

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR AMENDMENTS TO THE CITY OF SEATTLE SHORELINE MASTER PROGRAM

SMP Submittal accepted October 1, 2019, Ordinance No. 125882
Prepared by Department of Ecology on October 21, 2019

Brief Description of Proposed Amendment

The City of Seattle (City) submitted on September 16, 2019, a locally initiated Shoreline Master Program (SMP) amendment to Ecology for final review pursuant to RCW 90.58.020 and WAC 173-26-120. The amendment clarifies the definition of a “vessel” through a number of SMP code amendments as contained in *Council Bill (CB) 119471* and formally adopted under *Ordinance 125882*. According to the City, the amendment is intended to clarify terms used in the SMP, so 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 interpreted as a “structure” that could then request to be verified as a “Floating On-Water Residence” (FOWR) and expanded or be replaced to further accommodate residential amenities.

FINDINGS OF FACT

Locally Initiated SMP Amendment

The City’s comprehensive update to their SMP went into effect on June 15, 2015. Overwater residential use was an issue of significant focus in the City’s comprehensive SMP update, with concerns voiced by a number of Lake Union on-water residents, seeking clarity on the legal status of their community of houseboats that did not fit the City’s SMP definition for a “floating home”, “house barge”, or “vessel”. To address these concerns, the City Council (with Ecology’s support) convened a “On-Water Stakeholder Group” that were directed to develop recommendations to further clarify the status of existing floating structures there were not clearly identified as a “vessel” by the City’s pre-2015 SMP. Following five meetings between March 18 and May 21, 2013, the stakeholder group reached a “high-level consensus” on development of a “Houseboat Vessel Live-aboard License” program, which established a foundation for the City’s Floating on Water Residences verification process that is currently used to register existing FOWR’s in the City. In addition, the Washington State Legislature passed ESSB 6440 in 2014, amending the SMA (RCW 90.58.270.6) providing the City and Ecology the authority to authorize existing “Floating On Water Residences” (FOWR) as a conforming use, provided the residence was legally established within a marina within the City prior to July 2014. The amendment to RCW 90.58.270, the City’s incorporation of FOWR provisions into the SMP, and the City’s establishment of a FOWR verification/registration program, all contributed in responding to the original concern in providing clarity to the Lake Union community on the legal status of their existing residences.

The City’s current SMP (update in 2015) specifically addresses the following 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

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

moored within the City. In proposing the subject amendment, the City identified a need in *CB 119471*, to respond to a 2016 City Hearing Examiner decision¹ that found an inoperable trawler was not classified as a “vessel” for the purpose of the SMP and would therefore 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 could be expanded or replaced as a FOWR. While the Shoreline Management Act Guidelines (WAC 173-26-241(3)(j)(iv)(a) require local SMP’s to prohibit new over-water residences, the SMA and the Guidelines also recognize the value of existing and historical over-water residential communities and require that local governments accommodate these established communities *through “...reasonable SMP 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”* (RCW 90.58.270). In addition to preserving existing FOWR communities, the Legislature specifically stated their intention in amending the SMA in 2014 to; *“...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”* (RCW 90.58.270 – Findings Intent 2014 Legislation).

The City’s proposed amendment modifies the “house barge” and “vessel” definition in the SMP, to clarify important distinctions between FOWR’s, house barges and a vessel. The amendment also intends to further 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 an 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.

The adopted Ordinance (#125882) also establishes in section 4 that passage of the amendment is not intended to alter the status of FOWRs that received verification from the City, prior to the effective date of the ordinance.

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.

¹ Seattle Hearing Examiner 2016 decision S-16-005 [Michael Schmautz appeal of DCI decision](#)

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

"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, Joint Review Process

The City elected to utilize the optional joint review process for this SMP amendments pursuant to WAC 173-26-104.

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 provided additional information regarding the 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 a notice of the public comment period, public hearing, and a description of the proposed amendment on a 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 City summarized comments received and provided responses to the issues raised during the joint local-state comment period.

The City also provided copies of comments received by City staff or Councilmembers after the formal joint comment period ended on May 1, 2019. The City Council continued to accept public comments during the local adoption process and considered these comments prior to local adoption. Most were in opposition to the "vessel" definition change and in support of Lake Union Liveaboard Association (LULA) request to delay adoptions of the proposed amendments, 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 the 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 by Ecology to be complete. This began Ecology's review and analysis of the amendment to inform an initial determination.

Ecology prepared an initial determination concluding that the amendment is consistent with the policy of the SMA and applicable guidelines. A written statement of initial concurrence was sent to the City on July 25, 2019.

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

The Planning, Land Use and Zoning Committee consisting of a subset of City Council members discussed the proposed amendment (*CB 119471*) in three meetings² prior to recommending approval of the amendment to the full city council. On August 5, 2019, the Seattle City Council voted 9-0 in favor of approving the ordinance. Following City Council approval, *Ordinance #125882* was forward to the Mayor and signed on August 9, 2019. With completion of the City's local adoption of the amendment, City staff formally submitted the locally approved SMP amendment to Ecology for final review on September 16, 2019.

Analysis of SMP Amendment:

Ecology confirmed receipt of a completed SMP amendment submittal to the City on October 1, 2019. In reviewing the submittal forwarded to Ecology, the following elements of the SMP amendment were evaluated for compliance with the SMA and SMP Guidelines.

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's amendment 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 local clarifications in alignment with broader SMA policies and SMP-Guideline requirements relevant to the City's administration of their SMP in managing floating residences.

The City's SMP provide distinct provisions for four types of floating residences including: **Floating Homes** and Floating Home Moorages in section 23.60A.202, **Floating On-Water Residences (FOWR)** in section 23.60A.203, **House Barges** and Floating Structures in section 23.60A.204, and **Vessels containing dwelling units** in section 23.60A.206.

Ecology finds that the proposed vessel definition must be considered in the context of other related terms and definitions from the City's SMP, including the following:

² [Council Bill #119471](#) discussed at the Planning Land Use and Zoning Committee meetings on: 5/1/2019, 6/5/2019, and 6/19/2019.

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

"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. (SMC 23.60A.912- Definitions – "F")

"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. (SMC 23.60A.912- Definitions – "F")

"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. (SMC 23.60A.916- Definitions – "H")

"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. (SMC 23.60A.924- Definitions – "L")

"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. (SMC 23.60A.936- Definitions – "S")

"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. (SMC 23.60A.942- Definitions – "V")

Ecology finds that structures do not include vessels and a FOWR is defined as a structure, not a vessel within the City's current SMP, RCW 90.58.270 (6) (b) and the SMP Guidelines at WAC 173-26-020 (18) (a). Therefore, the clarifications provided in the City's amendment appear to improve internal consistency with associated terms and provisions in the City's SMP and is consistent with the applicable state requirements under the SMA (RCW 90.58), SMP Guidelines (WAC 173-26, part 3), and SMP Administrative rule (WAC 173-27).

Ecology finds that Section 23.60A.204.A (below) already states that inoperable vessels, designed or used as a place of residence, are something other than a floating on-water residences.

"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."

(Seattle SMP section 23.60A.204)

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

Ecology further finds that, consistent with the City's stated intent in proposing this amendment and considering the distinction provided in SMC 23.60A.204.A, (above) the proposed modifications to the "vessel" definition, further clarify that inoperable vessels used as a place of residence should not automatically or by default be considered for verification as a floating on-water residences, as they could still be considered a "vessels containing a dwelling unit" subject to compliance with the provisions in section 23.60A.206 in the City's SMP. Or alternatively, if they are not considered a "vessel containing a dwelling unit," they would automatically or by default be regulated as a floating home pursuant to Section 23.60A.204.A.

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 also provided evidence of compliance with SMA procedural requirements for amending their SMP, pursuant to 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.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and Determination of Nonsignificance (DNS) issued on July 16, 2018 for the proposed SMP amendments. Ecology did not comment on the DNS. On August 6, 2018, the City's DNS was appealed by Steady Floats Inc. and Lake Union Liveaboard Association (LULA). The appeal was ultimately dismissed by the Hearing Examiner on November 5, 2018.

Other Studies or Analyses supporting the SMP update

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment and background information relevant to this topic. These documents include:

1. SEPA Determination of Nonsignificance (DNS), SEPA Checklist, Appeals filed by Steady Floats & Lake Union Liveaboard Association, and City of Seattle Hearing Examiners Order on Motion to Dismiss (HEX File:W-18-006 & W-18-007).
2. SDCI Director's Report regarding the SMP amendment dated January 31, 2019;
3. Seattle City Council – Central Staff Memo to Planning, Land Use and Zoning Committee, regarding Council Bill 119471, date June 3, 2019.
4. City of Seattle SMP Comprehensive update (Ordinance 124105) Conditional Approval Attachment A (Findings and Conclusions), dated May 12, 2014 and the subsequent (Ordinance 124750) Final Approval Attachment A (Findings and Conclusions Addendum), dated May 1, 2015.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's amendment is consistent with the policy and standards of RCW 90.58.020 and

City of Seattle

SMP Locally Initiated Amendment - ATTACHMENT A: FINDINGS AND CONCLUSIONS

RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the SMP amendments will assure that no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c) and WAC 173-26-186(8)).

Ecology concludes that the proposed amendments satisfy the criteria for approval of SMP amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i)) and the amendment is consistent with all applicable policies and standards of the act (WAC 173-26-201(1)(c)(ii)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City complied with applicable requirements in RCW 90.58.100 regarding the SMP amendment process and content.

Ecology concludes that the City complied with applicable requirements in RCW 90.58.130, WAC 173-26-090, and WAC 173-26-104 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City complied with the purpose and intent requirements for SMP amendments as outlined in WAC 173-26-104, including conducting a public hearing, providing notice and consultation with parties of interest and solicitation of comments from tribes, other government agencies and Ecology.

Ecology concludes that the City complied with applicable requirements of Chapter 43.21C RCW, the State Environmental Policy Act in processing the SMP amendment.

Ecology concludes that the City's SMP submittal to Ecology was determined to be complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that State procedural requirements were followed for review and approval of this SMP amendment, as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the locally approved SMP amendments are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.