

March 17, 2005

To: Bainbridge Island Mayor and City Council

From: Chair, Bainbridge Island Harbor Commission

Subject: Eagle Harbor Open Water Anchoring and Mooring Plan

Action requested: The Eagle Harbor Open Water Anchoring and Mooring Plan (AMP) is attached for City Council consideration.

Public Comment: The Harbor Commission held a public meeting on November 9, 2004, to receive issues, concerns and recommendations on the draft AMP. Then a revised draft was issued to the public for a second round of review and comment, with public statements being received at the Harbor Commission's February 1, 2005, meeting. Based on those comments and additional written comments received through February 28, 2005, the AMP has been revised into its present form, dated March 2005 .

Purpose of the AMP: The AMP implements procedures to bring Eagle Harbor aquatic lands under City management and to ensure vessels anchoring and mooring within Eagle Harbor comply with the Revised Code of Washington and the Washington Administrative Code, as well as with City of Bainbridge Island Harbor Codes, City of Bainbridge Island Harbor Management Plan (HMP) and the City of Bainbridge Island Shoreline Management Master Program (SMMP).

Issues Resolved by the AMP: The AMP brings Eagle Harbor aquatic lands under better City management and provides for orderly anchoring and mooring of transient, short-term, long-term and live-aboard vessels in Eagle Harbor.

Issues Remaining Unresolved: A Department of Natural Resources (DNR) email on March 10th (sent to various City officials and citizens) contains the formula that DNR will use in determining DNR's portion of vessel rental fees within the proposed anchoring and mooring area. The formula is so inflexible as to threaten the economic viability of the proposed anchoring and mooring area. A 30-foot using fore-and-aft anchoring would be charged a relatively reasonable \$32 per month, but a moored vessel would pay a whopping \$342 per month. Still, that's nothing compared to the DNR rental fee for an anchored vessel which – at only 30 feet, remember – must pay the surreal sum of \$1,040 per month.

DNR refuses to base their cost calculations on anything less than charging 100 percent for an arbitrary area (one-third of an anchored or moored vessel's watch circle) which it then arbitrarily defines as "encumbered." To quote DNR's email of March 10th, *"The rent is based on the area encumbered. For a single anchor, at any given time no one else will be able to anchor within the 1/3 of the watch circle. Encumbrance is defined as precluding someone else from utilizing the same area...."* In reality, vessels will motor, sail and row easily through the 1/3 of the watch circle which DNR defines as "encumbered." And by what criterion is 1/3 of the watch circle more encumbered than, say, 1/2 or 1/5th of the watch circle? Using DNR's own definition of

encumbrance, the City should be charged only for the surface area actually occupied by a vessel or structure. An open water anchoring and mooring area differs considerably from a land-based marina in this regard because even when a vessel is not occupying a slip, the surface area is encumbered because the marina structure (floats, pilings, walkways) makes it impossible for other vessels to navigate over that surface area. DNR has rejected any such concept, claiming there is no difference between a land-based marina and one located in open water, except for DNR's arbitrary charge for 1/3 of the watch circle in open water anchoring and mooring.

The result of the latest DNR formula is an enforced anchoring and mooring method that, to use the words of one Harbor Commissioner, "packs 'em in like cord wood." It is true that using the fore-and-aft method which DNR is forcing on the City will make the most efficient use of the anchoring and mooring area's space. But citizens who choose to live aboard their vessels will find their world resembling a floating parking lot. And to what end? Annually, the City must pay DNR a non-refundable lease fee in advance for the long-term vessels anticipated to use the anchoring and mooring area. But the "floating parking garage," as one vessel owner called it, may discourage long-term use of the anchoring and mooring area at all (leaving the City unable to recoup thousands of dollars in DNR rental fees), as well as cause people who wish to reside on their boats to leave. Yes, I am aware that a portion of our citizens are hopeful of that very outcome. The seven Harbor Commissioners, however, are not part of that group and we therefore trust that City officials will have better success than the Harbor Commission has had in trying to reach a rational financial formula for long-term anchoring and mooring that allows privacy, dignity, and respect for the lifestyle of Bainbridge Island citizens living afloat.

Why would the anchoring and mooring plan become a crowded parking lot? A DNR email on March 1st to the Chair, Harbor Commission, stated that DNR expects the City to reduce the size of the anchoring and mooring area to the minimum dimensions necessary. Forcing fore-and-aft anchoring and mooring will allow DNR to condense the leased area significantly.

Time to Implementation: The process from City Council direction to operational status of the AMP will likely take one year to get to the point of applying for permits and perhaps another two years for the permits to be approved. At a minimum, the City must amend its SMMP to allow the anchoring and mooring area by November 11, 2007, per Washington Administrative Code. Implementation will require the following:

1. Resolution adopting the AMP.
2. Aquatic land lease or management agreement with DNR.
3. Implementing ordinances, including amendments to the SMMP and BIMC 16.12.040(D).
4. Developing an Anchoring and Mooring Handbook.
5. Permits from local, state, and federal agencies.
6. Construction and management of the anchoring and mooring area. City buoys should be repositioned along the anchoring and mooring area perimeter.

City Costs to Be Recouped Through Long-Term Fees: In addition to DNR lease costs, certain expenses incurred by the City should be recouped. These additional costs should be added to the monthly fees long-term vessel owners would pay to anchor or moor within the Eagle Harbor anchoring and mooring area. The Harbor Commission researched costs charged by other cities

to moored vessels, buoy servicing and installation costs, and administrative costs associated with establishing and maintaining an open water anchoring and mooring area in Eagle Harbor. The Harbor Commission found that costs vary considerably depending on the services requested and the methods use to calculate and deliver those services. For example, estimates for once-a-year inspecting, cleaning, and replacing of mooring tackle for a single buoy range between \$100 and \$150 for labor alone. Buying a new mooring buoy and its tackle could cost between \$500 to \$1,000, depending on the method used to fix the tackle to the bottom. Another example of a significant cost spread involves the determination of hours spent by City employees on servicing the anchoring and mooring area. Depending on how those hours are calculated and charged, annual City labor could be as little as \$62 per vessel or as much as \$444. The bottom line is that the costs are not fixed. They are very much a moving target and heavily depend on definitions and calculation formulas. Trash removal, which would be only charged to floating residences, would be in the \$300 to \$350 range per year, while City vessel registration would be \$15 annually. As a related cost, an optional geological survey of the anchoring and mooring area bottom to chart obstructions and other concerns would probably be about \$5,000, depending on the degree of detail and survey requirements.

Parking, dinghy mooring or storage, and other services may or may not apply to individual vessel owners.

Sewage pump-out at the City Dock (including maintenance and repairs) is funded by a permanent grant under the Washington State Parks and Recreation Commission's Boat Sewage Facility Clean Vessel Act. Therefore, no City funds are used for sewage pump-out. A second, vessel-to-vessel pump-out service is available by subscription, and such service would be between the vessel owner/operator and the contractor, not involving the City. However, the contractor would report a record of operations to the City.

Options Available to the City Council:

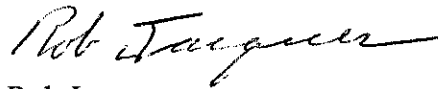
(1) The City Council may choose to adopt the March 2005 Anchoring and Mooring Plan, agreeing to DNR's leasing cost formula. The impact of this choice will be to change Eagle Harbor into a significantly different place in a relatively short period of time. Given the DNR costs to the City, it would be unlikely long-term vessel owners would wish to avail themselves of the anchoring and mooring area, leaving the City paying non-refundable rent (payable in advance) for a sizeable white elephant.

(2) The City Council may choose to adopt the March 2005 Anchoring and Mooring Plan, contingent on the City's successful negotiation of a more reasonable rent fee with DNR. The impact of this choice will be to extend the negotiations that have occurred over the past several years for some additional indeterminate period of time. It should be noted that DNR has adhered unwaveringly to its Guideline "Residential Use on State-Owned Aquatic Lands" (GL-09.10.2 of December 2003) ever since it suddenly appeared in print. DNR's March 10th email on the DNR lease cost calculation does not depart from the financial extremes put in place by the DNR Guidelines.

(3) The City Council may choose to reject the March 2005 Anchoring and Mooring Plan. The impact of this choice will be to continue the status quo until some as-yet-to-be determined time when DNR may choose to enforce its own interpretations of state codes and DNR regulations. Additionally, the City and the Washington Department of Fish and Wildlife would be required to enforce their existing regulations because BIMC 16.12.040(D) only established a temporary situation that rejecting the AMP will terminate.

Harbor Commission Recommendation: Although the AMP has significant advantages in establishing clear management procedures for Eagle Harbor and represents a consensus view of the Harbor Commission, the DNR lease costs create considerable negative financial impacts on the City unless the anchoring and mooring area is to become essentially little more than a parking lot. Therefore, the Harbor Commission forwards the AMP recommending its adoption while the City pursues additional avenues with DNR to develop a more realistic method of assessing rental fees for vessels performing one-point anchoring or mooring. Unless such a method is found, any concept of personal privacy for citizens residing on their vessels will be destroyed, effectively dealing a death blow to that lifestyle in the anchoring and mooring area.

Respectfully,



Rob Jacques
Chair
Bainbridge Island Harbor Commission