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Maggie Glowacki
700 5th Avenue, Suite 2000
P.O. Box 34019,
Seattle, WA 98124-4019
VIA: margaret.glowacki@seattle.gov,

RE: Public comments on the proposed Shoreline Master Program update

Dear Ms. Glowacki:

Thank you for the opportunity to comment on Shoreline Master Program (SMP).

Public Involvement

In reviewing the information posted at the City of Seattle DPD website, I note the methods and extent of public engagement on the issue of updating the Shoreline Master Program (SMP) for Seattle. I was impressed with the heartfelt concern of many of the comments to the first draft regarding over the water residences, live-aboard uses, house boats and barges, and the docks and marinas where these uses are located. It then surprised me that with the release of the 2nd draft no public meetings were scheduled. Written comments appear to be the only way to engage on the 2nd draft. I would offer that to me, this does not seem a very interactive nor friendly approach to the significantly affected communities. I sent you an e-mail asking about any public meetings on the 2nd Draft. You replied that there were not going to be any. I then pointed out the following language from the DPD SMP website.

Public Involvement

*Throughout the Shoreline Master Program update process, there will be opportunities for the public to be involved. Public meeting dates, opportunities to comment on draft documents, and other events will be posted here once they are scheduled. **Draft regulations will be released for public comment soon and a public meeting will be scheduled during the public comment period. (emphasis added)***

Although I did not receive a response from you, the website reference to a public meeting was soon deleted. The changes, especially for the live aboard community have the potential to create considerable impacts including economic impacts and would seem to deserve a public dialog with the community. **I want to express my disappointment and concern that no public meetings were scheduled on the 2nd Draft.**

I own a vessel that was in full time residential use on and before January 2011. I believe my vessel will be significantly affected by the proposed regulations.

- 1) My vessel was designed to comply with environmental regulations for a vessel and complies with CAM 229.
- 2) My vessel was not designed to collect grey-water and retrofitting such collection is likely to be physically challenging in a small vessel and have significant financial impacts.
- 3) I am not aware of any commercial service to support the grey water removal from live aboard vessels such as mine.

The issue of live aboard use for vessels is woven into the proposed SMP ordinance and any response on the issue requires examining multiple sections of the proposed SMP.

I have chosen to divide my response into major code sections.

- 1) **Live aboard vessels**, where I will discuss how the proposal changes the SMP regulatory approach for vessels.
- 2) **Marina Standards**, where I will discuss some of the potential and unknown impacts to marinas that have live aboard uses.
- 3) **House Barges**, where I will discuss the significant change in the definition which would segregating a minority of vessels for new regulation.
- 4) **Standards for Vessel Moorage**, where I will suggest a single standard for all vessels in all marinas.
- 5) **Live Aboard Use**, where I will examine the new “live aboard” definitions.

Taken individually and together, these proposed code sections pose a serious concern in both equity and scope.

1) Live aboard vessels

The question and answer portion of the DPD website discusses live-aboard vessels and states:

How do these changes affect live-aboard vessels?

1st draft: WAC 173-26 requires that the impacts of live-aboards on the shoreline be addressed; therefore, DPD has proposed standards for moorages that allow live-aboard uses and has proposed an allowance of 25 percent of the moorage for live-aboard use. DPD has modeled the regulations for live-aboards after the Port of Seattle regulations for live-aboards at Shilshole Bay Marina. For specific details on regulations governing live-aboards see subsections 23.60.200.B and E and Sections 23.60.214 and 23.60.219

2nd draft: Washington Department of Natural Resources (DNR) regulates floating homes and house barges the same and the WAC 173-26 prohibits new overwater residences; therefore, no new house barges will be allowed under the proposal. All existing house barges must be registered and treat their gray water by a date that will be determined prior to the adoption of the legislation.

There's no longer a limit proposed on the number of live-aboards allowed in marinas.

These responses caused me to review WAC 173-26 where I found reference to over the water residences.

WAC 173 26 241 (j) states:

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.

WAC 173 26 makes no reference to vessels. I do not understand why the City of Seattle is proposing to prohibit a small minority of the live aboard vessels which currently are exempted from the SMP and make them subject to use interpretation as "over the water residences?"

This regulatory control of live aboard vessels, and some suggest most vessels, is partly achieved in the Draft SMP by the proposed exclusion from 23.60.018 *Non-regulated actions*. The current SMP excludes vessels from SMP regulated actions. You are proposing to exclude "**other than moorage of vessels and uses on vessels unrelated to navigation**" from non-regulated actions. I find it hard to understand this new exclusion from the non-regulated actions. There are many uses on recreational boats, ships or vessels that are not related to navigation, so this broad and arbitrary change would seem to include all vessel moorages and most of the vessels moored in Seattle. This is not a "reasonable accommodation" of a long standing and major use in maritime oriented Seattle. Vessels are already registered with the appropriate agency including for many the State of Washington. Like my vessel, many have the ability to undertake propulsion and have steering to make them navigable.

23.60.018 Non-regulated actions((-))

*Except as specifically provided otherwise, the regulations of this chapter ((~~shall~~)) do not apply to the operation of boats, ships and other vessels designed and used for navigation, **other than moorage of vessels and uses on vessels unrelated to navigation**; nor to the vacation and closure, removal or demolition of buildings ((~~found~~)) determined by the Director to be unfit for human habitation pursuant to the Seattle Housing Code; nor to correction of conditions found by the Director to be in violation of the minimum standards of Chapters 22.200, et seq., of the Seattle Housing Code; nor to the demolition of a structure pursuant to an ordinance declaring it to be a public nuisance and providing for summary*

abatement. ((None of these actions shall constitute a development requiring a substantial development permit.)) (Emphasis added)

Differing from the 1st draft, the 2nd draft Questions and Answer section now cites an interpretation by DNR regarding houseboats and house barges. The logic of this reasoning is not supported in any documentation that I could find and again seems mired in the issue of what are the uses of a vessel. Clearly some shoreline areas in Seattle are under the control of DNR but not all marinas and docks are located on DNR land. My recreational marina is not on nor over DNR land. The legislative action (HB 1783) regarding floating homes appears to make a distinction between floating homes and vessels. The City of Seattle should continue to do the same and not cast its regulatory net to include vessels that are currently in compliance with vessel registrations and the City of Seattle guidance in CAM 229.

The City should remove the proposed addition of “other than moorage of vessels and uses on vessels unrelated to navigation” from 23.60.018. It is an unreasonable, unnecessary and unsupportable extension of regulatory authority in this revision of the SMP.

2) Marina standards

Proposed section 23.60.200 sets out standards for marinas and states that if all of those standards (A-F) are met then section (G) would allow live aboard uses at the marina with two additional conditions. I am not a marina owner but some of the new proposed standards such as (B)5 would seem challenging for the marina where I am moored and many other existing marinas.

23.60.200 (B) 5. Marinas having either more than 3,500 linear feet of moorage or slips large enough to accommodate vessels larger than 20 feet in length shall provide a sewage pump-out facility or the best available method of disposing of sewage wastes;

Currently sewage (black water) is disposed of by small private pump boat services; this section would appear to require marinas to provide such services. This seems especially impacting to small marina operations. No matter what size the marina, if any slip is over 20 feet this section would appear to apply and require the marina to provide the service.

Any new marina could plan for these standards but if applied retroactively, especially to smaller marinas, this may work to exclude many currently available locations for vessels, including those with live aboard use. The following new proposed section would require compliance by **all marinas with any live aboard use** to comply with all of the standards of 23.60.200.

*A new Section 23.60.214 of the Seattle Municipal Code is added as follows:
23.60.214 Standards for live-aboard uses on vessels
A. House barges are regulated in Section 23.60.204.*

*B. Live-aboard uses are allowed on vessels other than house barges if the vessel is moored at a marina for the particular type of vessel, and **if the marina complies with the standards set out in Section 23.60.200. (emphasis added)***

Currently my moorage lease requires me to both comply with BMP and to secure a sewage pump out service. As proposed in the 2nd draft, all marinas with any live aboard use must comply with Section 23.60.200.

I believe the marina standards should be evaluated against all existing marinas with live aboard uses. The study of those the impacts of these standards on existing marinas should be made public prior to any adoption and implementation of the proposed SMP. I believe the intended and perhaps unintended consequences will create considerable impact to marinas and their tenants.

3) House Barges

There has been considerable discussion about what is a house barge. Currently a vessel with steering and propulsion is not a house barge. As proposed this is an unreasonable change in the definition which like the definition of unregulated actions captures this currently legal use on the water and makes it non-conforming and therefore prohibits it from expansion or substantial improvement.

Section 23.60.916 of the Seattle Municipal Code, last amended by Ordinance 116051, is amended as follows:

23.60.916 Definitions -- "H" ((.))

((~~"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. Historic ships which do not have a means of self propulsion and steering equipment are regulated as vessels.~~))

House barge means a vessel, with or without means of self propulsion and steering equipment or capability, that is principally designed as a place of residence.

With the implementation of this new proposed definition for House barge, the proposed SMP would

- prohibit any new house barges, but place no limit on live aboard vessels that are not defined as house barges.
- force additional registration of vessels, which are **already registered with Washington State**,
- limit location to recreational marinas, (other marinas may be suitable for House barges)
- force compliance with the City stormwater code (**the implications of this code are not disclosed and it seems designed for land development not vessels on the water. The impacts of this regulation are not discussed in any of the supporting materials**)
- and require all water used or collected on board to be disposed of at a pump out station or by pump out service.

Any of these taken individually is an unreasonable extension of regulatory authority and taken together an unreasonable burden on the owners of vessels currently engaged in a legal use.

Compliance with 23.60.204(E) & (F)2 would be exceptionally onerous. In my marina, we already follow Best Management Practices (BMP). There is no evidence presented that these additional requirements will have any identifiable improvement to ecological function. No evidence has been presented as to the individual or cumulative impact of current live aboard vessel operations. All vessels, that I am aware of in my moorage, currently following the BMP standards and make no discharge of sewage (black water) into the water. I am concerned that currently many of the other commercial and recreational vessels may not abide by BMP and dump huge amounts of grey water, including bilge water and for some black water, over the side into our public waters. The SMP proposes no regulation of these vessels.

My vessel was designed to be seaworthy, has a method of propulsion and navigation. Like many vessels it was designed for living, sleeping, eating, cooking and sanitation. It has been navigated on Lake Union, Lake Washington and through the locks to Puget Sound and visited a number of Puget Sound ports. Just like many, many other vessels.

Is my vessel "*principally designed as a place of residence?*" "Place of residence" is not defined in the SMP. A "dwelling unit" is described in the Seattle Residential Code as "a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation." Many thousands of vessels moored in Seattle are designed to make permanent provisions for living, sleeping, eating, cooking and sanitation. Are these vessels now a "place of residence?"

Many vessels in Seattle have live aboard use and making a narrow distinction related to house barges is unreasonable. I urge the City to continue the current definition of House Barge. Adopting the proposed AMP will make otherwise legal uses of vessels into non conforming uses in the City of Seattle.

4) Standards for Vessel Moorage

If new standards are to be adopted for vessel moorage, the standards as proposed in 23.60.216 for Standards for Vessel Moorage are more appropriate to all vessels, including live aboard, and should be used in place of 23.60.204(F):

Owners and operators of vessels moored in recreational marinas, commercial marinas and other lawful moorages shall use best management practices to minimize impacts on the aquatic environment. The best management practices include the following:

- 1. using non-toxic cleaners and other products used on vessels;*
- 2. limiting the amount of gray water produced by using less water;*
- 3. disposing of sewage at pump-out stations or through a pump-out service;*
- 4. disposing of garbage, food scraps, waste material and recyclables into the appropriate on-land receptacles; and*

5. *storing all outside materials in a secure manner so that they do not blow away in the wind.*
6. *not using herbicides, pesticides or fertilizers in outside.*
7. *using a double containment system when using products on the vessel so that any spills are contained in the second receptacle rather than entering the water.*

Did DPD really mean to require a double containment system for any products being used on a vessel? Would I need a double containment system for my soap, bottled water, a bag of sugar or cookies? Please review and revise the language.

I understand the securing of materials as appropriate to the weather conditions. I think this should be applied to all other uses in the shoreline, including residential, commercial and industrial. However, you should consider being more specific in the language to have an understandable standard that is related to the wind conditions.

The current operation of our vessel already substantially meets the 23.60.216 standards.

- We use only the most non-toxic biodegradable cleaning supplies.
- We already limit our use of water on board to limit the amount of grey water. Our marina already provides restrooms, showers, and clothes washing facilities on the land portion of our marina.
- We already dispose of our sewage by using a pump out service.
- We already dispose of our garbage, food scrapes, waste materials and recyclables into the appropriate land based receptacles currently provided by our marina.
- We already store our outside materials in a reasonable manner to reduce the risk that they will be blow way in the wind.
- We do not use herbicides, pesticides or fertilizers in a way that allows them to enter the water.
- We use double containment systems when there is a chance for a hazardous material spill.

I am also concerned that as proposed in 23.60.204(G) and 23.60.204(G) the Director may “establish appropriate” best management practices through a rule and not by amending the code.

G. The Director may establish appropriate best management practices to implement the requirements of sub-section 23.60.204.F by Director’s Rule.

These BMP standards have been developed by marinas and vessel owners. They have had a long vetting and considerable scrutiny, they should not be subject to easy alteration by a Director’s Rule.

5) Live Aboard Use

The definition of terms is very important in City Codes and especially in the SMP. It should be noted that even “shall” and “should” have different meanings in shoreline regulations. As proposed a “live aboard use” is defined as the use of a vessel as a dwelling unit for certain periods or by actions to distinguish the

vessel as a residence. As noted above a “dwelling unit” is described in the Seattle Residential Code as “a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.” The proposed definitions related to live aboard are:

Section 23.60.924 of the Seattle Municipal Code, last amended by Ordinance 117789, is amended as follows: 23.60.924 Definitions -- "L" (.)

“Live-aboard or live-aboard use” means a use that meets the definition of live-aboard vessel”.

“Live-aboard vessel” means a vessel that is used as a dwelling unit for more than a total of thirty days in any forty-five day period or more than a total of ninety days in any three hundred sixty-five-day period; or the occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes. Marinas may define “residential use” more narrowly than the above definition, but not more broadly.

It seems inherently unfair and arbitrary for the City to propose implementing regulations for a small minority of the live aboard vessels and not all vessels which are designed or used in a way to meet the definition of a dwelling unit.

The proposed SMP is not an equitable application of live aboard use regulations. The potential harm to the environment is present from any live aboard use, yet you are only proposing to regulate a small minority of live aboard users. The City is not proposing to add any regulations to the thousands of commercial and recreational boats that currently discharge into our waterways. There have been considerable SMP comments to support concern regarding the ecological impacts from all vessel that discharge into the water.

We are responsible users of the water. We enjoy this unique and historic way of life in Seattle. Please do not impose these burdensome live aboard regulations. The improved ecological function seems speculative and lacks any supporting documentation that there will be measurable improvement to the ecological function by their adoption.

Thank you for accepting comments on the 2nd draft. I remain disappointed that no public meetings were held on this 2nd draft. However, I look forward to the City response to the many substantive comments received. I hope these will result in positive changes in the proposed Shoreline Management Plan and will limit unnecessary impacts to Seattle’s live aboard community.

Sincerely,



John Chaney