FLOATING HOMES ASSOCIATION

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December 22, 2011

Ms. Margaret Glowacki
City of Seattle
700 Fifth Avenue, Suite 2000
Seattle, WA 98124-4019

Sent via email to margaret.glowacki@seattle.gov

RE: Floating Homes Association's Second Comments on Proposed Shoreline Master Program

Dear Ms. Glowacki:

Thank you for the opportunity to review and comment on the City's October 2011 Proposed Shoreline Master Program. We are pleased to note the two edits that have been made based on our first comment letter and that the Department of Planning and Development is considering our requests to use the county registration system and to incorporate our environmental best practices.

We remain concerned, however, that the proposed legislation is contrary to the express policy enunciated in RCW 90.58.270 and the intent of the legislature in passing this new law. Amending and clarifying the state's position on floating homes, our legislators recognized that our homes are "an important cultural amenity," an "element of our maritime history," and "a linkage to the past." The new law was passed with the goal of "ensuring the vitality and long-term survival" of our community and allowing the "continued use, improvement, and replacement" of our homes "without undue burden." Specifically, the law states that "applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable."

The current proposed regulations are contrary to the spirit and the letter of RCW 90.58.270 in three significant ways:

1. The proposed definition of "float," as pertains to floating homes, needs significant revision and should reflect the understanding that our organization came to with DPD in a meeting with Diane Sugimura, John Skelton and Margaret Glowacki on February 4, 2011. Specifically, we discussed which structural changes would trigger the requirement to reengineer flotation. We did this with the mutual understanding that reengineering flotation was a serious and costly enterprise and that a float consisted of buoyant materials. The current proposed definition of "float" does not reflect this understanding and will effectively preclude replacement and remodeling of existing floating homes as it is used in section D.5.h, thus violating RCW 90.58.270.

2. Second, proposed language regulating the minimum distance between floating homes – measured now from floats as well as walls – is unreasonable and will effectively preclude replacement and

remodeling of existing floating homes, thus violating RCW 90.58.270. This problem is exacerbated by the City's problematic definition of "float."

3. Third, we object to regulations that prevent floating homes from being relocated to moorage sites in public waters, including for Safe Harbor, an integral part of preserving our historic community. Shoreline management regulations that support the concept of Safe Harbor have the added potential of preventing an increase in overwater coverage by reducing the number of new floating homes moorages.

Our comments to specific provisions are below. We'd be glad to meet with you to provide clarification on any or all of these issues.

Sincerely,

Marty Greer
President, Seattle Floating Homes Association

Floating Homes Association's Response to Proposed Revisions to Section 23.60.202 of the Seattle Municipal Code, Standards for Floating Homes and Floating Home Moorages

Definition of "float"

"Float" when used in connection with a floating home means those elements that provide the buoyancy necessary to keep the floating home above the water. This does not include any platform or decking, which are elements that make the home heavier and do not aid in flotation. The proposed definition of float, as pertains to floating homes, is inaccurate and it is unclear what the word "platform" means in this context.

It is important that the definition of "float" as pertains to floating homes is correct so as to prevent minor repairs from triggering unintended consequences and violating RCW 90.58.270.

Section 23.60.202.B.1.c
"Floating homes may not relocate to that portion of a floating home moorage occupying public waters."

The City's proposed language may cause confusion between waters leased from the State through the Department of Natural Resources (DNR) and land owned by the city that is occupied by floating homes (or portions of floating homes). To prevent confusion, the term "city-owned" should be inserted into the provision. Occupancy of floating homes on state-owned land is, and should be, governed by the lease agreements between floating home owners/associations and the DNR.

Floating homes moored in public waters at an established moorage should have the flexibility to move to different slips within that moorage. In the interest of reducing overwater coverage, a floating home that loses a slip elsewhere in Lake Union or Portage Bay should be permitted to relocate to a moorage occupying public waters when this relocation negates the need for a new moorage to be built.

Section 23.60.202.B.3.a
a. Total water coverage of floating home moorages, including all piers, shall not be increased above 45% of the submerged area or the currently existing coverage, whichever is greater, including the floating home;"

Floating homes are protected by a Safe Harbor provision that ensures the right of displaced homes to relocate. The City's proposed language, which does not accommodate these Safe Harbor situations, runs afoul of that right.

This section must be rewritten to ensure accommodation for Safe Harbor situations in which a floating home loses its slip or a floating home moorage loses its DNR lease, street end or other previous location. To ensure Safe Harbor accommodation, this section should read, "Total water coverage of floating home moorages, including all piers, shall not be increased above 45% of the submerged area or the currently existing coverage, whichever is greater, unless the additional coverage is caused by the accommodation of a displaced floating home or homes."

Section 23.60.202.B.3.d

d. Existing floating home moorages shall not be reconfigured and existing floating homes shall not be relocated within a floating home moorage site unless the standards of this Section 23.60.202 are met or the Director determines that the standards cannot be met at the site and the reconfiguration or relocation will result in improved ecological functions."

The regulations need to account for, and accommodate, a Safe Harbor situation. Reconfiguring or relocating within a moorage may be necessary in situations where leases or permits are not renewed (e.g., DNR, street-ends). The right of floating homes to relocate in such a situation has already been recognized; the proposed regulation would impermissibly impair that right.

Section 23.60.202.B.3.4

4. Floating home moorages shall not provide moorage to floating homes that do not display a registration number issued under subsection 23.60.202.G."

We appreciate that DPD is reviewing our request to make the changes requested below. This continues to be an important issue for the FHA.

This section should read as follows: "Floating home moorages shall only provide moorage to floating homes that are allowed under subsection 23.60.202.A.1." Please see our comments under Section G regarding registration numbers for floating homes.

Section 23.60.202.C.1

1. Height

a. Both floating homes are the same height;

b. The relocation will not result in a floating home that is over 18 feet in height and higher than the replaced floating home being located waterward of floating homes that are 18 feet or less in height; or

c. No floating home greater than 18 feet in height shall be relocated except to replace a floating home of equal or greater height.

2. The minimum distance between adjacent floating home walls and between any floating home wall and any floating home site line will meet the requirements of the applicable moorage standards in subsection B or D of this Section 23.60.202; and

3. The requirements of Chapter 7.20 of the Seattle Municipal Code, Floating Home Moorages, have been met.

Individual floating home associations already have strict covenants in place to preserve view corridors and prevent the type of situation this proposed section appears to contemplate. But unlike the City, the individual associations are able to address the particulars of each moorage and draft appropriate restrictions to account for those.

This proposed section does not have the benefit of particularized knowledge and, like several of the above sections, impermissibly impacts potential relocations under the Safe Harbor provisions. This provision should be stricken.

Section 23.60.202.D.5.c.1
1) The minimum distance between adjacent floating home floats or walls is not reduced below 10 feet or the existing distance, whichever is less, and shall not be less than 6 feet if the floating home is being replaced."

and

Section 23.60.202.D.5.c.2
"2) The minimum distance between any floating home float or wall and the boundary of any floating home moorage site is not reduced below 5 feet or the existing distance, whichever is less, and shall not be less than 3 feet when the floating home is replaced or rebuilt. No minimum distance is required between a floating home float or wall and a moorage lot line when the lot line is adjacent to a public street right-of-way, a waterway, or the fairway."

These sections substantially change the current requirements for replacing or rebuilding existing nonconforming floating homes. Because of the existing configuration of the majority of floating home moorages, these new requirements have the potential to preclude the remodeling or replacement of an existing nonconforming floating home by rendering the action impracticable which is contrary to RCW 9.58.270.

Not only does the proposed regulation require a greater distance between homes, it exaggerates that change by measuring the distance between "floats," not just walls. Coupled with the city's overly inclusive definition of "float," the proposed change will deprive many or most floating home owners of much of the value of their homes, as it would be essentially impossible to rebuild.

Many floating homes are wrapped by a narrow deck that provides access for maintenance and repairs. Even if this deck is only two feet wide, the proposed regulation would strip 50 to 100 square feet of living space – potentially ten to twenty percent of the entire home. That amount would likely be doubled, as most nonconforming homes are close to neighbors on both sides. Then, if the existing distance – which is currently measured between walls, and would in future be measured by decks ("floats") – is less than the permissible amount, even more of the home would disappear along with much of the home's value and perhaps even its ability to stay afloat.

The existing language for nonconforming floating homes should be maintained: "2) The minimum distance between adjacent floating home walls shall not be decreased to less than six (6) feet if the floating home is being remodeled or shall not be less than six (6) feet if the floating home is being rebuilt or replaced. No minimum distance is required when the lot line is adjacent to a public street right-of-way, a waterway, or the fairway."

Section 23.60.202.D.5.h
"h. Floats shall be maintained and repaired using the minimum amount of structure below OHW necessary to maintain floatation. At the time of replacement of the float and/or floating home, any structure below OHW and outside the primary float structure that provides minimal or no floatation shall be removed."

This section is an example of why "float" must be correctly defined as those elements that provide the buoyancy necessary to keep the floating home above the water. Any other definition is too broad and will trigger major reengineering of flotation during routine maintenance, thus violating RCW 90.58.270.

The word "replacement" as regards the floating home is ambiguous in this context.

Section E. Owners and tenants of floating homes shall use the best management practices to minimize impacts on the aquatic environment.

We appreciate that DPD is reviewing our request to make the changes requested below. This continues to be an important issue for the FHA.

The Floating Homes Association has developed and published best management practices for the floating home community (See attached BMPs or find them on the internet at, http://www.seattlefloatinghomes.org/bmps). We believe that our voluntary commitment to environmental principles will lead to a higher level of compliance than mandated regulations. We recommend that, in place of the specific examples provided in DPD's draft language, DPD reference the Floating Homes Association's BMPs in the regulations with the understanding that the Floating Homes Association and its members are dedicated to complying with our own, community developed best management practices.

Section 23.60.202.F.
The Director may establish appropriate best management practices to implement the requirements of sub-section 23.60.202.E by Director's Rule."

We recommend that DPD work with the Floating Homes Association to develop and implement any additional best management practices as may be necessary in the future. This section should be rewritten as follows, "The Director may establish additional best management practices to implement the requirements of sub-section 23.60.202.E after reasonable public involvement and comment period." Mandatory community involvement will ensure that residents are invested in compliance and that regulations are both practical for the community and protective of the environment.

Section 23.60.202.G. Registration numbers for floating homes

We appreciate that DPD is reviewing our request to make the changes requested below. This continues to be an important issue for the FHA.

As all floating homes in Seattle have been previously assigned a personal property tax account number by the King County Assessor's office, it is not necessary to spend City funds or administrative time to create a duplicate system. Surely the City can use the current County registration system for their purposes, making additional registration unnecessary. Avoiding a duplicate system would benefit both the City and any floating homes residents who may not be able to afford the extra registration fee or who may be confused about how to comply with a new, yet nearly identical system.