

# City of Seattle

## Shoreline Master Program Update

### Addendum to the August 28, 2012, Director's Report

This Addendum to the SMP Update August 28, 2012, Director's Report explains the changes to Ordinance 124105 and the source of the changes.

### INTRODUCTION

The City Council adopted Ordinance 124105 in January 2013 updating the City's Shoreline Master Program (SMP). The SMP is a requirement under the State of Washington's Shoreline Management Act (SMA), created by citizen referendum in 1972. The SMA establishes policy goals for the management of shorelines, and the state's SMP guidelines establish the requirements on how to achieve the policy goals.

In 2003, the state required an update of the SMP. The City Council adopted the update in January of 2013 with Ordinance 124105. For additional background information on the SMP update requirements see the August 2012 Director's Report prepared for the SMP update:

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

After the adoption of the updated Shoreline Master Program by the City Council and Mayor, the state Department of Ecology (DOE) is required to review the regulations for compliance with the Shoreline Master Program Guidelines, take public comment for a minimum of 30 days, and hold a public hearing. DOE concluded this process and issued a Conditional Approval of the Shoreline Master Program on June 5, 2014. The Conditional Approval contains three main components:

1. Assessment of DPD's update process and final ordinance meeting the requirements of WAC 173-26 (Shoreline Master Program Guidelines). DOE's assessment is that DPD met all of the requirements (Attachment A).
2. DOE identified specific changes to the January 2013 adopted SMP ordinance required to make the proposal approvable (Attachment B).
3. Recommended changes to the January 2013 adopted SMP ordinance (Attachment C). These changes include DOE and DPD recommendations.

These three documents, and the ordinance that responds to the conditional approval, can be found on DPD's website:

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

In response to DOE’s required and recommended changes, as well as additional changes, DPD is proposing legislation amending Ordinance 124105. After City Council adoption, the Mayor’s approval, and DOE final concurrence, the SMP update process will conclude as described in the next section of this report.

## DEPARTMENT OF ECOLOGY ADOPTION PROCESS

After City Council adopts and the Mayor signs the amended SMP and 30 days have expired, DPD will submit the final amendments to DOE for their final review and approval. Changes that are made to DOE’s June 2014 Conditional Approval are required to be consistent with the Conditional Approval, and these changes must include an explanation of how they are consistent with DOE’s Conditional Approval. If DOE determines that the proposed amendments are consistent, the SMP will become effective 14 days after DOE’s final determination. If DOE determines that Seattle’s SMP is inconsistent with their June 2014 Conditional Approval, DOE will require Seattle to re-submit their SMP for another review and approval process.

## SUMMARY OF PUBLIC PARTICIPATION - since Council Adoption, January 2013

In addition to earlier opportunities for public input during the eight-year process to arrive at this point, the Shoreline Master Program Guidelines requirements were met as follows: the Department of Ecology’s comment period extended from September 3, 2013, to November 4, 2013, for a total of 62 days and DOE’s public hearing was held on September 11, 2013. DPD also continued to meet with the Lake Union Liveaboard Association, the Floating Home Association, Shilshole Bay Marina and Washington State Liveaboard Associations, marina owners, and maritime industrial stakeholders including the Port of Seattle and the North Seattle Industrial Association throughout 2013 and 2014 including the following dates:

<b>Date</b>	<b>Topic Discussed</b>	<b>Participants</b> (in addition to City of Seattle Executive staff)
March 18, April 8, April 22 & May 21, 2013	On-water residence provisions in general	Lake Union Liveaboard Association (LULA)
April 18, 2013	Enforcement of on-water residence provisions	LULA
June 3, 2013	Marina provisions	Marina owner representative
July 8, 2013	On-water residence provisions in general	LULA
July 10, 2013	City Council Planning, Land Use and Sustainability (PLUS) Committee discussion on-water residence provisions in general	PLUS members, LULA

July 16, 2013	On-water residence provisions in general	Vessel stakeholders and LULA
July 24, 2013	PLUS Committee discussion of vessels and on-water residence provisions in general	City Council PLUS members, LULA
August 22, 2013	On-water residence provisions in general	LULA
October 1, 2013	DPD public meeting on vessels and on-water residences	LULA, various stakeholders
October 11, 2013	Marina provisions	Marina owner representative
October 28, 2013	On-water residence provisions in general	LULA
January 15, 2014	On-water residence provisions in general	LULA
March 24, 2014	On-water residence provisions in general	LULA, DOE
April 2, 2014	On-water residence provisions in general	LULA
April 14, 2014	SMP update in general	Shilshole Bay Marina and Washington State Liveboard Associations
June 30, 2014	DPD and DOE informational public meeting - DPD draft response to DOE's recommended and required changes and next steps in the approval process	Various stakeholders
June 30 to August 14, 2014	Public comment period	Comments received from various stakeholders
August 4, 2014	Maritime and industrial provisions and Environmentally Critical Areas regulations	Maritime and industrial representative, including Port of Seattle and North Seattle Industrial Association
September 4, 2014	Floating home regulations	Floating Home Association
September 15, 2014	Provisions applicable to Coleman Dock	Representatives of WA state ferries

Additional meetings and/or correspondence continued up until DPD made recommendations to the Mayor for an ordinance to send to the City Council to respond to the DOE Conditional Approval.

## DOE'S REQUIRED CHANGES

The 29 required changes to the January 2013 SMP adopted ordinance are grouped by general topic and location in DPD's proposed ordinance as follows:

<b>Summary of Required Changes</b>	<b>DOE Item(s) from Table B</b>	<b>DPD Proposed Ordinance Section (and sections and subsections of the SMC)</b>
Include a policy change to allow water-dependent and water related-uses to be located in the migratory habitat of aquatic species without providing an analysis that no feasible alternative location exists.	1-B	Section 1 (Comprehensive Plan Policy LU255)
Remove temporary use regulations that are not consistent with state law.	2-B, 4-B	Sections 2, 5 (Subsection 23.60A.020.C.17 and Section 23.60A.092)
Include floating on-water residences regulations in accordance with 2014 Senate Bill 6450.	3-B, 9-B, 10-B, 11-B, 30-B	Sections 4, 18, 20, 22, 64 (Subsections 23.60A.090.A.1 -4, 23.60A.200.B; and Sections 23.60A.203, 23.60A.206 and 23.60A.912)
Clarify the Archaeological & Historic Preservation Development Standards.	5-B	Section 7 (Section 23.60A.154)
Clarify the Environmentally Critical Areas definitions.	6-B	Section 9 (Section 23.60A.156)
Include additional management and protection of native vegetation.	7-B, 8-B	Sections 16, 17 (Subsections 23.60A.190.D.4 and 23.60A.193.B)
Apply standards to minimize impacts to the aquatic environment from vessels containing a dwelling when moored at a marina.	12-B	Section 23 (Subsections 23.60A.214.E and F)
Include a requirement to allow aquaculture in all but the Conservancy Preservation shoreline environment as a Conditional Use.	13-B, 15-B, 17-B, 27-B	Sections 26, 29, 31, 58 (Subsections 23.60A.224.A, 23.60A.282.A, 23.60A.310.A, and 23.60A.540.A)
Add an additional standard for nonwater-oriented uses in the	14-B	Section 26 (Subsection

Conservancy Management environment to comply with use requirements.		23.60A.224.B.1)
Decrease the distance needed to trigger the requirement for public access for multi-family residential development.	16-B, 20-B, 29-B	Sections 30, 38, 60 (Subsections 23.60A.294.A.1, 23.60A.392.A.1.a, and 23.60A.578.A.1)
Include lists of the uses that are allowed on upland lots in the Urban Commercial (UC), Urban General (UG), Urban Industrial (UI), and the Urban Maritime (UM) shoreline environments.	18-B,19-B, 21-B, 23-B, 24-B, 25-B, 26-B	Sections 32, 33, 40, 46, 47, 51, 52 (Sections 23.60A.382, 23.60A.383, 23.60A.402, 23.60A.482, 23.60A.483, 23.60A.502, and 23.60A.503)
Increase the setback required from the ordinary high water mark in the UG environment to meet no net loss of ecological function, to be consistent with DOE Guideline requirements including the science and technical information described in WAC 173-26-201(2)(a).	22-B	Section 41 (Subsection 23.60A.410.A)
Include additional setback standards for the Urban Residential shoreline environment to meet the state's requirement for no net loss of ecological function.	28-B	Section 59 (Subsection 23.60A.575.A)

## DOE'S RECOMMENDED CHANGES

The 109 recommended changes to the January 2013 SMP adopted ordinance are primarily minor non-substantive to add clarity, correct typos, and improve internal consistency. The City requested some of these edits, and some are recommended by DOE in response to comments received. The recommended changes are grouped by general topic and location in DPD's proposed ordinance as follows:

<b>Type of Clarifying Change</b>	<b>DOE Items From Table C</b>	<b>DPD Proposed Ordinance Section (and sections and subsections of the SMC)</b>
Correct grammar or typos - changing "&" to "and" adding a word such as "In" or "the" or "if."	3-C, 8-C, 28-C, 41-C, 54-C, 59-C, 60-C, 77-C, 84-C, 87-C,	Throughout the ordinance

<p>Clarifications made in response to comments and provide more consistency between sections for the same standards, such as the verification process for various types of living over water.</p>	<p>2-C, 10-C, 11-C, 12-C, 17-C, 18-C, 20-C, 21-C, 25C, 26-C, 27-C, 92-C, 94-C, 96-C, 98-C, 99-C, 100-C,</p>	<p>Sections 1, 8, 12, 13, 17, 18, 19, 21, 23, 62, 64, 66, 69, 70, 71 (Comprehensive Plan Policy LU258; Sections 23.60A.155, 23.60A.164, 23.60A.167, 23.60A.190, 23.60A.200, 23.60A.202, 23.60A.204, 23.60A.214, 23.60A.906, 23.60A.912, 23.60A.916, 23.60A.926, 23.60A.928, 23.60A.930)</p>
<p>Clarifications include:        Change words “and” to “or”; “in” to “part of”; “an area equal to” to “a minimum of”; “surface of the” to “dry land area of the”.        Add details on measurements, including where a measurement should be taken from and what part of a lot should be measured.</p>	<p>4-C, 22-C, 28-C, 29-C, 37-C, 38-C 39-C, 40-C, 41-C, 43-C, 44-C, 45-C, 48-C, 49-C, 51-C, 52-C, 54-C, 55-C, 56-C, 57-C, 61-C, 63-C, 64-C, 65-C, 66-C, 67-C, 68-C, 72-C, 76-C, 78-C, 79-C, 80-C, 85-C, 86-C, 87-C, 88-C, 105-C</p>	<p>Throughout the ordinance</p>
<p>Clarify what a plan shoreline permit is, and the permit process for this type of permit.</p>	<p>5-C, 6-C, 7-C, 29-C, 34-C, 35-C, 70-C, 71-C, 94-C</p>	<p>Throughout the ordinance</p>
<p>Clarify the general development standards and correct typos.</p>	<p>9-C</p>	<p>Section 6 (Section 23.60A.152)</p>
<p>Clarify of the meaning of “lot” and “site” and “area.”</p>	<p>22-C, 43-C, 48-C, 49-C, 52-C, 54-C, 55-C, 56-C, 57-C, 64-C, 65-C, 66-C, 67-C, 68-C, 72-C, 79-C, 80-C, 83-C, 89-C, 91-C, 92-C, 93-C, 98-C, 102-C, 105-C, 107-C</p>	<p>Throughout the ordinance</p>
<p>Provide more flexibility to where mitigation and ecological restoration can occur.</p>	<p>10-C, 12-C, 30-C, 31-C, 32-C, 33-C, 36-C, 38-C, 42-C, 45-C, 47-C, 49-C, 50-C, 52-C 53-C, 54-C, 55-C, 57-C,</p>	<p>Throughout the ordinance</p>

	59-C, 66-C, 67-C, 69-C, 74-C, 75-C, 81-C, 82-C, 86-C, 89-C, 90-C,	
Consolidate Best Management Practice (BMP) provisions in a new Section 23.60A.155 in response to comments. The use of Section 23.60A.155 for BMPs is a different use of this Section from that proposed by DOE in its recommendation in 10-C, see the description of new Section 23.60A.159 in the next table below.	10-C, 15-C, 24-C, 25-C	Sections 8, 15, 19, 21 (Sections 23.60A.155, 23.60A.187, 23.60A.202, 23.60A.204)
Respond to Senate Bill 6450 by adding a definition of “remodel” for on-water floating residences.	19-C, 25-C, 101-C	Sections 18, 21, 72 (Sections 23.60A.200, 23.60A.204, 23.60A.934)
Respond to floating homes related comments on regulations for existing floating homes.	20-C, 21-C, 22-C, 23-C	Section 19 (Section 23.60A.202)
Clarify the boundaries of upland lots for application of height limits in the UC Environment.	46-C	Section 35 (Section 23.60A.386)
Add a height standard in the Urban Harborfront Environment in response to a comment.	58-C	Section 43 (Section 23.60A.446)
Clarify use regulations on upland lots in the Urban Industrial (UI) Environment in response to comments.	62-C	Section 46 (Section 23.60A.482)
Correct an inadvertent change that was made by staff to the shoreline setback for uses that are not water-dependent in the UI Environment. This 60-ft setback is a requirement in the existing SMP and was proposed to remain in the new SMP. The inadvertent change occurred during the Council review process. Therefore, this change restores the original and long-standing setback of 60-ft.	73-C	Section 50 (Section 23.60A.490)
Clarify criteria for allowing non-water oriented uses on waterfront lots in the UI and UM Environments.	67-C, 83-C	Sections 46, 51 (Sections 23.60A.482, 23.60A.502)
Clarify and add definitions, delete an	92-C, 93-C, 94-C,	Sections 62, 63, 64, 65, 66, 67, 69,

irrelevant definition, move a definition to correct alphabetical order, and delete a duplicate definition and correct references.	95-C, 96-C, 97-C, 98-C, 99-C, 100-C, 102-C, 103-C, 104-C, 106-C	70, 71, 73, 74, 76 (Sections 23.60A.906, 23.60A.908, 23.60A.912, 23.60A.914, 23.60A.916, 23.60A.918, 23.60A.926, 23.60A.928, 23.60A.930, 23.60A.936, 23.60A.938, 23.60A.944)
Add detail regarding what is covered under enforcement of the SMP and add a reference to the required standard for review.	108-C	Section 80 (Section 23.91.002)
Clarify that Environmentally Critical Areas are designated in that Code (SMC 25.09) and are regulated within shoreline areas under the SMP. These changes are in response to comments and are consistent with the Growth Management Act and with the SMA policy to accommodate uses (RCW 98.58.020).	109-C	Section 82 (Section 25.09.020)

## ADDITIONAL DPD CHANGES

In addition to the changes as a result of DOE's Conditional Approval, DPD is proposing revisions related to additional comments received, after DOE's Conditional Approval, as well as revisions that are primarily clarifications, formatting and corrections. As noted certain changes will be considered as an alternate proposal to what was reviewed by DOE earlier this year. The changes are described in the following table.

### Changes after DOE's Conditional Approval

<b>Summary of Changes after DOE's Conditional Approval</b>	<b>DPD Proposed Ordinance Section (and sections and subsections of the SMC)</b>	<b>Explanation of changes. Alternatives to DOE's Conditional Approval are noted.</b>
Add a reference to flood plain area identification as adopted by the City Council in Ordinance 124447, which became effective in April 2014.	Section 9 (Section 23.60A.156)	This is a clarifying reference. These floodplain provisions were adopted in response to federal government requirements.
Add a new Section 23.60A.159 to accommodate DOE's	Section 11 (Section	This is in direct response to a DOE recommendation, but the



<p>recommendation 10-C to provide criteria used to guide administration of provisions for ecological restoration and off-site mitigation.</p>	<p>23.60A.159)</p>	<p>City is proposing an alternate location in the SMP.</p>
<p>Clarify provisions for existing floating homes:</p> <ul style="list-style-type: none"> <li>• Allow five (rather than two) floating home moorages or sites to be added in the UC Environment;</li> <li>• Allow modifications to the setback and float separation requirements when moorage in other locations is lost, consistent with fire and life safety codes ('Safe Harbor' provision);</li> <li>• Provide flexibility to reconfigure an existing floating home moorage to accommodate floating homes when moorage in other locations is lost ('Safe Harbor' provision);</li> <li>• Clarify that a City determination does not convey compliance with other state or federal requirements on waters managed by Washington State Department of Natural Resources;</li> <li>• Provide flexibility for reconfiguring floating home sites that extend into rights-of-way (ROW) as long as the amount of the extension into the ROW is not increased overall;</li> <li>• Clarify that replacement of existing Styrofoam floats is required only to the extent of any proposed repair or replacement work;</li> <li>• Make the deck of the structure (up to 3 feet above the surface of the water) the starting point for the application of height limits, consistent with the approach proposed for floating on-water</li> </ul>	<p>Section 19 (Section 23.60A.202)</p>	<p>The proposed changes are in response to comments received from the Floating Home Association after DOE's Conditional Approval. These changes are consistent with the purpose and intent of the changes originally submitted by DPD and with the policy of RCW 90.58.020 and the applicable Ecology guidelines for existing floating homes. These proposed changes are intended to better implement existing Safe Harbor provisions and to clarify measurements, requirements and procedures for existing floating homes. A procedural provision is added that allows for an appeal of the Director's decision for registering floating homes consistent with Ecology approved provisions for similar decisions.</p>

<p>residences; and</p> <ul style="list-style-type: none"> <li>• Provide an appeal to the hearing examiner if an applicant disputes the Director’s denial of registration of a floating home.</li> </ul>		
<p>Clarify provisions for floating on-water residences:</p> <ul style="list-style-type: none"> <li>• Structures and additions shall not exceed the height limit;</li> <li>• Floating on-water residences may be replaced to the same size and configuration as a verified existing residence and is considered conforming to regulations even if it exceeds the height limit; and</li> <li>• The City is not precluded from carrying out its enforcement responsibilities related to the verification process whether or not a decision of the Director of DPD is appealed to the Hearing Examiner.</li> </ul>	<p>Section 20 (Section 23.60A.203)</p>	<p>These changes are an alternative to DOE’s Conditional Approval and clarify nonconformity, height limits, and the City’s enforcement responsibilities when there is no appeal of the Director’s decision.</p>
<p>Clarify for floating structures (that are not floating on water residences or floating homes) and house barges:</p> <ul style="list-style-type: none"> <li>• Structures and additions shall not exceed the height limit; and</li> <li>• The City is not precluded from carrying out its enforcement responsibilities related to the existing City required verification process if a decision of the Director of DPD is not appealed to the Hearing Examiner.</li> </ul>	<p>Section 21 (Section 23.60A.204)</p>	<p>These changes are an alternative to DOE’s conditional approval and clarify height limits and the City’s enforcement responsibilities when there is no appeal of the Director’s decision.</p>
<p>Clarify the City’s enforcement responsibilities related to the verification process if a decision of the Director of DPD is not appealed to the Hearing Examiner.</p>	<p>Section 23 (Subsection 23.60A.214.D)</p>	<p>These changes are an alternative to DOE’s conditional approval and clarify the original provision approved by DOE regarding enforcement when there is no appeal for a vessel with a dwelling unit.</p>

Clarify uses that are allowed and prohibited.	Sections 34, 48, 53 (Sections 23.60A.384, 23.60A.484, 23.60A.504)	These changes do not change the intent of the regulations submitted to DOE.
This change reverts to the original City and WAC definition of vessel and adds reference to existing definition of house barge as a vessel.	Section 75 (Section 23.60A.942)	These changes are an alternative to DOE's conditional approval. The changes eliminate the proposed procedural provision requiring certification by a naval architect and reiterate that the original house barges are vessels. Definition is consistent with WAC definition.
Changes indicated in items 1-C, 13-C, 14-C, 16-C, and portions of 17-C of DOE's Table C were not needed.	N/A	After additional comment and review DPD determined the changes were not needed.

## RECOMMENDATION

The proposal would amend the Shoreline Management Program (SMP) as adopted in Ordinance 124105 in 2013. The topics addressed include: the SMP Regulations, the Shoreline Goals and Policies in the Seattle Comprehensive Plan, the Shoreline Restoration and Enhancement Plan and Environmental Critical Areas regulations for critical areas within the Shoreline District. These provisions together will manage the most sensitive, fragile and valuable areas of Seattle. The Shoreline District is valuable for economically productive industrial, commercial, recreational and navigational uses, residential amenity, scientific research, education and for providing habitat for terrestrial and aquatic species. Shorelines are sensitive and fragile because they depend upon balanced physical, biological, and chemical systems that may be adversely altered by natural forces (landslides, storms, floods) and human conduct (industrial, commercial, residential, recreation, navigational).

The policy goals of the SMP relate both to the use and protection of the extremely valuable and vulnerable shoreline resources. The process of updating and amending Seattle's SMP included the use of scientific and technical information to determine the appropriate measures to protect existing ecological functions and the participation of Seattle residents and business owners and operators that have an interest in achieving the goals of the Washington State Shoreline Management Act (SMA). DPD recommends adoption of the proposed amendments to achieve the goals of the SMA.