

“Washington State Regulations on Residential Use of State-owned Aquatic Lands”

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As background, Ms. McNair explained that the state owns salt and fresh waters that were navigable at statehood, but that many of the tidelands and some shorelands were sold to private individuals after statehood, mostly to promote aquaculture. The beds of these navigable water bodies were never sold. In 1971, the Washington State Legislature passed the Gissburg Amendment, ending all sales of these tide and shore lands, except to other public entities. The rules concerning the sale or trade of these lands are very strict and must ensure that the state receives a benefit from these transactions. As a rule, we do not trade or sell these lands even to jurisdictions, because we are trying to reclaim our aquatic land base. We can accept gifts of aquatic lands and have a bill before the legislature to be able to purchase aquatic lands for very specific purposes that align with our statutes...

State owned Aquatic lands include 2.6 million acres of tidelands, shoreland and bedlands of Puget Sound, and navigable, at statehood, freshwater lakes and rivers state wide. The state also has jurisdiction over the Pacific Ocean out to three nautical miles. DNR has a proprietary role to ensure environmental protection, encourage public use and access, encourage renewal resource use, and foster water-dependent use and commerce and navigation. We are completely self-supporting, receiving no General Funds from the Legislature. We must earn as a result of our businesses significantly more revenue than we need to support our programs, because we provide funds for a grant program and for other state agencies for their operations. The Legislature makes the determination on the allocation of all funds. We must compete with other agencies for the use of these funds. Obviously, this is a tough balancing act to be both environmental stewards and economic revenue generator. We have developed set priorities in our strategic plan and a business plan that guides our work and programs.

I referenced the Washington Administrative Code (WAC), under which we function. The Legislature passes statutes and the Board of Natural Resources passes WAC, which often provide the details needed to supplement the statutes. Why did DNR adopt new WACs on residential use of state-owned aquatic lands? The prior Commissioner of Public Lands didn't want to allow any residential use. We decided that it might be okay to have residential use, but, the existing statutes and regulations lacked definitions, clarity, and guidance, thus creating the potential for environmental problems. This situation became political due to the lack of certainty for marinas, and uses by the general public. If you are going to have this type of use, it is imperative that regulations that provide environmental stewardship are in place, and the public feels engaged in the process.

Today, the rules and the definitions are clear. A floating home is now defined as a structure designed or remodeled to serve primarily as residence over water. and may

include house barges and house boats. These structures are charged a non-water-dependent “rent”, which is a market rent and not discounted. A boat that is primarily used for navigation, but is a residence is charged a water dependent rent and is charged about 30% of the market rate. For any type of residential use, the local jurisdiction needs to allow for this use in their shoreline Master Plan, regardless of whether it is in marine or fresh water.

Today’s rules provide for a balance of public benefits for all citizens, while fulfilling the requirements of the Aquatic Lands Act. They ensure local government input on planning issues; provide certainty for marinas, residential users, and the public. The residential rule, in particular, is a local planning issue and local governments have a strong voice.

Highlights of the Residential Use Rules are: clear definitions, treatment of sewage waste, Best Management Practices (BMPs), limits, and open water moorage areas.

- Sewage and gray water – new rules clarify that they must be disposed upland, in accordance with federal, state, and local laws (by marinas). Marinas must also adopt BMPs for gray water. (These are currently being developed.)
- Ten Percent Limit – limits residential use to 10% of available slips in a marina; it also allows local governments to alter that limit. We allowed attrition to be the mechanism to get the marinas to 10% if they are over that amount and the jurisdiction didn’t change it.
- Stipulates that no existing residential users will be evicted, as long as they remain in compliance.
- An open water moorage area – the rule defines the areas and authorizes same if local government leases and manages the area. Local governments must amend the SMP within 5 years of the adoption of the WAC to be eligible. The 5 years ended this past November. The environmental regulations are the same for open water moorage and marinas attached to the land.

I referenced the Bainbridge Island area, an important navigation route that is congested with moored boats. The new rules require the state to balance such uses, to ensure environmental protection, commerce and navigation and residential use to include local government participation.

The program has been in place five years and the marinas that have residential use seem to be complying and doing well. We do not hear the strong constituent complaints that were constant when this process began. We involved stake holders in the process and held extensive public review. We would be happy to provide our WAC and guidance as a reference if desired.