

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BOARD OF NATURAL RESOURCES

RESOLUTION NO.

A **RESOLUTION** relating to a Petition to amend WAC 332-30-109(11) concerning moorage of floating houses in harbor areas.

**BE IT RESOLVED BY THE BOARD OF NATURAL RESOURCES,
DEPARTMENT OF NATURAL RESOURCES THAT:**

SECTION 1. On February 10th, 2014, Conner Edwards, Citizen Activist, petitioned the Department to amend WAC 332-30-109(11) in the following manner:

DNR will allow floating homes in harbor areas (a) where compatible with existing navigation and commercial uses of the harbor area; and (b) in the same manner as floating houses are allowed outside of a harbor area. (c) existing use and presence of a floating house in a harbor area is deemed authorized (d) when a lease expires, DNR can require floating houses to yield to a newly authorized navigational or commercial use where those uses would not otherwise create a conflict. In these cases, DNR must provide an affected floating homeowner with at least six months notice.

In support of his petition, Mr. Conner asserts the current rule has no basis in Article XV Section 1 of the Washington State Constitution or RCW 79.115.101 (2) and serves no legitimate purpose. Further he states the proposed amendment recognizes DNR's responsibility to safeguard commerce and navigation in harbor areas, while at the same time providing for an allowance of houseboats in harbor areas. Further, he states that these two goals do not (and never have) conflicted in any way and that staff have failed to

identify any practical concern about houseboats impeding navigation. The following provides the Department's response to the petition.

SECTION 2. The Board of Natural Resources received a petition from the Freedom Foundation on December 9th, 2013, to repeal the rule prohibiting floating houses (WAC 332 30 109 (11)). This earlier petition was reviewed and considered at the February 4th BNR meeting, and rejected in the form of BNR resolution #420. See attached copy of resolution and minutes from February meeting.

SECTION 3. .

The Department strives to manage 2.6 million acres of state-owned aquatic lands to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands and as identified by the legislature are varied and include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection, and utilizing renewable resources, as well as generating revenue in a manner consistent with other public benefits.

SECTION 4. Approximately 10,000 acres of the 2.6 million acres of state-owned aquatic lands are designated harbor area. Under article XV of the Washington Constitution, harbor area is forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. Although the Department may lease harbor area for periods of up to 30 years, it may not relinquish control over them.

SECTION 5. In accordance with the constitution, the Department manages harbor areas to meet current and future needs of water-dependent navigation and commerce. The

Department has established harbor area use classes which favor water-dependent commercial uses and disfavor residential uses of harbor area. WAC 332-30-115.

SECTION 6. DNR's rules recognize that residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. WAC 332-30-115(4). One of the few exceptions to the general prohibition is made in limited circumstances for vessels used as a residence in harbor area locations in which vessels are allowed. Floating houses are not permitted in harbor areas. WAC 332-30-109(11).

SECTION 7. The prohibition on floating houses in harbor areas does not preclude the moorage of floating houses elsewhere.

SECTION 8. Overall, WAC 332-30-109(11) has been very effective in limiting the use of harbor area by floating houses that may conflict with present or future water-dependent commerce and navigation without significant controversy. Because the rule has been effective in preventing a proliferation of floating houses in harbor areas few opportunities for actual conflict between floating houses and water-dependent commerce and navigation in harbor areas have arisen.

SECTION 9. Allowing vessels used as residences to moor in harbor areas under limited circumstances while excluding floating houses is a reasonable policy decision. Although private residences do not significantly contribute to water-dependent or water-oriented commerce, vessels used as private residences are more closely related to the navigational purposes of harbor areas than floating houses, which, by definition, are not designed primarily for navigation.

SECTION 10. It is also reasonable for DNR to exclude floating houses from harbor areas because relocating floating houses to accommodate commerce and navigation may present hardships for floating house owners and the Department. Floating houses are often difficult to relocate. As floating houses are not primarily designed for navigation, they may be more challenging and expensive to relocate than vessels in the event that space used for residential purposes on an interim basis is needed for water-dependent commerce and navigation.

SECTION 11. DNR has provided a formal proposal to allow the existing floating houses located in the two harbor areas already identified as being noncompliant with the prohibition on floating houses to remain for the duration of the upcoming lease term with each marina lessee. While the details of a complete agreement would need to be worked out between the marinas, floating house owners, and DNR, DNR would agree to allow existing floating houses to remain at the marinas for the term of the new lease, regardless of who owns the floating houses, provided Westbay Marina and Martin Marina otherwise remain in compliance with the terms and conditions of their leases with DNR. Because all residential uses of state owned aquatic lands are subject to DNR's leasing requirements, DNR's proposal is consistent with DNR's treatment of other floating houses throughout the state that are not located within harbor areas.

NOW THEREFORE, based on the foregoing, the Board adopts the following policy resolutions:

1. The petition to amend WAC 332-30-109(11) is **DENIED**.

2. The Aquatic Resources Division shall continue to work with the affected homeowners and marinas to resolve the situation.

APPROVED AND ADOPTED by the Board of Natural Resources, Department of Natural Resources, State of Washington, this _____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Commissioner of Public Lands.

PETER GOLDMARK
Commissioner of Public Lands

Approved as to form,

Christa Thompson, AAG