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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of )  
)  
8 **Michael Schmautz** )  
) No. S-16-005  
9 From an Interpretation by the Director, Seattle )  
Department of Construction and Inspection. ) Declaration of Erin E. Ferguson in Support of  
) City's Motion for Summary Judgment  
)  
11 )

I, ERIN E. FERGUSON, declare under penalty of perjury under the laws of the State of Washington that:

1. This declaration is based on my personal knowledge of the facts described below.
2. I am over eighteen years of age and am otherwise competent to testify regarding these matters.
3. I am employed as an Assistant City Attorney for the City of Seattle.
4. A true and correct copy of the Director's Report for Ordinance 116051, with relevant portions highlighted, is attached as EXHIBIT A.
5. A true and correct copy of Engrossed Substitute Senate Bill 6450, passed by the legislature in the 2014 Regular Session, is attached as EXHIBIT B.

1 6. A true and correct copy of a 2014 letter from Washington State Department of Ecology  
2 regarding conditional approval of Ordinance 124105 and excerpts of the referenced  
3 attachments, with relevant portions highlighted, is attached as EXHIBIT C.

4 DATED this 21<sup>st</sup> day of November, 2016.

5  
6 By: Erin E. Ferguson  
7 Erin E. Ferguson  
8 Assistant City Attorney  
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# **Exhibit A**



## DIRECTOR'S REPORT

### SHORELINE MASTER PROGRAM AMENDMENT TO ALLOW EXISTING HOUSE BARGES IN THE CITY OF SEATTLE

September 1991

#### Introduction

Councilmember Donaldson and the Department of Construction and Land Use are sponsoring an amendment to the Shoreline Master Program of the Seattle Land Use Code, which would allow existing house barges to remain as residential uses over the city's waters. This amendment addresses the plight of approximately thirty-two (32) house barges faced with eviction from their marina moorages with no place to relocate within the City of Seattle. The amendment would "grandfather" existing house barges as permitted non-conforming uses within the shorelines of Seattle. The amendment would also add a definition for house barge to distinguish this residential use from floating homes and navigable vessels used for residential purposes.

#### Background

In the Spring of 1990 the Department of Construction and Land Use (DCLU) received complaints that several marinas on the Ship Canal and Lake Union were allowing the illegal moorage of house barges. The house barges were not located at designated floating home moorages and were discharging sewage into the city's waters. DCLU notified the approximately 50 house barge owners and the marinas that they were in violation of Seattle's Shoreline Master Program (SSMP).

Through its Shoreline regulations, the City of Seattle regulates both floating homes, which are not vessels, and house barges, which are vessels designed and/or used as residences and lacking steering and propulsion capabilities. The City of Seattle does not regulate other navigable vessels containing self-propulsion and steering equipment which may provide over-water, liveaboard residences.

Since the original notice of violation was issued to house barge owners, all but 32 have shown that they are bona fide vessels by demonstrating navigability, having a means of self-propulsion and steering.

In July 1990, the City agreed to allow these thirty-two (32) house barges to remain at their current locations until July 26, 1991 while a legislative change was pursued to legalize

their use, with the condition that all water quality and sewage disposal issues were adequately addressed. Subsequently, the owners of the remaining house barges have resolved their water quality problems, most by signing on with a mobile pump-out service. However, one house barge remains vacant and has not responded to DCLU's inquiries.

Councilmember Donaldson requested that DCLU consider an amendment to the SSMP to "grandfather" existing house barges as legal, nonconforming uses. Proposed legislation would only affect the thirty-two known house barges in existence prior to the original notification date in the Spring of 1990. After that date, any other house barges in Seattle not located in an approved floating home moorage would be regulated as floating homes and prohibited outside of floating home moorages.

**Shoreline Master Program Regulations for Floating Homes, Navigable Vessels and House Barges**

The City of Seattle adopted a revised Shoreline Master Program in 1987 which defined both floating homes and vessels. At that time, a new section was added clarifying the City's authority to regulate vessels without a means of self-propulsion and steering as floating homes. The City has never asserted authority to regulate residential use of navigable vessels. The purpose of this 1987 revision was to reduce the potential for establishing prohibited uses over water by taking advantage of the previous exemption for vessels in the Shoreline Master Program.

Under the SSMP, floating homes are only allowed in specifically designated floating home moorages, the number and location of which are strictly limited and controlled. Floating homes are defined in the SSMP as "a building constructed on a float used in whole or part for human habitation as a single-family dwelling, which is moored, anchored or otherwise secured in waters within the city limits." A floating home is not a vessel.

Navigable vessels are defined in the SSMP as "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, including historic ships which do not have a means of self-propulsion and steering equipment." The City of Seattle does not regulate the use of bona fide navigable vessels designed and used as such, including when used for residential purposes. However, the City does prohibit sewage discharge directly in to the water while moored.

House barges are vessels without a means of self-propulsion and steering equipment. Unlike navigable vessels used as

residences, house barges are regulated by the SSMP, which states that "floating structures, including vessels which do not have a means of self-propulsion and steering equipment and which are designed or used as a place of residence shall be regulated as floating homes pursuant to this chapter. Locating other non-water-dependent uses over water on floating structures, including vessels, which do not have a means of self-propulsion or steering equipment is prohibited unless specifically permitted on historic ships by other sections of this chapter."

House barges are not permitted to moor in marinas. Regulated as floating homes, house barges are only allowed in specifically designated floating home moorages. Because of the limitations on the number, location and expense of floating home moorages, relocation opportunities for house barges are likely to be extremely limited or non-existent.

#### Analysis and Recommendation

House barges in Seattle vary in size, age and moorage location. Seattle's house barges are located along the shores of Lake Union, the Ship Canal and Lake Washington over private lands, although some may be moored over State Department of Natural Resources leased property. Although most house barges are modest in size, a number of the units are newer, larger two-story residences which resemble floating homes. A number of house barges are reconditioned boats of varying size and condition which have been rendered non-navigable upon removal of steering devices and propulsion capabilities. Many appear to have been around Seattle for a long time. Historic records on the size, age and condition of house barges do not exist since these units have, until recently, been unregulated by the City of Seattle.

Many house barge owners state that they were unaware that house barges were regulated as floating homes, and not permitted moorage in marinas with navigable vessels. Most were unaware that house barges were regulated differently from navigable vessels, as to location and land use.

The SSMP does not allow house barges to locate anywhere except floating home moorages, which are essentially unavailable. Strict enforcement of this Shoreline provision would result in the eviction of house barges from their marina moorages. This would displace approximately 32 floating residences with nowhere to locate within the City of Seattle.

Although some of the house barges may have been constructed and moored with the owners knowledge of the prohibition against this form of floating housing, many house barges

were either in existence prior to this restriction and/or the owners were truly unaware of the Shoreline District limitations on this form of over-water residential living. The same situation also applies to marina owners, who may or may not have been aware of this restriction prior to leasing or selling their moorage to a house barge.

Seattle is a boating community, and living aboard vessels and floating homes has a long tradition in the lakes and canals of the city. Many would argue that house barges are a colorful, interesting and unusual form of housing that should be respected and preserved, similar to SSMP provisions which recognize floating homes as a valuable water-related form of housing worthy of protection. Others, however, would argue that house barges are a relatively recent arrival and another intrusion upon water-dependent uses.

The SSMP exists to protect and regulate the city's shorelines from incompatible uses. The Shoreline regulations recognize, however, that a variety of uses are located along our shorelines, and the regulations designating and regulating uses vary depending upon the Shoreline designation assigned to the shoreline properties. Existing house barges are located in areas with Shoreline designations which generally encourage water-dependent uses, and limit residential use.

The State Department of Ecology (DOE), which administers and must approve all amendments to the SSMP discourages changes which would increase opportunities for residential use and further limit water-dependent uses within shorelines. In addition, the State Department of Natural Resources does not allow residential use over submerged leased lands.

Given the overlapping interests in the use of the city's shoreline area and the implicit preference for non-residential, water-dependent uses in the SSMP, DCLU does not recommend allowing house barges outright in the Shoreline environment. However, in recognition of the confusion surrounding the designation of house barges and recent changes to the City's shoreline regulations which rendered house barges illegal in their current location, DCLU proposes that those house barges existing as of June 1990 be permitted as legal non-conforming uses. New house barges established after this date would be illegal and subject to enforcement action unless located in an approved floating home moorage.

DCLU considers this a reasonable solution to the problem facing house barge owners. DOE has been notified of the City's intention to address this issue legislatively. While DOE has indicated a willingness to consider a limited solution to the immediate problem, it is unlikely that

department would support any amendment which would permit new house barge use along the city's shoreline.

**Proposed Amendment Language**

DCLU proposes an amendment to the Seattle Shoreline Master Program which would allow existing house barges to remain in Seattle. The following proposed amendment to the SSMP would recognize existing house barges and clarify their regulations in the city.

**Proposed Definition:**

Amending Section 23.60.916, "H", of Seattle's Shoreline Master Program

"House barge" means a vessel that is designed or used as a place of residence and that has no means of self-propulsion and no steering equipment or capability.

**Proposed Code Amendment Language:**

Amending Subchapter III, General Provision, Section 23.60.090.F, Identification of Principal Permitted Uses, of Seattle's Shoreline Master Program:

F. Floating structures, including vessels which do not have a means of self-propulsion and steering equipment, and which are designed or used as a place of residence, with the exception of house barges moored within the City of Seattle in June 1990 and permitted by the City of Seattle, shall be regulated as floating homes pursuant to this chapter. Locating other non-water-dependent uses over water on floating structures, including vessels, which 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.

G. House Barges shall only be permitted under the following conditions:

(1) A permit for the house barge, which is transferable between owners but not transferable to another house barge, has been secured from the Department of Construction and Land Use verifying that the house barge existed and was used for residential purposes within the City of Seattle in June 1990;

(2) The house barge owners shall demonstrate permanent sewage holding and disposal facilities designed to prohibit overboard discharge, certify proper operation

of such facilities and meet water quality standards;  
and

(3) House barges permitted under this section shall be regulated as a nonconforming use and shall be subject to the standards of Section 23.60.122, except that relocation of an established house barge to a different moorage within Seattle shall be permitted. When a house barge is removed from Seattle waters for more than six (6) months, the permit establishing its use shall be rescinded and the house barge shall be prohibited from relocating in Seattle waters.

kd  
hb-2  
9/9/91

# **Exhibit B**



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ENGROSSED SUBSTITUTE SENATE BILL 6450

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Passed Legislature - 2014 Regular Session

State of Washington                      63rd Legislature                      2014 Regular Session

By Senate Natural Resources & Parks (originally sponsored by Senators Pedersen, Kohl-Welles, Pearson, Liias, Ericksen, and Kline)

READ FIRST TIME 02/05/14.

1            AN ACT Relating to on-water dwellings; amending RCW 90.58.270; and  
2            creating new sections.

3            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    (1) The legislature recognizes that all  
5            Washington residents benefit from the unique aesthetic, recreational,  
6            and economic opportunities that are derived from the state's aquatic  
7            resources, including its navigable waters and shoreline areas. The  
8            legislature also recognizes that, as affirmed in chapter 212, Laws of  
9            2011, existing floating homes are an important cultural amenity and an  
10            element of the state's maritime history and economy. The 2011  
11            legislation, which clarified the legal status of floating homes, was  
12            intended to ensure the vitality and long-term survival of existing  
13            floating single-family home communities.

14            (2) The legislature finds that further clarification of the status  
15            of other residential uses on water that meet specific requirements and  
16            share important cultural, historical, and economic commonalities with  
17            floating homes, is necessary.

18            (3) The legislature, therefore, intends to: Preserve the existence  
19            and vitality of current, floating on-water residential uses; establish

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 6450**

63rd Legislature  
2014 Regular Session

Passed by the Senate February 13, 2014  
YEAS 49 NAYS 0

\_\_\_\_\_  
**President of the Senate**

Passed by the House March 5, 2014  
YEAS 88 NAYS 10

\_\_\_\_\_  
**Speaker of the House of Representatives**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6450** as passed by the Senate and the House of Representatives on the dates hereon set forth.

\_\_\_\_\_  
**Secretary**

FILED

**Secretary of State  
State of Washington**

1 greater clarity and regulatory uniformity for these uses; and respect  
2 the well-established authority of local governments to determine  
3 compliance with regulatory requirements applicable to their  
4 jurisdiction.

5 **Sec. 2.** RCW 90.58.270 and 2011 c 212 s 2 are each amended to read  
6 as follows:

7 (1) Nothing in this (~~statute~~) section shall constitute authority  
8 for requiring or ordering the removal of any structures, improvements,  
9 docks, fills, or developments placed in navigable waters prior to  
10 December 4, 1969, and the consent and authorization of the state of  
11 Washington to the impairment of public rights of navigation, and  
12 corollary rights incidental thereto, caused by the retention and  
13 maintenance of said structures, improvements, docks, fills or  
14 developments are hereby granted: PROVIDED, That the consent herein  
15 given shall not relate to any structures, improvements, docks, fills,  
16 or developments placed on tidelands, shorelands, or beds underlying  
17 said waters which are in trespass or in violation of state statutes.

18 (2) Nothing in this section shall be construed as altering or  
19 abridging any private right of action, other than a private right which  
20 is based upon the impairment of public rights consented to in  
21 subsection (1) (~~hereof~~) of this section.

22 (3) Nothing in this section shall be construed as altering or  
23 abridging the authority of the state or local governments to suppress  
24 or abate nuisances or to abate pollution.

25 (4) Subsection (1) of this section shall apply to any case pending  
26 in the courts of this state on June 1, 1971 relating to the removal of  
27 structures, improvements, docks, fills, or developments based on the  
28 impairment of public navigational rights.

29 (5) (a) A floating home permitted or legally established prior to  
30 January 1, 2011, must be classified as a conforming preferred use.

31 (b) For the purposes of this subsection:

32 (i) "Conforming preferred use" means that applicable development  
33 and shoreline master program regulations may only impose reasonable  
34 conditions and mitigation that will not effectively preclude  
35 maintenance, repair, replacement, and remodeling of existing floating  
36 homes and floating home moorages by rendering these actions  
37 impracticable.

1 (ii) "Floating home" means a single-family dwelling unit  
2 constructed on a float, that is moored, anchored, or otherwise secured  
3 in waters, and is not a vessel, even though it may be capable of being  
4 towed.

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

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

19 NEW SECTION. Sec. 3. This act does not affect the application of  
20 any other applicable permits, authorizations, or authorities.

--- END ---

# **Exhibit C**





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

June 5, 2014

The Honorable Ed Murray  
City of Seattle  
600 Fourth Avenue, Seventh Floor  
Seattle, WA 98104

**Re: City of Seattle Comprehensive Shoreline Master Program Update –  
Conditional Approval – Ordinance No. 124105**

Dear Mayor Murray:

I would like to take this opportunity to commend the city of Seattle (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) update. It is obvious that a significant effort was invested in this update. The SMP will provide a framework to guide development and habitat restoration along the City's shorelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Recommended changes are proposed in Attachment C. The findings and conclusions that support Ecology's decision are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes (required and/or recommended changes), or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally developed by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and Guideline requirements.



The Honorable Ed Murray  
June 5, 2014  
Page 2

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology  
Attention: Director's Office  
PO Box 47600  
Olympia, WA 98504-6700

The City can request additional time to develop a response to Ecology's conditional approval.

Ecology appreciates the dedicated work that the City Council, City staff, citizen advisory committee members, and the community have put into the Shoreline Master Program update.

We look forward to concluding the SMP update process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Regional Planner, Joe Burcar, at [Joe.Burcar@ecy.wa.gov](mailto:Joe.Burcar@ecy.wa.gov) or (425) 649-7145.

Sincerely,



Maia D. Bellon  
Director

Enclosures (4)

By Certified Mail [7012 1010 0003 3028 3454]

cc: Tim Burgess, Seattle City Council President  
Diane Sugimura, City of Seattle  
Margaret Glowacki, City of Seattle  
Erik Stockdale, Ecology  
Joe Burcar, Ecology

**ATTACHMENT A: FINDINGS AND CONCLUSIONS -  
COMPREHENSIVE UPDATE TO THE CITY OF SEATTLE SHORELINE MASTER PROGRAM**

SMP Submittal accepted August 2, 2013, Ordinance No. 124105  
Prepared by Joe Burcar on May 15, 2014

**USE OF THIS DOCUMENT:** Ecology's *Findings and Conclusions* (Attachment A), including reference to *Attachment B* (Required Changes) and *Attachment C* (Recommended Changes), provide the factual basis for Ecology's decision on the City of Seattle's (City) updated Shoreline Master Program (SMP). The document is divided into four sections providing introductory information (Section 1), findings related to the City's documentation of current shoreline conditions (Section 2), amendment history and review process (Section 3), and conclusions (Section 4).

**DESCRIPTION OF PROPOSED AMENDMENT**

The City submitted to Ecology for review a comprehensive amendment to their SMP to comply with the Shoreline Management Act (SMA) at RCW 90.58 and the SMP-Guidelines (Guidelines) at WAC 173-26 (Part Three). The updated master program provides locally tailored shoreline management policies, environment designations, regulations, and administrative provisions to manage shoreline development throughout the City's shoreline district. Additional reports, and supporting information and analyses as noted throughout this document, were considered by Ecology during review of the City's submittal.

**SMP PROVISIONS TO BE CHANGED BY THE AMENDMENT AS PROPOSED**

This comprehensive SMP amendment is intended to replace the City's existing SMP in its entirety. The final SMP includes the following references to be formally incorporated as part of this SMP:

- City of Seattle Stormwater provisions provided in Chapters 22.800 – 22.808;
- City of Seattle Essential Public Facilities provisions provided in subsection 23.80.004.C.2;
- City of Seattle Definitions listed in Chapter 23.84A; and
- City of Seattle Environmentally Critical Areas provisions provided in Chapter 25.09.

**FINDINGS OF FACT**

SMP update materials submitted by the City including: Ordinances #124105; reports, analysis, local approval materials, public comments, and other documents provide information supporting the need for the proposed SMP amendment. The SMP update is the first comprehensive review of the City's program since 1987.

According to the *City Shoreline Characterization Report* (Seattle, 2010), approximately 86 miles of shoreline within the City are classified as "Shorelines of the State" pursuant to RCW 90.58.030 and including: 30 miles of marine waters adjacent to Puget Sound, 22 miles of fresh water shoreline along Lake Washington, 28 miles of fresh water shoreline along Lake Union and the Ship Canal, 4 miles of riverine shoreline along the Duwamish River, 2 miles of freshwater shoreline surrounding Green Lake, as well as associated wetlands and floodplains within the City.

Lake Washington and marine waters seaward of extreme low tide are further characterized as a "Shoreline of Statewide Significance" pursuant to RCW 90.58.030 (2) (f).





In addition to the CAC, the City convened inter-departmental and inter-agency teams that also provided input on the updated SMP (Seattle, 2012b). The City also engaged more directly with specific interests through hosting or attending more than 80-events<sup>7</sup> between 2007 and January 2013, thus providing a variety of opportunities for public involvement related to the SMP update.

**Mayor and City Council Review:** The City’s Mayor’s Office reviewed the “SEPA-draft” (3<sup>rd</sup> draft) of the proposed SMP and developed recommendations in September 2012 that were then formally passed on to the City Council for review and local adoption. As described on the City’s SMP-update website<sup>8</sup>, Seattle City Council members were first briefed on the SMP-update in November of 2011, but did not begin their formal review until August of 2012. Between the first meeting in August and local adoption of the updated SMP on January 22, 2013, the City Council held 10 meetings<sup>9</sup> within the *Planning Land-Use and Sustainability* (PLUS) committee and two meetings with the full council. The City Council held a public hearing for the updated SMP on October 15, 2012. In addition to the public hearing and the PLUS committee meetings, the full City Council also discussed the SMP update during two final meetings on January 14<sup>th</sup> and the 22<sup>nd</sup> as a part of their final deliberation prior to approving Ordinance 124105 and submittal of the locally approved SMP on to Ecology for review.

The City Council’s PLUS committee dealt with a variety of issues related to the SMP update, leading up to local adoption of the SMP in January of 2013. However, issues related to overwater residences occupied a majority of the Council’s time, as a large number of residents voiced confusion related to unknown legal status of existing residential floating structures, that do not qualify as either a “floating home” or a grandfathered “house barge” and may or may not satisfy the City’s definition of a “vessel”. Even though the issue and questions raised by the residents, pertained to interpretation of the City’s existing SMP, the stakeholders voiced a strong request for clarity related to their existing residences. In response to this call, Ecology recommended<sup>10</sup> that the City separate questions related to the status of the existing on-water residences (i.e., compliance with existing SMP), from local adoption of the updated SMP, which is intended to manage future uses. Consistent with Ecology’s recommendation, the City Council locally adopted the updated SMP on January 14, 2013 under Ordinance #124105. In a separate action the City established the *On-Water Residential Stakeholder Process* (SOWRSP, 2013) to develop recommendations for the City to clarify the status of existing floating structures that are not a floating home or a house barge. See additional discussion related to overwater residences and the *On-Water Residential Stakeholder Process* below in the section titled: “**Summary of Issues Identified by Ecology as Relevant to its Decision**”.

*Ecology finds that the City satisfied SMP-Guideline standards related to public process (WAC 173-26-201 (3) (b) through development of their public participation plan, visioning process, citizen advisory committee, council review and extensive staff outreach involving more than 80 public meetings or events related to the SMP update.*

<sup>7</sup> As a part of the formal submittal to Ecology, the City provided a table listing all public meetings involving the SMP-update from 2007-2013.

<sup>8</sup> “Shoreline Master Program Update – Project Timeline” provided at:

<http://www.seattle.gov/dpd/codesrules/changestocode/shorelineupdate/timeline/default.htm>

<sup>9</sup> SMP-Update Discussed at PLUS Committee meetings on: August 8, 2012; September 12 & 13, 2012; October 15 & 26, 2012; November 14, 2012; December 3 & 12, 2012, January 9 & 14, 2013.

<sup>10</sup> Ecology’s recommendation was provided in a comment letter to the City, dated January 10, 2014.

## DEPARTMENT OF ECOLOGY REVIEW PROCESS

Ecology certified receipt of a complete submittal of the City's SMP amendment and supporting materials consistent with WAC 173-26-110, in a letter to the City dated August 2, 2013. This action initiated formal state review of the proposed SMP.

Ecology accepted written comments on the updated SMP from September 3 through November 4, 2013 and public testimony at a public hearing hosted by Ecology (in Seattle) on September 11, 2013. Notice of the comment period and public hearing was published in the *Daily Journal of Commerce* on August 28<sup>th</sup>, 2013 and was distributed to over 1,200 interested parties in compliance with the requirements of WAC 173-26.

Ecology received testimony from 16 people during the public hearing and written comments from 62 individuals or organizations, as summarized in Ecology's *Responsiveness Summary* (Attachment D). The *Responsiveness Summary* identifies the range of issues raised during the comment period and includes a final response by the City to SMP topics raised by the comments pursuant to WAC 173-26-120 (6)

### Summary of issues raised during the Ecology Public Review Process

Consistent with SMP-Guideline review requirements in WAC 173-26-120, on November 26, 2013 Ecology provided the City with a summary of issues raised on the City's SMP through either testimony at the public hearing, or written comments submitted to Ecology. Below is a general list of SMP topics included in the comment summary:

**SMP Update Process** (Public Participation, Limits on Administrative Interpretations, and a comment on the City's Shoreline Characterization), **Goals and Policies** (Public Access, Shoreline Restoration, Shoreline Jurisdiction, Single-Family Residential Use Preference, and Shoreline Recreation), **Compliance** (Regulatory Authority), **Nonconforming Uses and Structures** (Nonconforming Vessel), **Shoreline Development Standards** (General Development, Archaeological/Historic Preservation, Overwater Parking, Public Access, Shoreline Setbacks, Breakwaters/Jetties/Groins/Weirs, Overwater Structures, Gray Water Discharge, Vegetation Requirements, and Pesticide/Fertilizer Requirements), **Specific Use Standards** (Agriculture, Aquaculture, Marina-Public Access, Marina-BMP's, General Marina Provisions, Floating Homes, New/Expanded Overwater Residences, House Barges, Vessels as Dwelling Units and, Utilities) **Shoreline Environment Standards** (Allowed Uses in the CW, Ecological Protection for UC/UM/UR, Allowed Uses in UG, Use Restrictions in UM/UR, Non-water-dependent Uses in the UM, and Multifamily Public Access), **SMP-Definitions** (Custom Craft Work, Unnecessary Definitions, Fairway, Ordinary High Water Mark, Moorage, Non-water-dependent, Live-aboard, Vessel, Waterway, and Passenger Terminal), and additional general comments not referenced to specific provisions in the proposed SMP.

On January 17, 2014, the City provided a response back to Ecology, on issues raised in comments or through testimony provided to Ecology. The complete record of Ecology's comment summary and the City's response are provided in the *Responsiveness Summary* (Attachment D).

### **Summary of Issues Identified by Ecology as Relevant To Its Decision**

Based on review of the locally adopted SMP for consistency with applicable SMP-Guideline requirements, and consideration of issues raised during Ecology’s public comment period (Attachment D), the following topics remain relevant to Ecology’s final decision on the City of Seattle SMP:

**SMP-Update Process:** As provided in the *Responsiveness Summary* (Attachment D), Ecology received comments arguing that the City did not achieve adequate public participation during the update of the local SMP. In addition, comments and testimony from a number of overwater residential stakeholders, expressed general frustration with the update process, stating that their interested were not represented throughout the update process.

*Ecology finds that the City’s SMP update involved a number of complex topics. This conclusion is based on the inherent challenge that the City faced in recognizing the range of issues and perspectives provided by a diversity of interested parties in the City, representing a wide range of shoreline management related topics. In order to engage with all these interests, the City developed or participated in a variety of outreach forums throughout the full six years of their SMP update. The City’s engagement included over 80 meetings, presentations, and public hearings or facilitated discussions involving interested parties - all of which were open to the general public. Therefore, Ecology concludes that despite frustration expressed by some stakeholders, the City adequately fulfilled their obligations related to engaging the public in the SMP-update process.*

**Goals and Policies:** Shoreline Master Programs provide both a planning and a regulatory function, for which both statewide and local interests need to be considered through a coordinated, rational approach to both short and long-term shoreline management issues. For jurisdictions planning under the Growth Management Act, the updated SMP is considered an element of the jurisdictions comprehensive plan, for which “Goals and Policies” related to shoreline management provide a foundation for more specific use and development regulations in the SMP. Comments provided to Ecology related to “Goals or Policies” in the City’s updated SMP covered a number of topics ranging from public access to shoreline recreation. The City’s response to these comments (Attachment D), identified a number of amendments to certain policies in the updated SMP. These changes are included as either required (attachment B) or recommended (attachment C) changes to Ecology’s conditional approval.

*Therefore upon the City’s acceptance of required changes, Ecology finds that the City adequately considered statewide and local interests in developing the goals and policies within the updated SMP. Further, Ecology finds that Goals and Policies included in the updated SMP reflect relevant provisions related to current conditions in the City, and will ensure consistency with SMP-Guidelines requirements when considering (future) anticipated development within the City’s shoreline areas.*

**Compliance/Non-Conforming:** required (attachment B) and recommended (attachment C) changes related to this section of the SMP are addressed below under the topic of “Overwater Residential Uses”.

**General Shoreline Development Standards:** Master programs provide both general use standards, which apply universally to all actions under the authority of the SMP and specific use standards, which are focused on specific types of shoreline activities. Ecology’s decision, including both required (attachment B) and recommended (attachment C) changes, list a number of relatively minor

amendments to the general development provisions in the updated SMP. Specific amendments are described within each of the attached documents.

*Ecology finds that certain clarifying amendments as listed in Attachment B are necessary to ensure consistency with SMP-Guideline requirements.*

**Shoreline Use Standards:** WAC 173-26-241 of the SMP-Guidelines provides requirements related to Shoreline Uses managed by a Master Program. As described within Section 2 (Shoreline Conditions), the City dedicated a significant effort to analyzing demand for water-oriented uses (Property Counselors, 2009) to help characterize the status and pressure on water-oriented uses within the City (Seattle, 2008a). These efforts also encouraged citizen and stakeholder engagement in the City's *Visioning Process* (Seattle, 2008) that helped inform the appropriate policy direction for the City to take through the SMP update.

In addition, shoreline uses that will be managed by the updated SMP have been evaluated for consistency with applicable SMP-Guideline requirements as a part of Ecology's review of the SMP. Based on consideration of issues raised through public comments along with general review for consistency with SMP-Guideline requirements in WAC 173-26 (Part III), the following shoreline uses are described in additional detail related to required (attachment B) or recommended (attachment C) changes connected to Ecology's conditional approval of the City's updated SMP:

**Aquaculture:** Aquaculture practices as defined in WAC 173-26-241 (3) (b) of the SMP-Guidelines, are considered a preferred (water-dependent) use. As described within Ecology's required change document (attachment B), the SMP-Guidelines require<sup>11</sup> that jurisdictions preserve future opportunities to consider new (evolving) forms of aquaculture by not outright prohibited the use within the SMP. The City's locally approved SMP, lists a general prohibition of "Agricultural and Forest Practices" in their conservancy designations. "Aquaculture" is defined by the SMP within the broader category of "Agricultural and Forest Practices" in the SMP, which effectively prohibits Aquaculture within the conservancy designations. The City has not provided a rationale or analysis supporting the prohibition of Aquaculture.

*Therefore, Ecology finds that required amendments to Aquaculture provisions, as provided in Attachment B, are necessary to ensure consistency with SMP-Guideline requirements provided in WAC 173-26-241 (3) (b).*

**Overwater Residential Use:** The SMP-Guidelines at WAC 173-26-241 (3) (j), address overwater residences, stating that existing uses should be reasonable accommodated, while future overwater residences, should be prohibited. The SMA and SMP-Guidelines provide a couple of notable exceptions to this limit related to overwater residences. First, the SMA acknowledges the historic floating home community and existing "floating on water residences"<sup>12</sup>, by protecting their continued presence. Second, "live-aboards" or boaters living on their vessels, are not characterized as a "preferred use", but should be allowed within "Boating Facilities", provided neighboring water-dependent uses are not displaced and the jurisdiction can demonstrate compliance with no net loss

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<sup>11</sup> See SMP-Guideline requirement WAC 173-26-241 (3) (b) (i) (B)

<sup>12</sup> ESSB 6450 was adopted during the 2013/2014 Legislative session and signed by the Governor during Ecology's review of the City's updated SMP.

of shoreline ecological functions when considering anticipated impacts associated with future development of this use, as allowed by the updated SMP.

Under Seattle’s existing SMP there are essentially three ways to live on the water:

1. On a floating home, which must be connected to the municipal sewer system and require consistency with land-use and building requirements similar to upland residences,
2. On a house barges, which are defined by the City’s existing SMP as: *“a vessel that is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability (SMC 23.60.916 “H”),* and
3. On a vessel, consistent with the following definition from the City’s existing SMP: *“...ships, boats, barges, or any other floating craft that are designed and used for navigation and do not interfere with the normal public use of the water...(SMC 23.60.942 “V”).”*

Therefore, to comply with SMP-Guideline requirements, the updated SMP must accommodate existing floating homes and floating on-water residences, in a manner that allows for the preservation of these of these historic uses (RCW 90.58.270). According to the City (2012b), existing standards for floating homes and house barges are maintained in the updated SMP with some modifications to ensure consistency with SMP-Guideline requirements (see further discussion below under “Floating Homes”). Whereas new standards have been added to the SMP to more specifically address: floating on-water residences, vessel moorage and live-aboard vessels within marinas (boating facilities). Existing floating on-water residences and house-barges are accommodated in the updated SMP, but new residences will not be allowed. Live-aboard vessels moored within boating facilities will not be prohibited by the updated SMP, but will require compliance with SMP requirements related to “vessel type” (23.60A.214) and marina best management practices to maintain no net loss of shoreline ecological functions.

**Floating Homes:** Both the SMA (RCW 90.58.270) and the City’s Comprehensive Plan through policy “LU 231” acknowledges the importance of the historic floating home community and lays out a goal to preserve and protect the existing floating home community. According to the City (Seattle, 2012b), in order to satisfy their Comprehensive Plan, SMP-Guideline requirements and to ensure protection shoreline ecological functions, the updated SMP needs to prohibit construction of new floating homes and new floating home basements. In addition, updated SMP standards are intended to achieve the following goals related to accommodating existing homes:

1. *Continue to regulate floating homes as a conforming use;*
2. *Continue to allow the maintenance, repair, replacement and expansion, within development standards, of existing floating homes; and*
3. *Consolidate existing floating home regulations into one standard. The intent of this policy is to simplify these standards, which currently require historical research to implement and to combine the standards in a manner that maintains standards for “conforming” homes and prevents increasing non-conformity of non-conforming homes. (Seattle, 2012b)*

During review of the updated SMP, Ecology received comments from members of the floating home community expressing general concerns with new floating home provisions in the SMP. Many of the comments referenced the 2011 amendment to the SMA, characterizing the legislation as a directive to the City and Ecology, to be more accommodating to the existing

floating home community. Other commenter's focused their concerns on provisions in the updated SMP that were perceived as detrimental to displaced floating homes, or too restrictive in not allowing existing floating home moorages to accept displaced homes that may lose their current moorage space in the future.

The City's response to these comments, identified a number of the provisions for which there was concern expressed, as unchanged from the City's current SMP that was last updated in 1987. Further, the City noted that other limitation in the current SMP, limiting the number of new moorages that can be created in the UR environment, were removed from the updated SMP, for which they concluded that displaced floating homes would be provided more options than are currently available under the existing SMP. In regards to reconfiguration of an existing floating home moorage to accommodate a displaced home, partially in response to comments, the City requested that Ecology revise provision 23.60A.202,B.3.d, to remove the directors discretion along with the requirement to improve ecological functions through a moorage reconfiguration.

**Marinas:** The SMP-Guidelines at WAC 173-26-241 (3) (c) list requirements for Boating Facilities, which are defined as facilities providing four or more moorage slips and require that jurisdictions include SMP provisions to: manage siting of new facilities, satisfy health, safety and welfare requirements, require mitigation sequencing, manage public access (when required), limit impacts from live-aboards, maintain navigation rights, satisfy no net loss requirements, and restrict extended mooring on state waters consistent with all applicable state regulations. Boating facilities are referred to as "marinas" within the City's updated SMP.

According to the City, the SMP will require that all users of moored vessels follow the Best Management Practices (BMP's) to avoid pollutant discharge into surrounding water bodies (Seattle, 2012b; 25). The BMP's are intended to protect shoreline ecological functions consistent with SMP-Guideline requirements related to live-aboards in WAC 173-26-241 (3) (c) (v) and subsection (vi.) related to general boating facility consistency with overall no net loss goals.

**Live-aboard regulations:** The City describes their existing SMP as written to regulate uses on vessels, which they suggest does not clearly address use of the vessel as a dwelling unit, for which they conclude that the current SMP creates confusions, as to whether using a vessel as a dwelling unit is prohibited or not (Seattle, 2012b; 25). Based on this confusion and the obligation under the SMA to address shoreline impacts associated boaters living in their vessels (i.e., live-aboard), the City's updated SMP places limits on the types of vessels that will be allowed to be used as a dwelling unit, instead of attempting to regulate or limit the residential use on individual vessels, as required under their existing SMP (Seattle, 2012b; 25). In addition to regulating the types of boats allowed to be used as a dwelling, the City's updated SMP also requires: marinas to provide upland shower and bathroom facilities, demonstration that live-aboard tenants are appropriately handling black water through use of a pump-out facility or pump-out service, and that marina BMP's are followed to minimize water-quality impacts resulting from the live-aboard use of the vessel (Seattle, 2012b; 25).

Many of the comments received by Ecology provided general comments (attachment D) related to marina live-aboard requirements, as well as concerns associated with the City's proposed limits on the types of vessels allowed to be used as a dwelling unit, under the updated SMP. In response to these concerns, the City reiterated the requirement in the SMP-Guidelines to:

“...limit the impacts to shoreline resources from boaters living in their vessels” (WAC 173-26-241 (3) (c) (v)), which they conclude will be satisfied by SMP provisions that limit moorage within the City by the types of vessels that are customarily used for navigation (Attachment D; 34). Further, the City states that this SMP limit will preserve limited moorage space and avoid displacement of vessel moorage by “unusual vessels” or floating structures that are not navigated (attachment D; 34).

**Floating On-Water Residences:** Adoption of the 2003 updates to the SMP-Guidelines resulted in a requirement that local jurisdictions prohibit future over-water residential uses, pursuant to WAC 173-26-241 (3) (J). As noted in Ecology’s January 10, 2013 letter to the City Council, the 1987 update of the City’s SMP, attempted to prohibit overwater residential uses by limiting residential uses to “vessels” consistent with the definition provided in WAC 173-27-030 (18). However, by 1990 several overwater residential structures were moored in the City, for which, Ecology again worked with the City to more clearly prohibit future floating residential structures.

The solution in 1990 was to amend the SMP to include a new definition for a “house barge”, and prohibit future house-barges in the City (Ordinance 116051). The house barge definition was intended to be distinct from live-aboard use on a vessel (that is) “...designed and used for navigation... (SMC 23.60.942)”, as a house barge was defined by the SMP as a unique type of vessel (that is) “...designed and used as a place of residence without a means of self-propulsion and steering equipment or capability...(SMC 23.60.916)”. House barges that existed in the City prior to SMP amendment were grandfathered, but were required to register with the City and demonstrate within a 3-years timeframe, management of all wastewater generated by the residential use. The amendment prohibited discharge of black water (sewage) into surrounding water bodies and also required management of gray water (non-sewage wastewater), through either conveyance to an approved disposal facility or use of a treatment system approved by the Water Quality Program at the Washington State Department of Ecology (Ordinance 116328).

In addition to amendments to the SMP in 1987 and 1990, the City also developed guidance referenced as *Client Assistance Memo #229* (CAM 229) that was intended to further clarify the limited instances for which existing overwater residential uses are allowed within the City (Seattle, 2004). CAM #229 identified important characteristics to help distinguish floating homes, house barges and vessels, used by live-aboards. As illustrated in the following description from CAM #229, the City attempted to clarify that “vessels” are distinct as they need to be designed and used for navigation:

*“Vessels must be designed for navigation, including having a seaworthy hull design that meets U.S. Coast Guard standards for flotation, safety equipment, and fuel, electrical, and ventilation systems. They are capable of being used for water transportation, and if they are used for residential purposes they must be able to travel under their own power to open water, including a method for steering and propulsion, deck fittings, navigational and nautical equipment, and the required marine hardware absent these features, they will be categorized as house barges, as described above (Seattle, 2004; 2).”*

Therefore after 1990, if not on an existing floating home or house barge, the only other option for living on the water would be as a live-aboard on a “vessel” that is: “...designed and used for navigation (SMC 23.60.942).”

Despite attempts by the City and Ecology to clarify the limited instances for which the SMP would allow an overwater residential use, significant concern was voiced through the final stages of the City's SMP update by a number of Lake Union on-water residents that were seeking clarity on the legal status of their community of (approximately) 115 existing houseboats. These houseboats did not fit the definition of a "floating home" or a "house barge", and may or may not satisfy the "vessel" definition in the City's existing SMP. The groups concerns were expressed towards a number of components of the City's SMP-update, ranging from a perception that their interests were not represented on the City's Citizen Advisory Committee, to more substantive concerns related to their legal status under both the existing and proposed SMP.

As previously described, after local adoption of the updated SMP, the City Council responded to Lake Union on-water stakeholder concerns through establishment of the On-Water Stakeholder Group (SG) process. The SG were directed to develop recommendations to further clarify the status of existing floating structures that are not clearly identified as a vessel by the City's current SMP (SMC 23.60.942). Specifically, the SG was established to support the following objectives:

1. *Possible regulatory or procedural actions that can be taken by the City to provide greater certainty, clarity, or procedural safeguards for on water residences;*
2. *Possible legislative amendment to the Shoreline Master Program (SMP) that the Department of Ecology (DOE) agrees are sufficiently promising to merit formal review by DOE if adopted by the Council.*

The City further noted that the objective of the SG was to provide greater "certainty, clarity or procedural safeguards" for which recommendations would need to be consistent with the SMA, and not designed to legalize structures that are not vessels (Seattle, 2013b). Through five meetings between March 18 and May 21, 2013, the SG developed eight recommendations to the City Council, for which "consensus" was not reached on all the proposals. However, the SG did reach "consensus" on the following proposals:

- Establishment of a *Houseboat Vessel Live-aboard License (HVLL)* program,
- Amendments to the City's existing *Compliance Process, establishment of a Grey Water - Education, Outreach, and Technology* program, and
- Targeted amendments to sections of the City's proposed SMP (SMC 23.60A) for *Rules Going Forward*.

In addition, the SG reached "high-level consensus" on criteria for *Vessel Evaluation* and development of a *Gray Water Pilot Program*. The last proposal, *Gray Water – Proposed Regulations*, were supported by two stakeholder members, but did not receive either "consensus" or "high-level consensus" from the rest of the SG members (SOWRSG, 2013).

Ecology supported the SG process through grant funding (to hire an independent meeting facilitator), attendance at all five meetings, individual consultation with SG members, and coordination with DPD staff and the SG facilitator throughout the process.

The SG presented their recommendations to City Councils PLUS committee on July 10, 2014 followed by additional written feedback from Ecology<sup>13</sup> and City staff and a follow-up discussion with the committee on July 24, 2014. The Council accepted a number of the SG's recommendations by requesting that the Department of Planning and Development (DPD) proceed in drafting a "Directors Rule" to clarify the status of existing dwelling units floating on the water that are not a floating home or registered house barge (Seattle, 2013c).

In addition, passage of ESSB 6450 during the 2013/2014 legislative session provided the City and Ecology with the authority to authorize existing "floating on-water residence" as a conforming use, as long as the residence is legally established within a marina within the City prior to July 2014. Therefore, Ecology worked with the City to develop provisions for the updated SMP to accommodate existing floating on-water residences. These provisions are included in Ecology's conditional approval as both required (attachment B) and recommended (attachment C) changes.

*Ecology finds that the City's SMP standards related to overwater residential uses (subject to acceptance of Ecology's required changes) are generally consistent with SMP-Guideline requirements related to accommodating existing uses, while also prohibiting future overwater residences.*

*In addition, Ecology finds that vessel moorage is a limited resource within the City, as the Property Counselors (2009) market analysis reported in analyzing available land-supply and demand for water-dependent and water-related uses, there is an increasing demand for larger<sup>14</sup> slips, at a long-term growth rate greater than 0.6% per year. Further, because of the largely built-out, urban nature of the City's shoreline (especially in areas close to downtown such as Lake Union and the Ship Canal) and continual rising shoreline property values, future development of additional (new) moorage space to offset moorage demand within the City is not anticipated. In order to satisfy SMA policies related to prioritizing water-dependent use and to maintain consistency with SMP-Guideline requirements to manage shoreline impacts from live-aboard use of vessels, the City's updated SMP needs to appropriately manage these demands in a manner which recognizes the limitations and needs of water-dependent uses. Therefore, Ecology concludes that the City's SMP provisions managing moorage and live-aboard use of vessels are necessary to ensure compliance with the SMA and the SMP-Guidelines at WAC 173-26-241 (3) (c).*

*Ecology finds that the SMP-Guidelines only provide fairly general limits related to live-aboards, requiring that jurisdictions prohibit future over-water residential uses (WAC 173-26-241(j)) and limit impacts to shoreline resources from boaters living in their vessels (WAC 173-26-241 (c) (v)). Further, the SMP-Guidelines do not provide explicit standards or requirements dictating the way that a local jurisdiction should manage live-aboard's within boating facilities. As provided in the City's response to comments on this issue<sup>15</sup> (See attachment D), their intent in placing limits on the types of vessels (with dwelling units) allowed in the City, is based on their past experience in managing these uses and to satisfy applicable SMP-Guideline requirements. Therefore, the City's*

<sup>13</sup> Ecology provided a comment letter to the PLUS-committee dated July 15, 2013 with detailed feedback related to recommendations in the On Water Residents Stakeholder Group's final report.

<sup>14</sup> Larger slips are identified within the report as moorage for sailboats or large power boats that cannot be lifted out of the water and stored in a dry stacked facility (Property Counselors, 2009; 36).

<sup>15</sup> Comment and response in lines "F-12" and "F-13 on page 35 of Attachment D.

*approach is unique, but appears to be consistent with the underlying requirements in the SMP-Guidelines.*

*Related to floating on-water residences, Ecology finds that consistency with recent amendments to the SMA (ESSB 6450) can be achieved through the City's acceptance of required (attachment B) and recommended (attachment C) changes attached to this decision.*

**Shoreline Environment Designations:** Ecology's decision does not include any required (attachment B) or recommended (attachment C) changes to the City's shoreline environment designations.

**SMP Definitions:** as a part of Ecology's required changes (attachment B), a new definition for "floating on-water residences" is necessary to integrate legislative amendments to the SMA (ESSB 6450). In addition, the City requested a number of amendments adding, revising, or deleting a number of definitions from the locally adopted SMP. The changes requested by the City are provided as recommended changes and are provided in Attachment C.

*Therefore, Ecology finds that the proposed SMP as approved by the City under Ordinance 124105 is not consistent with all applicable SMP-Guideline requirements as specifically identified within Attachment B (Required Changes). However, Ecology also finds that the SMP can be amended to be compliant with the SMP-Guidelines through the City's acceptance of required changes listed within attachment B and recommended changes listed in attachment C.*

**Consistency with Chapter 90.58 RCW:** The proposed amendments have been reviewed for consistency with the policy and procedural requirements of RCW 90.58.020 and the approval criteria of RCW 90.58.090.

**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 -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City and submitted to Ecology as part of the City's formal submittal package following local adoption of the updated SMP.

**Consistency with SEPA Requirements:** The City submitted evidence of SEPA compliance. The City issued a Determination of Non-Significance for the proposed SMP amendments on June 29, 2012. Notice of the SEPA determination was published in *Daily Journal of Commerce*, the City provided an opportunity for the Public or interested parties to comment on the DNS between June 29 and July 20, 2012. Ecology did not provide comment on the City's DNS.

**Other Studies or Analyses supporting the SMP update:** Ecology reviewed a large number of reports, studies and information related to the City's SMP update, all of which are included in the master file record, or are listed as "references" at the end of this document.

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III);

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES: <u>underline</u> = new text; <del>(strike through)</del> = deleted text))	RATIONALE – ECOLOGY CONCLUSION
<i>SMP Policies:</i>				
1-B	SHORELINE GOALS & POLICIES - "Shoreline Protection"	SMP Goal	LU255 Avoid development in areas identified as special wildlife or priority saltwater or fresh water habitat unless no feasible alternative location exist, <u>except for a water-dependent use or water-related use that has a functional requirement for a location over water and is located in saltwater habitat that is priority habitat solely due to its use by anadromous fish for migration, provided the</u> <del>(and the new)</del> development <del>((is designed to))</del> mitigates impacts to achieve no net loss of ecological function.	Required changes to the identified policy, are necessary to recognize the Shoreline Management Act's preference to support water-dependent uses, pursuant to RCW 90.58.020 and WAC 173-26-201 (2) (d) in the SMP-Guidelines.
<i>Subchapter 3: General Provisions (Parts: 1-Use Standards, 2-Nonconforming Uses and Structures, 3-Development Standards, and 4-Shoreline Modifications)</i>				
2-B	PERMITS AND EXEMPTIONS - 23.60A.020.C.17	Temporary Development	<del>((17. Temporary development of four weeks or fewer if the development: a. Does not remove any native vegetation; b. Does not remove any trees greater than 6 inches DBH; c. Does not include the erection of a permanent structure; and d. Does not cause or contribute to permanent adverse impacts to ecological functions and mitigates any temporary adverse impacts to ecological function including impacts caused by overwater structures.))</del>	The proposed "temporary use" provisions are listed in the City's SMP as a shoreline exemption, but are not consist with Substantial Development Permit exemptions listed in RCW 90.58.030 or WAC 173-27.040. Pursuant to WAC 173-27-040 (2) (g), local jurisdictions are provided the authority to interpret "normal appurtenances" to a single-family residence, based on local circumstances. However, this authority does not extend to allow jurisdictions to create new categories of exemptions beyond residential appurtenance. Therefore, the "temporary development" exemption cannot be allowed, as part of the City's updated SMP, as the provisions are not consistent with the sections of the SMA (RCW 90.58) or the administrative WAC (173-27) as described above.
3-B	P-1 USE STANDARD: IDENTIFICATION OF PRINCIPAL AND ACCESSORY USES – 23.60A.090.A. 1. – 4.	Floating Home Moorages & Floating On-Water Residences as allowed uses	1. Boat moorage, off-loading goods from boats, dry <del>((--))</del> docks, swimming platforms, uses on vessels authorized under Sections 23.60A.214 and 23.60A.215, or other use components that by their nature require an over water location to operate; 2. Railroad, rail transit, streets, bridges and tunnels that reasonably need to cross water that is regulated in this Chapter 23.60A; <del>((--))</del> 3. <u>Floating home moorages, floating homes and floating on-water residences authorized under Section 23.60A.202 and 203; or</u> 4. <u>Allowed, allowed as a special use, allowed as a shoreline conditional use or allowed as a Council conditional use as a use overwater in the specific regulations for the type of use or for the shoreline environment.</u>	The SMP-Guidelines under WAC 173-26-241 (3) (I), require jurisdictions to prohibit new over-water residential uses, while also accommodating existing uses as a part of the comprehensive SMP-update. After local adoption of the City's updated SMP, the Washington State Legislature passed Engrossed Substitute Senate Bill 6450 (ESSB 6450), which amended the SMA under RCW 90.58.270, clarifying that existing "floating on-water residence" that are legally established prior to July 2014, shall be considered a "conforming use". Therefore, the required change is necessary to respond to the 2013/2014 amendment to the SMA (ESSB 6450), thus identifying existing "floating on-water residences" as an allowed over-water use in the City's updated SMP.
4-B	P-1 USE STANDARD: TEMPORARY DEVELOPMENT, SHORELINE MODIFICATION AND USES - 23.60A.092	Temporary use provisions	<del>((23.60A.092 Temporary development, shoreline modifications and uses A. Development, shoreline modification limited to floats, and uses that will occur for four weeks or less may be exempt from obtaining a shoreline substantial development permit as provided in Section 23.60A.020; developments that are exempt shall comply with the Shoreline Management Act and the standards and provisions of this Chapter 23.60A. B. Development or Uses for Up to Six Months 1. The Director may approve a permit for a development, shoreline modification or use for a time period of up to six months if the development, shoreline modification, or use complies with the standards and provisions of this Chapter 23.60A, except as provided in subsection 23.60A.092.B.2, and the following standards: a. Does not include the erection of a permanent structure; b. Does not cause or contribute to permanent adverse impacts to ecological functions and mitigates any temporary adverse impacts to ecological function; c. Does not remove or harm native vegetation; and d. If new impervious surface is created, this surface is removed and planted with native vegetation at the end of the temporary use. 2. If no reasonable alternative exists, in approving a temporary development or use the Director may allow: a. Views to be blocked; b. Public access to be blocked for a period of up to three months; and c. Development within the shoreline setback but farther than 15 feet from the OHW mark. C. Temporary development, floats, or uses shall not interrupt any legally established permanent use of a property.))</del>	Same rationale as item 2-B.



ATTACHMENT B - DEPARTMENT OF ECOLOGY REQUIRED CHANGES TO THE CITY OF SEATTLE COMPREHENSIVE SMP AMENDMENT (ORDINANCE #124105)

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES: <u>underline</u> = new text; ( <del>strikethrough</del> = deleted text)	RATIONALE – ECOLOGY CONCLUSION
			<p>f. Nonuse of(<del>Not using</del>) herbicides, pesticides or fertilizers; and</p> <p>g. Use((ing)) a double containment system when using <u>hazardous and/or toxic</u> products on the vessel <u>and floating on-water residence</u> to contain any spills in the second receptacle and prevent the products from entering the water.</p> <p>3. 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 as a minimum standard.</p> <p>4. Non-commercial slip-side vessel <u>and floating on-water residences</u> maintenance is limited to:</p> <p>a. Interior vessel <u>and floating on-water residence</u> repair and cleaning, replacement of running gear and other cleaning and repair activities excluding hull scraping and painting, which is prohibited.</p> <p>b. Twenty-five percent of the exterior of the vessel <u>and floating on-water residence</u> above the deck at any one time; exterior work involving paint, varnish and other toxic substances below the deck is prohibited. The Director may establish appropriate BMPs based on Department of Ecology’s Resource Manual for Pollution Prevention in Marinas May 1998, Revised 2009 Publication #9811 in a Director’s Rule.</p> <p>5. Marinas shall provide restrooms connected to the sewer system for use by any patron of the marina facility. At a minimum, the facilities are required to include one toilet and one washbasin. The Director shall determine the need for additional facilities to provide reasonable hygiene based on the number of slips, percentage of live-aboard slips, and the number of transient moorage slips within the marina.</p> <p>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>7. 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 reasonable.</p>	<p><i>the need to address “floating on-water residences” in response to stakeholder’s request, passage of ESSB 6450 and consistency with amendments to RCW 90.58.270.</i></p>
10-B	<p>FLOATING ON-WATER RESIDENCE STANDARDS (New) 23.60A.203. (A. – F.)</p>	<p>Floating on-water residences authorization, maintenance, repair, remodeling, relocation, expansion, rebuilding and replacement. AND “D”Administrati on Registration of Floating on-water residences AND “E.”Minimizing impacts on the aquatic environment from Floating on-water residences</p>	<p><u>23.60A.203 Standards for floating on-water residences</u></p> <p><u>A. 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. Locating other uses on floating on-water uses authorized pursuant to this section 23.60A.203 is prohibited.</u></p> <p><u>B. For purposes of this Chapter 23.60A, a floating on-water residence is allowed only if it:</u></p> <p><u>1. Was used as a dwelling unit within the City prior to July 1, 2014.</u></p> <p><u>2. Was moored pursuant to a lease or ownership interest at a marina, as defined by Section 23.60A.926, within the City prior to July 1, 2014.</u></p> <p><u>C. Maintenance and repair, remodeling, relocation, expansion, rebuilding, and replacement</u></p> <p><u>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:</u></p> <p><u>a. Normal maintenance and repair, as defined in Section 23.60A.020.C.1, is allowed, and replacement is not considered the common method of repair for this type of structure.</u></p> <p><u>b. Remodeling is limited to the interior and to changing the siding or architectural features on the exterior of the existing structure, except that exterior open railings may be added as part of a remodel as allowed in subsection 23.60A.203.C.1.c.</u></p> <p><u>c. Open railings may be added around existing exterior spaces and stairs to access these spaces, provided that 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.</u></p> <p><u>d. Relocation is allowed, and owners should update the floating on-water residence verification within 60 days.</u></p> <p><u>e. Expansion is allowed provided that:</u></p> <p><u>1) The height of the structure shall not exceed 18 feet if the current height of a floating on-water residence is 18 feet or lower, measured from the main deck or three feet above the surface of the water, whichever is lower;</u></p> <p><u>2) The height of the structure shall not exceed the current height if the current height of a floating on-water residence is more than 18 feet but less than 21 feet, measured from the main deck or three feet above the surface of the water, whichever is lower;</u></p> <p><u>3) The height of the structure shall not exceed 21 feet if the current height of a floating on-water residence is 21 feet or more, measured from the main deck or three feet above the surface of the water, whichever is lower; and</u></p> <p><u>4) No expansion of overwater coverage is allowed, except a single expansion at or below the surface of the water may occur as follows:</u></p> <p><u>a) The applicant provides documentation demonstrating that the expansion is the minimum necessary to provide stability as certified by a naval architect to correct stability problems for the structural size and configuration that existed before July 1, 2014, and the area of such expansion shall not be used for any purpose other than to provide stability; and</u></p>	<p><i>Similar to the rationale described above (under Item #2), 2013/2014 amendments to RCW 90.58.270 require that the City’s updated SMP consider existing “Floating On-Water Residence” that are legally established prior to July 2014, as a conforming use in the updated SMP. In addition, ESSB 6450 requires that a updated SMP, accommodate legally established “Floating On-Water Residences”:</i></p> <p><i>“...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.”</i></p> <p><i>In response to on-going stakeholder requests for clarity and conforming status of existing houseboats (SOWRSG, 2013), and to comply with ESSB 6450, a new section will be provided in the updated SMP, dedicated to managing existing, legally established “Floating On-Water Residences”.</i></p> <p><i>Consistent with ESSB 6450, the new section of the SMP in 23.60A.203: distinguish “Floating On-Water Residences” from a “Floating Home” (subsection “A”), clarifies when an existing “Floating On-Water Residence” needed to be moored in the City (subsection “B”), and provides reasonable development standards related to “maintenance, repair, remodeling, relocation, expansion, rebuilding and replacement” (subsection “C”). Subsection “D” provide administrative provisions that the City intends to use to verify that an existing “Floating On-Water Residence” is “legally established”. Subsection “E” identifies best management practices to minimize on-water residential impacts to aquatic resources.</i></p> <p><i>Ecology finds that the development regulations provided in subsection “C” are “reasonable”, consistent with RCW 90.58.270, as “repair” and “maintenance” of existing legally established Floating On-Water Residence would not require compensatory mitigation, but would require owners/tenants to follow best management practices (subsection “E”), to minimize ecological impacts to aquatic resources.</i></p>

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			<p>b) If an expansion is allowed under subsection 23.60A.203.C.1.e.4.a, no other expansion is allowed below, at or above the waterline for any purpose.</p> <p><del>5) If the total expansion over the life of the structure exceeds 120 square feet, gray-water containment or a waste-water hookup that disposes the gray water to the City's waste-water disposal system is required.</del></p> <p>f. Replacement to the same size and configuration as established in the verification issued pursuant to subsection 23.60A.203.D as updated is allowed.</p> <p>g. Replacement with expansion shall comply with the standards in 23.60A.203.C.1.e, including the requirement that expansions greater than 120 square feet shall provide gray-water containment or a waste-water hookup that disposes the gray water to the City's waste-water disposal system.</p> <p>2. When an owner of a verified floating on-water residence intends to expand, rebuild or replace the structure, prior to beginning any work:</p> <p>a. The owner/applicant shall present information to the Director demonstrating that the floating on-water residence will comply with subsection 23.60A.203.C.1. e through g, as applicable;</p> <p>b. The owner/applicant shall demonstrate any expansion will not create future stability problems for the floating on-water residence; and</p> <p>c. The owner/applicant shall update the verification records under subsection 23.60A.203.D.</p> <p><b>D. Verification of a floating on-water residence</b></p> <p>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 plate. The fee shall be established by the Director to recover the reasonable costs of the program for issuing verification number plates. Owners of 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.</p> <p>2. Verification shall constitute legal establishment of a floating on-water residence pursuant to the definition of floating on-water residence in Section 23.60A.912.</p> <p>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.</p> <p>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 SMC following a decision of the hearing examiner upholding the City's denial of floating on-water residence verification.</p> <p>5. The owner shall display the verification number plate issued by the DPD on the pier and landward side of the floating on-water residence or on the side most commonly used for access from the pier.</p> <p>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.</p> <p>7. Verification is transferable between owners but not transferable to another floating on-water residence, except for a replaced floating on-water residence as provided in subsection 23.60A.203.C.1.f and g.</p> <p><b>E. Minimizing impacts on the aquatic environment</b></p> <p>1. Owners and tenants of floating on-water residences shall use best management practices to minimize impacts on the aquatic environment. The best management practices include, but are not limited to, the following:</p> <p>a. Eliminate sewage discharge by either sealing overboard discharge and conveying sewage discharge to an approved disposal facility using a pump out station, a pump out service or other appropriate method or using port-a-potty or similar device and disposing of the sewage at a facility that is connected to the City's waste-water disposal system;</p> <p>b. Dispose of garbage, food scraps, waste material and recyclables into appropriate on-land receptacles;</p> <p>c. Secure all outside furniture, barbeque grills, plant containers and other material to ensure that they do not enter the water because of wind or wave action;</p> <p>d. Use natural and toxic free building material in exterior areas;</p> <p>e. Use natural and toxic free cleaning and other household products in outside areas and on exterior structures;</p> <p>f. Nonuse of herbicides, pesticides or fertilizers in outside areas or on the exterior of the structure; and</p> <p>g. Use a double containment system when using toxic and/or chemical liquid products outside to contain any spills in the second receptacle to prevent these products from entering the water.</p> <p>2. The Director may establish alternate or additional best management practices to implement the requirements of subsection 23.60A.203.E by Director's Rule.</p>	<p>SMP development standards require mitigation in the form of gray water containment or wastewater hook-up for (future) expansion (exceeding 120 square feet) of an existing Floating On-Water Residence through remodeling, rebuilding or replacement actions.</p> <p>As noted within the City's Shoreline Characterization (Seattle 2010) and Cumulative Impact Assessment (Seattle, 2012c,) water quality functions are currently degraded within Lake Union, the Ship Canal and Portage Bay, for which further water quality impacts through increased water temperature or lower dissolved oxygen would be detrimental to endangered species that migrate through these areas, and thus, should be avoided in managing future non-water oriented development (WRIA-8, 2005 and SPU-ACOE, 2008; 87). Currently the federal Clean Water Act does not regulate "normal discharges incidental to the normal operation of a recreational vessels (USEPA, 2011)". It is not clear if this exception applies to the live-aboard use of a vessel or floating on-water residence moored within a marina? Regardless, in 2008 Congress passed the "Clean Boating Act" that directed EPA to develop appropriate management practices related to recreational vessel discharge and directed the US Coast Guard to enforce any practices developed by EPA<sup>3</sup>, the status of this effort is on-going, for which it appears that EPA are currently working on their second of three phases in developing updated management requirements. However, overboard discharge of gray water effluent is known to contain nutrients (USEPA, 2009 and 2011), which further contribute to increased water temperature and lower dissolved oxygen levels in shallow water bodies with limited circulation, such as Lake Union (WRIA-8, 2005 and SPU-ACOE, 2008; 87). Therefore, future development contributing to water quality concerns in these areas, should be appropriately managed to ensure compliance with SMP-Guideline requirements related to Environmental Impact Mitigation (WAC 173-26-201 (2) (e)) and maintaining no net loss of shoreline ecological functions pursuant to WAC 173-26-186 (8).</p> <p>Ecology further finds that the City's regulation are practicable and will not "effectively preclude" the continued use of an existing legally established floating on-water residence consistent with RCW 90.58.270 (6) (a) and (b). The provisions also satisfy concerns voiced by stakeholders participating in the City's SMP-update, which requested clarification from the City pertaining to the conforming status of existing residences (SOWRSG, 2013; 5 and Attachment D). Consistent with ESSB 6450<sup>4</sup>, the identified provisions require "reasonable conditions and mitigation", in the form of on-going compliance with Best Management Practices to minimize impacts to aquatic environment. Also consistent with the intent of ESSB 6450 to "preserve the existence and vitality of current, floating on-water residential uses... (Section 1. (3))", the identified provisions authorize on-going "repair" and "maintenance" of existing residences without compensatory mitigation. The provisions do require mitigation for future development associated with expansion of an existing floating on-water residence, consistent with SMP-Guideline requirements to maintain no net loss of shoreline ecological functions (WAC 173-26-186 (8)). Therefore, considering the current ecologic conditions within Lake Union, the Ship Canal and Portage Bay and consistent with SMP-Guideline requirements, Ecology concludes that mitigation related to</p>

<sup>3</sup> Information provided on "Clean Boating Act History from EPA's website at: [http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/index.cfm#CP\\_JUMP\\_526476](http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/index.cfm#CP_JUMP_526476)

<sup>4</sup> RCW 90.58.270 (6) (a) states: "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."

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				water-quality impacts associated with gray water discharge should be required for (future) expansion that exceeds 120 square feet, on an existing legally established floating on-water residences.	
11-B	STANDARDS FOR RESIDENCES OTHER THAN FLOATING HOMES HOUR BARGES AND VESSELS USE AS DWELLING UNITS - 23.60A.206..	Over-water Residence Standards	<b>23.60A.206 Standards for residences other than floating homes, <u>floating on-water residences</u>, house barges, and vessels (<del>(used as)</del>)containing dwelling units</b> A. Floating homes, <u>floating on-water residences</u> , house barges, and vessels ( <del>(used as)</del> )containing dwelling units that comply with the standards of Sections 23.60A.202, <u>23.60A.203</u> , 23.60A.204, and 23.60A.214, respectively, are not subject to the standards of this Section 23.60A.206.	See rationale for items #3-B, #9-B, #10-S, and #11-B describing the need to address "floating on-water residences" in response to stakeholder's request, passage of ESSB 6450 and consistency with amendments to RCW 90.58.270.	
12-B	STANDARDS FOR VESSELS AS DWELLING UNITS - 23.60A.214. [New] <u>E - F.</u>	Vessel dwelling unit standard for minimizing aquatic impacts	<b>E. Minimizing impacts on the aquatic environment</b> <b>1. Owners and tenants of vessels containing dwelling units shall use best management practices to minimize impacts on the aquatic environment. The best management practices include, but are not limited to, the following:</b> <b>a. Eliminate sewage discharge by either sealing overboard discharge and conveying sewage discharge to an approved disposal facility using a pump out station, a pump out service or other appropriate method or using port-a-potty or similar device and disposing the sewage at a facility that is connected to the City's waste-water disposal system;</b> <b>b. Disposing of garbage, food scraps, waste material and recyclables into the appropriate on-land receptacles;</b> <b>c. Securing all outside furniture, barbeque grills, plant containers and other material to ensure that they do not enter the water because of wind or wave action;</b> <b>d. Using natural and chemical free building material in exterior area;</b> <b>e. Using natural and chemical free cleaning and other household products in outside areas and on exterior structures;</b> <b>f. Not using herbicides, pesticides or fertilizers in outside areas or on the exterior of the structure; and</b> <b>g. Using a double containment system when using toxic and/or chemical liquid products outside to contain any spills in the second receptacle to prevent these products from entering the water.</b> <b>2. The Director may establish appropriate best management practices to implement the requirements of subsection 23.60A.214.F by Director's Rule.</b> <b>F. If the Director has issued an order finding a vessel does not qualify as a conventional recreational vessel under subsection 23.60A.214.B.1, the owner may appeal the Director's determination to the hearing examiner within 30 days of the date the Director's determination was mailed pursuant to the provisions in Chapter 23.76.</b>	The identified Best Management Practices (BMP's) are intended to minimize impacts to the aquatic environment as a "Standards for vessels as dwelling unit" (23.60A.214) and as part of "Marina standards" (23.60A.200.B) applicable to: floating on-water residence and house barges that are moored within a marina. The BMP's are necessary to ensure consistency with SMP-Guideline Boating Facility requirements to, "... limit the impacts to shoreline resources from boaters living in their vessels" (WAC 173-26-241 (c) (v)).	
<b>Subchapter 5 The Conservancy Management (CM) Environment</b>					
13-B	USES IN THE CM ENVIRONMENT - 23.60A.224.A.	Conservancy Management use provision	A. AGRICULTURAL AND FOREST PRACTICE	(X)	The identified change to consider "Aquaculture" activities as a "conditional use" within the City's conservancy designations (i.e., CM, CR, CW, and UR) are necessary to ensure consistency with SMP-Guideline requirements and respond to public comments <sup>5</sup> (Attachment D; 27).  The SMP-Guidelines at WAC 173-26-241 (3) (b) recognize Aquaculture as a preferred, water-dependent use that is still evolving through the development of new technology and techniques related to the culture or farming of fish, shellfish, or other aquatic plants and animals. Therefore, the SMP-Guidelines require that local jurisdictions build in some flexibility to adapt to future forms of aquaculture, beyond the common practices that currently exist. Further, as a preferred, water-dependent use, aquaculture uses should not be prohibited without a definitive rationale responding to both SMA policies and SMP-Guideline requirements. The record from the City does not provide a rationale or analysis supporting the prohibition of aquaculture. Ecology recognizes that the urban nature of most of the City's shoreline may not seem immediately appropriate to support aquaculture. However, requirements within the SMP-Guidelines do not require a local jurisdiction to include specific aquaculture development regulation to manage the use as a permitted use, but rather require that opportunities to consider allowing new forms of
			A.1 Aquaculture	<u>CU</u>	
			A.2 Other agriculture and forest practice uses	<u>X</u>	

<sup>5</sup> Comments in line "F-2" on page 27 of Attachment D.

