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BEFORE THE SHORELINE HEARINGS BOARD  
OF THE STATE OF WASHINGTON

THE LOG FOUNDATION;  
EASTLAKE COMMUNITY  
COUNCIL; and FLOATING HOMES  
ASSOCIATION,

Petitioners,

v.

CITY OF SEATTLE, DEPARTMENT  
OF PLANNING AND  
DEVELOPMENT; and LAKE UNION  
INVESTMENTS, LLC,

Respondents.

NO. \_\_

PETITION FOR REVIEW

**1. Identity of Appealing Party and Representative**

Petitioner The Log Foundation is a Mutual Corporation organized under Ch. 24.06 RCW. Its purpose is to provide a floating home community association; to promote and protect the interests of its member with respect to their floating home and the moorage of those floating homes. The Log Foundation and its members are directly and significantly impacted by the proposal at issue in the petition. The Log Foundation's contact information is:

Robert Widmeyer, President  
The Log Foundation  
2017 Fairview Ave East, A  
Seattle, WA 98012

1           Petitioner Eastlake Community Council is a non-profit corporation organized under  
2 Ch. 24.03 RCW. The ECC is a neighborhood organization whose purpose includes  
3 fostering and encouraging a sense of community among people who live and work in the  
4 Eastlake neighborhood. The ECC and its members are directly and significantly impacted  
5 by the proposal at issue in the petition. The ECC's contact information is:

6           Chris Leman, President  
7           Eastlake Community Council  
8           2370 Yale Ave. East  
9           Seattle, WA 98102

10           Petitioner Floating Homes Association represents owners of floating homes on  
11 Portage Bay and Lake Union. It was founded in 1962, and its members represent 250 of  
12 the roughly 500 floating homes in Seattle. The FHA's mission includes protecting,  
13 preserving and promoting the vitality of Seattle's historic floating homes community  
14 through education, advocacy, environmental stewardship and collaboration. Its interests  
15 include ensuring that the water quality of Lake Union is protected and enhanced and that  
16 public safety is protected on the Cheshiahud Lake Union Loop and at Terry Pettus Park.  
17 FHA and its members are directly and significantly impacted by the proposal at issue in  
18 this petition. FHA's contact information is:

19           Floating Homes Association  
20           2329 Fairview Avenue E.  
21           Seattle, WA 98102

22           Petitioners are represented by David S. Mann and Gendler & Mann, LLP. The  
23 contact information is as follows:

24           David S. Mann  
25           Gendler & Mann, LLP  
26           615 Second Ave., Suite 560  
              Seattle, WA 98104

1 (206) 621-8868  
2 [mann@gendlermann.com](mailto:mann@gendlermann.com)

3 **2. Identity of Other Parties**

4 The decision being appealed was issued by the City of Seattle's Department of  
5 Planning and Development ("Seattle DPD"). Seattle DPD's contact information is as  
6 follows:

7 City of Seattle  
8 Department of Planning and Development  
9 700 Fifth Ave., Suite 2000  
10 P.O. Box 34019  
11 Seattle, WA 98124-4019  
12 (206) 584 8850

13 The applicant for the decision being appealed is identified in the application  
14 materials as Lake Union Investment, LLC. The Applicant's contact information is  
15 provided as:

16 Lake Union Investment, LLC  
17 c/o Jessica Clawson  
18 McCullough Hill Leary PS  
19 701 5<sup>th</sup> Ave., Suite #7220  
20 Seattle, WA 98104  
21 (206) 812 3388

22 **3. Application for Shoreline Permit**

23 On September 6, 2012, Lake Union Investments, LLC, applied for a substantial  
24 development permit to construct a private boat ramp to provide an entry and egress point to  
25 Lake Union for amphibious tour boats/vehicles operated by "Ride the Ducks." A copy of  
26 the September 20, 2012, Notice of Application is attached as Exhibit 1.

1           **4. Decision Appealed**

2           On January 29, 2015, Seattle DPD issued the Analysis and Decision of the Director  
3 of the Department of Planning And Development approving a Shoreline Substantial  
4 Development Permit (“SSDP”) and Issuing a SEPA Determination of Non-Significance  
5 (“DNS”). A copy of the Analysis and Decision is attached as Exhibit 2.

6           **5. Short and Plain Statement of Grounds for Appeal**

7           Seattle DPD’s approval of the SSDP and DNS are erroneous for the following  
8 reasons:

9  
10           1. Seattle DPD erroneously classified the proposed boat ramp as an allowed  
11 use within the Urban Maritime Environment. The proposed private boat ramp is properly  
12 classified as a commercial “entertainment” use which is prohibited pursuant to SMC  
13 23.60.728.B.6. Alternatively, the proposed use qualifies as a “high impacts use” which is  
14 also prohibited in the Urban Maritime Environment pursuant to SMC 23.60.728.D.

15  
16           2. The SSDP is inconsistent with the policies of the Shoreline Management  
17 Act, RCW 90.58.020 because it significantly interferes with public recreational use of the  
18 shoreline including, but not limited to, swimming, boating, paddle-boarding, walking,  
19 running, cycling, and aesthetic enjoyment.

20  
21           3. The SSDP is inconsistent with the City of Seattle’s Shoreline Goals and  
22 Policies because it significantly interferes with public recreational use of the shoreline  
23 including, but not limited to, swimming, boating, paddle-boarding, walking, running,  
24 cycling and aesthetic enjoyment.

25           4. The SSDP is inconsistent with many of the general development standards  
26 for all shoreline environments within Seattle. Inconsistencies include, at a minimum,

1           a.       The proposal fails to minimize adverse impacts to surrounding land  
2 and water uses, and is not compatible with the affected area. Typical marine industrial  
3 uses include one or two boat passages a day, yet the ‘Ducks’ are proposing an average of  
4 up to 1 Duck boat passage every 3.3 minutes up to 10 hours per day 7 days a week. This is  
5 the equivalent of putting a new highway with industrial truck traffic through a well-used  
6 public park area and the backyards of a residential community where children play.

7  
8           b.       The proposal will be a hazard to public health and safety, including  
9 pedestrian, bicycle, and traffic safety.

10         5.       The SEPA DNS is clearly erroneous in failing to adequately describe,  
11 consider, analyze, at a minimum,

12           a.       Impacts from noise including both operational noise and noise from  
13 the on-board entertainment system;

14           b.       Impacts to public safety, including traffic impacts to pedestrian and  
15 bicycle safety using the immediately adjacent Cheshiahud Loop trail, Fairview Avenue (a  
16 bicycle path and provisional “green street”), and the adjacent Terry Pettus Park;

17           c.       Impacts to public safety, including impacts from up to 18 passages  
18 per hour by large amphibious vehicles through a shoreline area regularly used by  
19 swimmers, boaters, paddleboarders, and adjacent floating home residences;

20           d.       Impacts to air quality and public health from concentrated diesel  
21 emissions, including emissions during queuing of multiple Duck vessels on land and water,  
22 adjacent to a public park, recreational trail and residential neighborhood;

23           e.       Impact to water quality and fish and wildlife resulting from the  
24 disturbance of contaminated soils during excavation;  
25  
26

1 f. Impacts to the fish and wildlife as well as fish and wildlife habitat  
2 from installation of a significant paved ramp followed by the regular entry of a significant  
3 number of large diesel vehicles carrying contaminants from the street into the water.

4 g. Impacts to traffic within the Eastlake Avenue E. corridor, including  
5 E. Blaine St. and E. Newton St. from the addition of up to 18 amphibious vessel trips per  
6 hour along with associated queuing.

7  
8 6. The SEPA DNS is clearly erroneous in failing to adequately mitigate  
9 significant adverse impacts and in imposing only vague and unenforceable conditions.

10 **6. Statement of Facts**

11 Lake Union Investments, LLC, owns property at 1949 Fairview Avenue East,  
12 adjacent to Lake Union in Seattle. On September 6, 2012, Lake Union Investments  
13 applied to construct a private boat ramp to provide entry and egress to Lake Union for  
14 amphibious tour boats/vehicles operated by "Ride the Ducks" ("Ducks"). The application  
15 is to construct a 30-foot wide by 140-foot long boat ramp to be used by the Duck vessels as  
16 well as a 3-foot by 32-foot dock as moorage for an emergency response vessel. The  
17 project requires grading 2,298 cubic yards of material, including contaminated soils.

18  
19 Entry to the boat ramp will require crossing the Cheshiahud Loop trail, a popular  
20 trail used by walkers, runners and cyclist to enjoy the shoreline of Lake Union. The entry  
21 will be located adjacent to the City's Terry Pettus Park – a popular location for the public  
22 to access Lake Union, including hand launch boats.

23  
24 Under the proposal, the boat ramp will be used for Duck vessels to enter and then  
25 exit from Fairview Avenue into Lake Union as part of the Duck tours. Duck tours are  
26 operated year-round. During the peak summer months, when pedestrian and boating use or

1 the shoreline is at its peak, the Duck vehicles will generate up to 18 trips during any hour  
2 of the day. This is equivalent to almost one amphibious vehicle entering or leaving the  
3 shoreline every three minutes.

4           During fair weather conditions, Duck tours are operated in an “open air” manner.  
5 The driver operates an amplified sound system that includes both commentary and a  
6 musical soundtrack. Tour operators encourage the Duck passengers to sing along, shout,  
7 and make noise using the tour-provided “quackers.”  
8

9           Once the Duck vehicles enter Lake Union, they will travel parallel to and within  
10 100-feet of an existing residential community of houseboats. The Duck vehicles will cross  
11 directly across an area commonly used by small boats navigating the shoreline of Lake  
12 Union.  
13

14           Operation of the proposed boat ramp, including up to 18 large amphibious diesel  
15 powered Duck boats, entering or leaving this popular shoreline each hour, will result in  
16 significant adverse impacts including impacts from noise and air pollution as well as traffic  
17 and public safety impacts to boater, walkers, runners, cyclists, and vehicle traffic on  
18 Fairview Avenue. Seattle DPD received over a hundred written comments during the  
19 public comment period and an audience of roughly 75 participants attended a public  
20 meeting to review the project. The comments focused on strong concerns about the  
21 potential noise, air quality, water quality, soil quality, public safety, recreational impacts  
22 and other environmental impacts associated with the proposal.  
23

24           On January 29, 2015, Seattle DPD issued a SEPA DNS and approved the  
25 application for an SSDP. This appeal follows.  
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7. **Relief Sought**

The Log Foundation requests the following relief:

- a. An order reversing Seattle DPD's issuance of a SEPA DNS and remanding for preparation of an EIS.
- b. An order reversing Seattle DPD's approval of the SSDP.
- c. Such other relief as the Board deems just and necessary.

Dated this 18<sup>th</sup> day of February, 2015.

Respectfully submitted,

GENDLER & MANN, LLP

By



David S. Mann  
WSBA No. 21068  
Attorneys for the Petitioners



**DECLARATION OF SERVICE**

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I declare under penalty of perjury under the laws of the State of Washington, that  
on the date and in the manner indicated below, I caused this document to be served on:

City of Seattle  
Department of Planning and  
Development  
700 Fifth Ave., Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019  
 By United States Mail  
 By Legal Messenger  
 By Federal Express/Express Mail  
 By Electronic mail

Washington Department of Ecology  
300 Desmond Drive SE  
P.O. Box 47600  
Olympia, WA 98504-7600  
 By United States Mail  
 By Legal Messenger  
 By Federal Express/Express Mail  
 By Electronic mail

Lake Union Investment, LLC  
c/o Jessica Clawson  
McCullough Hill Leary PS  
701 5<sup>th</sup> Ave., Suite #7220  
Seattle, WA 98104  
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 By Legal Messenger  
 By Federal Express/Express Mail  
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Attorney General of Washington  
1125 Washington St. SE  
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 By United States Mail  
 By Legal Messenger  
 By Federal Express/Express Mail  
 By Electronic mail

DATED this 18<sup>th</sup> day of \_\_\_\_\_, 2015, at Seattle, Washington.

  
\_\_\_\_\_  
David S. Mann