapter 23.60A)).</del></p> <p style="text-align: center;">* * *</p>	See 10.b above.
11. Water Quality-related Standards Applicable To New Marinas Or Marinas Undergoing Substantial Development		<p><b>23.60A.200 Standards for marinas, commercial and recreational</b></p> <p style="text-align: center;">* * *</p> <p>B. General standards. When new marinas are established or when substantial development occurs at an existing marina the following development standards apply:</p> <p style="text-align: center;">* * *</p> <p>2. <del>3.))</del>Marinas shall be operated and managed in a manner to preserve water quality pursuant to Title 22, subchapter VIII, Stormwater Code, and to protect the public health. The Director shall adopt a rule establishing model BMPs based on Department of Ecology’s Resource Manual for Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811 <u>as a minimum standard</u> <del>as a minimum standard</del>.</p> <p style="text-align: center;">* * *</p> <p>4<del>((5))</del>. Marinas shall provide restrooms connected to the sewer system for use by any patron of the marina</p>	<p>The SMP establishes water-quality related development standards for new marinas or marinas that undergo substantial development. “Substantial development” is a term of art of the SMA and generally refers to new development which has a dollar value of approximately \$6,400 or more. Normal maintenance, including in some circumstances replacement, of existing structures is not considered substantial development.<sup>10</sup></p> <p>LULA considers some proposed water-quality related development standards vague and has concerns about the cost to marina owners of compliance.</p> <p>Proposed amendments are under review by staff to determine whether they are consistent with DOE’s conditional approval and the SMA.</p> <p>DPD has confirmed that mobile pump out services, such as those</p>

<sup>10</sup> Ord. 124150 at Section 23.60A.020.

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		<p>facility. At a minimum, the facilities are required to include one toilet and one washbasin. The Director <del>may shall</del> <u>shall</u> determine the need for <del>reasonable additional facilities to serve</del> <u>provide reasonable hygiene based on the number and type of hygiene facilities needed to serve</u> the number of slips, percentage of live-aboard <u>and floating on-water residences</u> slips, and the number of transient moorage slips within the marina.</p> <p style="padding-left: 40px;">5((6)). Marinas having either more than 3,500 linear feet of moorage or slips large enough to accommodate vessels <u>and floating on-water residences</u> larger than 20 feet in length shall provide a sewage pump-out facility or the best available method of disposing of sewage wastes.</p> <p style="text-align: center;">* * *</p> <p style="padding-left: 40px;">F. Commercial and recreational marinas may provide moorage for vessels used as live- aboard vessels <u>and floating on-water residences</u> if the marina meets the following standards, in addition to the general development standards in subsections 23.60A.200.A through 23.60A.200.D:</p> <p style="text-align: center;">* * *</p> <p style="padding-left: 40px;">2. The marina provides shower facilities connected to a sanitary sewer that are <u>reasonably</u>-adequate <u>to serve</u> <del>provide good hygiene for</del> <u>provide good hygiene for</u> the live-aboard residents and floating on-water residents based <u>on</u> <del>(to serve)</del> the number of live-aboard vessels <u>and floating on-water residences</u> moored at the marina.</p> <p style="text-align: center;">* * *</p>	<p>that currently operate in Seattle, are considered the best available method for disposing of sewage from floating on-water residences.</p>