

Development Code Interpretation
#18-002



DEVELOPMENT SERVICES GROUP
9611 SE 36TH St., Mercer Island, WA 98040
(206) 275-7732

TO: Waterfront Construction, Inc.
DSG Staff

FROM: Evan Maxim, Interim Development Services Group Director

DATE: November 5, 2018

RE: Repairs of Non-Conforming Moorage Facilities

CC: Kari Sand, City Attorney

MICC SECTION(S) INTERPRETED

MICC 19.07.110(E)(6)(b)(ix)

AUTHORITY

This development code interpretation is issued under the authority of Section 19.15.030 and 19.15.160 of the Mercer Island City Code (MICC).

ISSUE

The purpose of this interpretation is to clarify the circumstances when the repair (replacement or reconstruction) of a non-conforming moorage facility will require compliance with subsections MICC 19.07.110(E)(6)(b)(ix)(A) through (C) to bring the non-conforming moorage facility further into compliance with current regulations.

BACKGROUND

On March 2, 2015, the Mercer Island City Council adopted Ordinance No. 15C-02, amending the Mercer Island Shoreline Master Program, which was initially adopted on December 2, 2013 (Ordinance No. 13C-02). Ordinance No. 15C-02 adopted several amendments to the Shoreline Master Program that were required or recommended by the Washington State Department of Ecology.

Following the adoption of Ordinance. No. 15C-02, the Shoreline Master Program established several regulations related to the repair of moorage facilities. One of these provisions, specifically MICC 19.07.110(E)(6)(b)(ix), referred to herein as subsection "ix" reads provides in pertinent part as follows:

If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:...

Subsection (ix) establishes two "thresholds" that, if met by an application to repair a moorage facility, require compliance with three additional standards, referred to herein as subsections "(A)", "(B)", and "(C)". The two thresholds in subsection (ix) relate to:

- 1) the extent of the repair (i.e. the clause related to "...50 percent of..."); and
- 2) the timing of the repair (i.e. the clause related to "...the five years...").

The phrasing of subsection (ix) is unclear and requires interpretation to administer. The purpose of this interpretation is to clarify how the City will administer subsection "(ix)", as it relates to requiring compliance with subsections "(A)", "(B)", and "(C)".

On July 18, 2018, Waterfront Construction, Inc., (c/o Steve Zuvela) requested that the City issue this interpretation.

FINDINGS

1. A request for an interpretation by Waterfront Construction (c/o Steve Zuvela) was received on July 18, 2018 (Exhibit A).
2. The request for an interpretation is related to MICC 19.07.110(E)(6)(b)(ix), which is a development regulation contained within the Mercer Island Shoreline Master Program.
3. Generally, MICC 19.07.110(E)(6)(b)(ix) is intended to describe the regulatory "thresholds" for requiring compliance with subsections (A), (B), and (C). The expected result of this section is that significant (more than 50 percent) replacement or reconstruction of moorage facilities will need to comply with subsections (A), (B), and (C). Conversely, non-significant (50 percent or less) replacement or reconstruction of moorage facilities will not be required to comply with subsections (A), (B), and (C). The requirement to comply is based upon the scope of the application.
4. A Notice of Application (NOA) for an interpretation was issued on July 18, 2018 (Exhibit B). The NOA provided for a 30-day public comment period. Seven comments were received during the comment period (Exhibit C).
5. When initiated, this interpretation was assigned DCI18-001, however following the notice period, staff concluded that the proper file number is DCI18-002.
6. In issuing an interpretation, the code official is directed to consider eight factors specified in MICC 19.15.160(A). These factors are:
 - a. The plain language of the code section in question;
 - b. Purpose and intent statement of the chapters in question;
 - c. Legislative intent of the city council provided with the adoption of the code sections in question;
 - d. Policy direction provided by the Mercer Island comprehensive plan;
 - e. Relevant judicial decisions;
 - f. Consistency with other regulatory requirements governing the same or similar situation;

- g. The expected result or effect of the interpretation; and
 - h. Previous implementation of the regulatory requirements governing the situation.
7. Legislative history:
- a. The Planning Commission recommended adoption of the Mercer Island Shoreline Master Program (SMP) to the City Council on April 6, 2011.
 - b. The City Council adopted Resolution #No. 1440 on August 1, 2011, consisting of an updated SMP.
 - c. The City Council considered amendments to section MICC 19.07.110(E)(6)(b)(ix) at its June 17, 2013, November 4, 2013, November 18, 2013, and December 4, 2013 meetings.
 - d. The SMP was adopted by the City Council of Mercer Island on March 2, 2015(Ord. No. 15C-02), amending the previously adopted version of the SMP that was adopted on December 2, 2013(Ord. No. 13C-12). The code section at issue in this interpretation was adopted in 2013 and was not amended in 2015.
8. Resolution #No. 1440 provided:
- "If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed, the replaced or reconstructed area of the structure must comply with the following standards:..."*
9. On June 17, 2013, the Council reviewed recommended language from the Department of Ecology that read:
- "If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed, during the life of the structure, the replaced or reconstructed area of the structure must comply with the following standards: (underline added)."*
10. On June 17, 2013, the Council directed staff to amend the language to read:
- "If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed within a five-year period, the replaced or reconstructed area of the structure must comply with the following standards:...(underline added)."*
11. On November 4, 2013, the Council discussed the standard, which read:
- "If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the previous 5 years, the replaced or reconstructed area of the structure must also comply with the following standards:...(underline added)."*
- During Council discussion, the above subsection was initially described by staff as a "rolling 5 years" and was subsequently described as the 5 years immediately prior to an application for a permit that proposes replacement or reconstruction of more than 50 percent of the moorage facility. Council directed staff to clarify language regarding the "starting point" of the 5 year period.
12. Ord. No. 13C-12 provided:
- "If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the 5 years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:...(underline added)"*
13. The SMP contains the following policies related to piers and moorages:

- a. New piers and docks should be allowed only for water-dependent uses or public access. Piers and docks associated with single family residences are considered a water-dependent use.
 - b. New piers and docks should be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.
 - c. The repair, renovation, and replacement of existing piers and docks should be allowed.
 - d. Property owners who repair, renovate or replace existing piers and docks should be provided information on the best materials and methods for environmental enhancement.
14. There are no known judicial decisions relevant to the subsection at issue in this interpretation.
15. The administration of this subsection appears to be inconsistent, and this interpretation is issued, in part, to ensure future consistency.
16. On November 1, 2018, the Washington State Department of Ecology provided the City with an Administrative Interpretation Review pursuant to WAC 173-26-140 (Exhibit D). The Administrative Interpretation Review indicates that this interpretation is consistent with the purpose and intent of RCW 90.58.020 and the guidelines on shoreline modifications in WAC 173-26-231.

CONCLUSIONS AND INTERPRETATION

1. As noted in the Administrative Interpretation Review issued by the Washington State Department of Ecology, incorporated herein by reference as Exhibit D, this interpretation is consistent with the relevant provisions of RCW 90.58 and WAC 173-26.
2. There are no known judicial decisions relevant to the subsection at issue in this interpretation. The rules of statutory construction have been considered when interpreting this subsection.
3. There are no other regulatory requirements governing the same or similar applications to replace or reconstruct moorage facilities.

Interpretation regarding the “more than 50 percent” threshold:

4. *“If more than 50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings)...” shall be interpreted* as follows:
 - a. To apply to structures where more than 50% of the exterior surface, including decking, is replaced or reconstructed.
 - b. To apply to structures where more than 50% of the structural elements, including pilings, are replaced or reconstructed.
 - c. To apply to structures where more than 50% of the exterior surface and the structural elements are replaced or reconstructed.
5. The phrase: *“If more than 50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings)...”* is unambiguous. The use of the word “or” in this context is inclusive; and requires compliance when any of the three situations described above is true (50 percent of the exterior surface or 50 percent of the structural elements, or both). The above interpretation is consistent with the following:

- a. The plain language of the code section;
- b. The purpose and intent statement of the chapter;
- c. The expected outcome described during the legislative process, that is, bringing non-conforming moorage facilities further into compliance with current Shoreline Master Program regulations;
- d. The Council's legislative intent; and,
- e. The policy direction provided in the Shoreline Master Program.

Interpretation regarding "during the five years" threshold:

- 6. "...during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:..." **shall be interpreted** as follows:
 - a. To apply to structures where more than 50 percent of the structure will be replaced or reconstructed following issuance of a permit.
 - b. The five-year period is intended to include the cumulative total of the work authorized by a permit application, and any replacement or reconstruction work conducted within the five years immediately prior to the work authorized by the permit application.

- 7. The phrase: "...during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:..." is ambiguous and unclear. The above interpretation is consistent with the following:
 - a. The purpose and intent statement of the chapter;
 - b. The legislative history; and,
 - c. The policy direction provided in the Shoreline Master Program.

- 8. In issuing the interpretation, I considered an alternative interpretation, which would only require compliance with subsections (ix)(A) through (C) if more than 50 percent of the structure had been demolished in the five years immediately prior to the submittal of an application for a replacement or reconstruction of the moorage facility. This interpretation was rejected because it:
 - a. Rendered the subsection moot by allowing for more than 50 percent and up to 100 percent replacement or reconstruction of the existing facility;
 - b. Rendered the subsection moot by requiring compliance with subsections (A), (B), and (C) of subsection (ix) only when the structure was replaced or reconstructed twice within a 5-year period and the first replacement or reconstruction exceeded 50 percent of the structure;
 - c. Was inconsistent with legislative history, wherein staff understands that the City Council intended to adopt a standard for a situation that would occur and would further reduce non-conformities by requiring compliance with additional, more environmentally protective regulations; and,
 - d. Resulted in an unlikely, absurd, and unintended outcome.

Exhibits:

- A. Request for Interpretation dated July 18, 2018, by Waterfront Construction, Inc.
- B. Notice of Application dated July 18, 2018.
- C. Public Comment

D. Administrative Interpretation Review dated November 1, 2018 by Washington State Department of Ecology

**CITY OF MERCER ISLAND
DEVELOPMENT SERVICES GROUP**

9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercer.gov.org



CITY USE ONLY		
PERMIT #	RECEIPT #	FEE
Date Received:		

DEVELOPMENT APPLICATION	Received By:
--------------------------------	--------------

STREET ADDRESS/LOCATION		ZONE
N/A		N/A
COUNTY ASSESSOR PARCEL #'S		PARCEL SIZE (SQ. FT.)
N/A		N/A
PROPERTY OWNER (required)	ADDRESS (required)	CELL/OFFICE (required)
Waterfront Construction Inc. c/o Celine LaVigne	205 NE Northlake Way, Ste. 230 Seattle, WA 98105	206-548-9800 E-MAIL (required) celine@waterfrontconstruction.com
PROJECT CONTACT NAME	ADDRESS	CELL/OFFICE
Celine LaVigne @ Waterfront Construction Inc.	same as above	E-MAIL
TENANT NAME	ADDRESS	CELL PHONE
N/A	N/A	E-MAIL

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Celine LaVigne
SIGNATURE

7/10/18
DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

We are requesting a code interpretation from the City of Mercer Island as discussed with Evan Maxim on 7/5/18.
Please see the attached letter dated 7/10/18 detailing our request.

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS Continued	SUBDIVISION SHORT PLAT Continued
<input type="checkbox"/> Building (+cost of file preparation)	<input type="checkbox"/> Impervious Surface (5% Lot overage)	<input type="checkbox"/> Short Plat Amendment
<input type="checkbox"/> Land use (+cost of verbatim transcript)	<input type="checkbox"/> Shoreline	<input type="checkbox"/> Final Short Plat Approval
<input checked="" type="checkbox"/> Code Interpretation	<input type="checkbox"/> Wet Season Construction Moratorium	VARIANCES (Plus Hearing Examiner Fee)
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	<input type="checkbox"/> Type 1**
<input type="checkbox"/> Determination	<input type="checkbox"/> Checklist: Single Family Residential Use	<input type="checkbox"/> Type 2***
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Checklist: Non-Single Family Residential Use	OTHER LAND USE
DESIGN REVIEW	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Accessory Dwelling Unit
<input type="checkbox"/> Administrative Review	SHORELINE MANAGEMENT	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Design Review – Major	<input type="checkbox"/> Exemption	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Review – Minor	<input type="checkbox"/> Semi-Private Recreation Tract (modification)	<input type="checkbox"/> Conditional Use (CUP)
WIRELESS COMMUNICATIONS FACILITIES	<input type="checkbox"/> Semi-Private Recreation Tract (new)	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Substantial Dev. Permit	<input type="checkbox"/> Lot Consolidation
<input type="checkbox"/> New Wireless Communications Facility	SUBDIVISION LONG PLAT	<input type="checkbox"/> Noise Exception
DEVIATIONS	<input type="checkbox"/> Long Plat	<input type="checkbox"/> Reclassification of Property (Rezoning)
<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Subdivision Alteration to Existing Plat	<input type="checkbox"/> ROW Encroachment Agreement (requires separate ROW Use Permit)
<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Final Subdivision Review	<input type="checkbox"/> Zoning Code Text Amendment
<input type="checkbox"/> Fence Height	SUBDIVISION SHORT PLAT	
<input type="checkbox"/> Critical Areas Setback	<input type="checkbox"/> Short Plat	
	<input type="checkbox"/> Deviation of Acreage Limitation	

**Includes all variances of any type or purpose in all zones other than single family residential zone: B, C-O, PBZ, MF-2, MF2L, MF-2L, MF-3, TC, P)

***Includes all variances of any type or purpose in single family residential zone: R-8.4, R-9.6, R-12, R-15)



205 NE Northlake Way, Suite 230
Seattle, WA 98105-6816
Tel (206) 548-9800
Fax (206) 548-1022
Contractor's License #: WATERCI881RS

July 10th, 2018

Evan Maxim
Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th St.
Mercer Island, WA 98040

Re: Code Interpretation for MICC 19.07.110(E)(6)(b)(ix) & 19.07.110(E)(6)(c)

Dear Evan,

Waterfront Construction, Inc. is requesting a code interpretation for [MICC 19.07.110\(E\)\(6\)\(b\)\(ix\)](#) and 19.07.110(E)(6)(c). These codes state:

“b. Development Standards for Replacement, Repair and Maintenance of Overwater Structures, Including Moorage Facilities. The maintenance, repair and complete replacement of legally existing overwater structures is permitted; provided, that:

ix. If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:

(A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;

(B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and

(C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).

c. Alternative Development Standards. The code official shall approve moorage facilities not in compliance with the development standards in subsection (E)(6)(a) or (b) of this section subject to both U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife approval to an alternate project design. The following requirements and all other applicable provisions in this chapter shall be met:

i. The dock must be no larger than authorized through state and federal approval;

ii. The maximum width must comply with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D);

iii. The minimum water depth must be no shallower than authorized through state and federal approval;

iv. The applicant must demonstrate to the code official's satisfaction that the proposed project will not create a net loss in ecological function of the shorelands; and

v. The applicant must provide the city with documentation of approval of the moorage facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.”

The interpretation we're seeking:

We understand the intention of these codes is to improve the shorelands and aquatic environment by requiring moorage facilities that fall under these standards be repaired or replaced in a way that meets the current code standards. This includes re-decking an entire pier with grating, raising the height of the pier to 18 inches above the OHWM, and reducing the width of the pier within the first 30 ft. of the OHWM to 4 ft. wide.

We are not necessarily seeking a code interpretation, but hoping the City will consider the illogical way the code is written in terms of how a construction company builds docks and piers, and take into consideration the additional impact the code places on the aquatic environment. Specifically, we are wanting the City to analyze how we build moorage facilities and how it relates to 19.07.110(E)(6)(b)(ix)(C) and 19.07.110(E)(6)(c)(ii). Both of these code sections require pier width reduction. We hope the City will consider our rationale and agree to a code revision.

We'd also like to know whether or not the City of Mercer Island and the Department of Ecology collaborated with a construction company, such as ours, when writing this code? Did they take into account how docks and piers are built, and what the impact would be if moorage facilities would be subject to a reduction in width?

Our rationale and justification of the proposed interpretation:

Our main argument against these codes is that decking, cap beam, and stringer replacement does not easily allow for pier width reduction because of where the existing piles are set. Existing piles are usually set as wide as the deck without extending further out underneath the deck. In order to reduce the width of the pier we'd have to demo the portion of the pier within the first 30 ft. of the OHWM, remove/cut away the existing piles, and drive new piling closer to the other side to reduce the deck width.

This work would cause more impact to the aquatic environment compared to an original proposal of simple decking or piling repair because we'd be performing more in-water work and disturbing the lake bed with pile driving. This disturbance is essentially what all permitting agencies prefer that we avoid. If the original proposal, such as application SHL18-008, only contained pier re-decking the entirety of this work would occur out of the water above the OHWM. However, because the

way the code is written, this project (SHL18-008) is subject to 19.07.110(E)(6)(b)(ix)(C) and will be required to include this additional impactful work of partial demo, pile removal, and new pile driving.

In terms of the 50 percent repair threshold for code 19.07.110(E)(6)(b)(ix), we don't believe substructure repair/replacement should be considered as part of the repair threshold. Using application SHL18-008 as an example, the main purpose of this project is decking replacement. The substructure replacement (cap beams and stringers) is only occurring as necessary to support the decking replacement. Otherwise, the substructure would not be replaced. Essentially, the substructure replacement is not the main purpose of the project and shouldn't be counted as adding to the 50 percent repair threshold.

Another big concern of ours is that the City's current interpretation and enforcement of these codes will completely disincentivize property owners' voluntary decking replacement or pile repair. Many property owners will likely not want to reduce their pier width and may opt to not install any habitat improving grating or repair any piling at all. If they choose not to repair their damaged piers, the structure runs the risk of extending beyond the service life of the structure. In such cases, structural failures can necessitate emergency repairs through less restrictive approval processes with greater burden on city officials. With such emotionally fraught processes, the end result would ultimately be more damaging to the aquatic environment overall.

As of late, the City of Mercer Island is the only local jurisdiction in the area that has such a strict requirement for this moorage facility repair threshold. Other cities, such as Kirkland, Medina, and Bellevue, have similar codes but either do not contain as strict regulations, or provide other mitigation options. Kirkland's code ([KZC 83.270.8.a](#)) has a similar repair threshold, but basically says if more than 50 percent of the decking or 50 percent or more of the decking substructure are repaired, then the dock must be grated in the first 30 ft. of the OHWM. The criteria for these repair proposals that should comply with these regulations are decking alone, or decking substructure and less than 50 percent of the existing pier-support piles. There is no requirement for reducing the width of non-conforming piers.

Medina's code ([MMC 20.65.060](#)) allows for replacement of up to 75 percent of the existing piles during any consecutive 18-month period, repair of up to 100 percent of the existing piles (such as via the splice method), replacement of any structure treated with pentachlorophenol, creosote, or similar toxic compounds provided the replacement is a voluntary action to improve shoreline ecological functions and not to repair structurally hazardous conditions, and the replacement of 100 percent of the solid decking with grating that allows at least 40 percent light transmittance. None of these repairs alone trigger a requirement for pier width reduction.

The City of Bellevue also has a similar repair threshold ([LUC 20.25E.080.N.2](#)), but offers five different options (improvements) the property owner can implement in order to meet the repair threshold. These include reducing the width of the pier in the near-shore area, fully grating the pier, removing skirting from the entire facility, removing existing piles from the first 18 ft. of the facility, or enhancing the shoreline by installing native plants in the shoreline critical area buffer. Once again, this City is not specifically requiring the reduction of pier width for proposed dock repairs, and even offers other options if they cannot easily perform such work.

Once again, we'd like the City of Mercer Island to consider the irrational way these repair threshold codes (MICC 19.07.110(E)(6)(b)(ix) & 19.07.110(E)(6)(c)) are written. We believe the increased environmental impact the additional construction would cause and lack of dock construction knowledge

within these codes do not fairly or accurately address the needs of waterfront property owners. We have begun to make our Mercer Island clients aware of this issue and they are outraged over the fact they will be forced to comply with additional work if they continue with their already environmentally improving pier repairs. As I mentioned above, these codes will disincentivize voluntary decking replacement and other pier repairs among Mercer Island waterfront property owners. We also hope the City of Mercer Island considers the dock repair codes of other local cities, and realize that Mercer Island is not on par with these local shoreline master program regulations.

We look forward to the City's response and welcome a discussion regarding these issues with the City. Please let me know if you have any questions.

Thank you,

Céline LaVigne

Permit Coordinator

Waterfront Construction, Inc.

205 NE Northlake Way, Ste. 230

Seattle, WA 98105

Office: (206) 548-9800

Fax: (206) 548-1022

celine@waterfrontconstruction.com

PUBLIC NOTICE OF APPLICATION



NOTICE IS HEREBY GIVEN that the City of Mercer Island has received the application described below:

- File Nos.:** DCI18-001 – Development Code Interpretation
- Description of Request:** A request for a development code interpretation of a portion of the Shoreline Master Program (available here: [MICC 19.07.110\(E\)\(6\)\(b\)\(ix\) and 19.07.110\(E\)\(6\)\(c\)](#)), related to the repair of docks and the applicable standards.
- Applicant :** Waterfront Construction Inc. (c/o Celine LaVigne)
- Location of Property:** The proposed interpretation would affect dock repairs on Lake Washington within the city limits of Mercer Island.
- SEPA Compliance:** This proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(19).
- Project Documents:** Please follow this file path to access the associated documents for this project: <https://mieplan.mercergov.org/Public/DCI18-001/>
- Written Comments:** Written comments on this proposal may be submitted to the City of Mercer Island either by email, in person, or by mail to the City of Mercer Island, 9611 SE 36th Street, Mercer Island, WA 98040-3732. Anyone may comment on the application, receive notice, and request a copy of the decision once made.
- Only those persons who submit written comments or participate at the public hearing (if a hearing is required) will be parties of record; and only parties of record will have the right to appeal.
- Public Hearing and Public Meeting:** Pursuant to MICC 19.15.010(E) and MICC 19.15.020(F)(1), a public hearing is not required for this proposal
- Applicable Development Regulations:** The application will be reviewed for consistency with the approval of criteria in Mercer island City Code (MICC) section 19.15.020(L). MICC 19.15.010(E) requires that the development code interpretation applications be processed as an Administrative Action with public notice. Processing

requirements for Administrative Actions are further detailed in MICC 19.15.020.

Other Associated Permits:

The proposed interpretation would affect dock repairs and associated shoreline permitting on Lake Washington within the city limits of Mercer Island.

Studies and/or Environmental Documents Requested:

None.

Application Process Information:

Date of Application: July 10, 2018

Date of Complete Application: July 18, 2018

Public Comment Period: July 23, 2018 through August 22, 2018

The project is available for review at the City of Mercer Island, Development Services Group, 9611 SE 36th Street, Mercer Island, Washington.

Project Contact:

Evan Maxim, Interim Director of Development Services
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
(206) 275-7732
evan.maxim@mercergov.org

From: Clark Stahl
To: [Evan Maxim](#)
Subject: Re: Director's Interpretation Request - DCI18-001
Date: Tuesday, July 31, 2018 7:47:48 AM
Attachments: [Outlook-1495748084.png](#)

Thanks Evan!

Hope you've been well.

As you're obviously aware, shoreline permitting in the City of Mercer Island has become extremely difficult and frustrating. We're happy to help however we can.

Regards,

Clark



CLARK STAHL
LAKESIDE CONSTRUCTION, INC.
P.O. BOX 525
ISSAQUAH, WA 98027
(206) 850-0250 OFFICE
(206) 850-7364 DIRECT
WWW.LAKESIDeseATTLE.COM



From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Monday, July 30, 2018 4:19 PM
Subject: Director's Interpretation Request - DCI18-001

Dear Sir or Madam,

You are receiving this email because you have recently engaged in permitting in-water (in Lake Washington) at the City of Mercer Island.

The City has recently received a request for an interpretation related to the repair / maintenance of docks on Lake Washington – specifically related to MICC 19.07.110(E)(6)(b) – a copy of the notice for this request is available here:

<http://www.mercergov.org/files/BULL07232018.pdf> (page 13).

Please feel free to comment on this requirement and the requested interpretation. The comment period is until August 22, 2018. Comments received after the comment period will be considered up until the interpretation is issued (after the end of the formal comment period).

Regards,

Evan Maxim

Interim Director of Development Services

City of Mercer Island Development Services

9611 SE 36th Street, Mercer Island, WA 98040

p: 206.275.7732

f: 206.275.7726

If you would like a public record, please fill out a public records request at

<https://mercerisland.nextrequest.com/>.

From: Elizabeth Goodrich
To: [Evan Maxim](#)
Subject: MICC Comments
Date: Tuesday, August 28, 2018 1:33:09 PM
Attachments: [MICC Comments Goodrich \(1\).pdf](#)

Hi Evan,

I was writing to follow up on the code interpretation and timing of an expected answer. However, when I went to my email to find the email I sent with my comments it is nowhere to be found. I could have sworn I sent it to you, but I don't see it there. So I've attached my comments again just in case they weren't sent in the first place.

Let me know if there is any update on timing.

Thanks,

Elizabeth Goodrich
esgoodrich@gmail.com
(215) 805-2172

Mr. Evan Maxim
Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th St.
Mercer Island, WA 98040

Re: Code Interpretation for MICC 19.07.110(E)(6)(b)(ix)

Dear Mr. Maxim,

We recently purchased a property on the waterfront on Mercer Island with a shared dock. The dock is serviceable, but in need of repair. Doing a bit of research on the mercergov.org website, I found that it should be no problem to repair the dock:

Q: What if I have an existing dock and want to do some repairs to it?

A: Normal maintenance or repair of existing structures requires a Shoreline Exemption Permit. "Normal maintenance" includes those usual acts established to prevent a decline, lapse or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment.

Now, however, having hired a dock repair company and speaking to the planning department at the City, what I originally thought would be a small project with little or no negative environmental impact (and likely a positive effect) could be transformed into a much more expensive and potentially invasive undertaking, due to the fact that the interpretation of the following section has changed in the last year (even though the Code has not):

MICC 19.07.110(E)(6)(b)(ix) ("IX" for the purposes of this letter)

ix. If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:

(A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;

(B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and

(C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility

that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).

The purpose of this letter is to provide comments on the interpretation of this section to allow residents like myself to obtain permits to address potential safety hazards while making their dock more environmentally friendly.

I. Purpose of the Code

There are 5 stated purposes in Code Section 19.07, but the most relevant for Moorage Facility (“dock”) repair are: “To include best available science in developing policies to protect the functions of critical areas” and “to prevent undue hazards to public health, safety, and welfare by minimizing impacts to critical areas.”

Any interpretation of IX should keep these officially-stated purposes in mind. The code should create the opportunity for residents to minimize safety hazards and at the same time protect critical areas.

II. Our Contemplated Project

Our original intention was to repair some of our pilings by sleeving them (without replacing any of them) and replace 100% of the decking with more environmentally friendly materials. In the past, under this current code, that would not have triggered the requirements of IX. That approach (repair of pilings and replacement of decking) both minimizes the environmental impact and eliminates a safety hazard. In fact, as initially contemplated, the project would have a positive impact on the environment because instead of repairing some rotted out wooden decking, we would be using the newer, environmentally friendly decking materials. If the new interpretation of IX is applied, we would have to narrow the width of the dock, which not only would be more expensive, but also and much more importantly, would be more impactful on the environment than our current approach due to the need to install new pilings throughout the dock footprint. It is hard to imagine that such a result is compatible with the intent of the Code as described above. The alternative for us would be to leave dock as is, with the less environmentally friendly, wood decking.

III. Comments on the applicability of IX

On its face, IX does not apply to a project where there hasn’t been replacement or reconstruction during the prior five years. The Code provision sets forth a straightforward if/then test. The “if” part of IX says:

If more than 50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed **during the**

five years immediately prior to any demolition for the replacement or reconstruction... (emphasis added)

While it might be argued that the five year prerequisite was not intended (although why else would there be an explicit reference to the five year period?), the language is so clear here that the City cannot ignore it and must follow the plain language of the Code. Case law, both Federal and State, is very clear:

In *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102, 108 (1980) the U.S. Supreme Court set out clear guidelines for the proper role of statutory interpretation:

[I]n interpreting a statute a court should always turn to one cardinal canon before all others ... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. [Citations omitted]. When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete."

This rule has been followed uniformly in a long line of cases, including *Connecticut Nat'l Bk. v. Germain*, 503 U.S. 249, 254 (1992); *Densley v. Department of Retirement Systems*, 162 Wn.2d 210, 219 (2007); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002).

In Washington, the principles of statutory construction are similarly well-established:

[The courts'] primary duty in interpreting any statute is to discern and implement the intent of the legislature. [Cite omitted]. Our starting point must always be "the statute's plain language and ordinary meaning." *Id.* When the plain language is unambiguous - that is, when the statutory language admits of only one meaning - the legislative intent is apparent, and we will not construe the statute otherwise. [Cite omitted]. Just as we "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language ... we may not delete language from an unambiguous statute." *State v. J.P.*, 149 Wn.2d 444, 448 (2003).

"If a statute is clear on its face, its meaning is to be derived from the language of the statute alone." *Cerrillo v. Esparza*, 158 Wn.2d 194,201 (2006) (quoting *Kilian v. Atkinson*, 147 Wn.2d 16,20 (2002)) (internal quotations omitted).

There is nothing ambiguous about the five year prerequisite; either the structure was "replaced or reconstructed" during that period or it was not. Moreover, as stated in *State v. J.P.*, *supra*, "we may not delete language from an unambiguous statute," which is exactly what would have to be done to construe IX so as to ignore the five year prerequisite. The proper remedy here, if

the City wants to impose new restrictions, is to go through the process, complete with hearings and input, to rewrite the Code the way it would like it to read, instead of how it actually reads.

We respectfully request that you confirm that this statutory prerequisite must be followed.

III. Comments on Calculation of 50%

When the Code is rewritten, if it includes some form of the “50%” test, it should be drafted to clarify how that test would be applied. The current language states:

“If more than 50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed . . .”

It doesn’t specify how the 50% should be measured. By square foot? By cost? By environmental impact? Something else? If the goal should be to require large projects likely having significant environmental impact to complete three additional steps, then the rule should be triggered by the likelihood of and magnitude of environment impact. Following that logic, It would make no sense to penalize a homeowner for replacing old decking with a material that is environmentally a net benefit, and require them to reduce the width of their dock (especially if, by reducing the width, they had to replace or move pilings that affect and disturb the lakebed). On the other hand, if a proposed project clearly has the potential for a material environmental impact (such as replacing a majority of pilings), it may make sense to require additional actions.

It is worth noting that there is no evidence that narrowing an existing dock would mitigate any environmental impact. In fact, when the Planning Commission evaluated the environmental impact of new, larger width docks in 2011, it did not find any compelling evidence that a narrower dock would help the environment.

“After careful consideration of all the facts, the Planning Commission is unconvinced there would be a net loss of shoreline ecological function in comparing an 8’ grated dock with a 4’ or 6’ grated dock and has concluded that no scientific or quantitative relationship between residential dock coverage and significant smolt survival has been conclusively demonstrated.”

The City rejected that recommendation as it applied to new docks, which might make sense where an owner is starting from scratch, but until recently it has never applied it to replacing an existing dock deck.

But now, under the most recent interpretation of the 50% rule, if an owner replaces 100% of old, environmentally unfriendly decking with environmentally friendly materials, apparently they would be required to narrow the width of the dock for no demonstrable environmental benefit--or simply leave the less environmentally beneficial wooden decking in place. That doesn’t seem like a common sense outcome.

I recommend that the City lay out a very clear test to calculate what constitutes 50%. To make the calculation as clear as possible I suggest that the calculation be based on comparative project costs. If the project cost is going to be more than 50% of the cost of a full dock replacement, then IX should be triggered. This is a very easy and clear test that can be proven with two estimates from a construction company, one for the proposed project and one for a full dock rebuild.

An alternative way to calculate what constitutes 50% replacement would be based on the number of pilings being replaced. The replacement of pilings by driving new pilings into the lakebed is the biggest contributor to environmental impact. As such, replacement of pilings could be used as the indicator of what constitutes 50%. For example, if an existing dock has 20 pilings, and the owner proposes to remove 11 piles and drive 11 new piles into the lakebed, this could be considered more than 50% for the purposes of triggering IX requirements..

IV. Inconsistent Application

Finally, it's important to note that this rule has been applied to different applicants in different ways. Over the last several years, even though the Code hasn't changed and no official interpretation has been released, the planning department has changed the interpretation of the rule. For the last seven years, many projects were approved that consisted of replacement of 100% of decking, all without triggering IX. Some of these permits include: Judah (SHL17-012 issued 9/25/17), Taylor (SHL16-009 issued 9/19/16) and Edwards (SHL16-018 issued 8/1/2016). However, something changed (without any public notice or rationale) that caused new projects of virtually identical scope to trigger IX. This seems arbitrary and inequitable. As a resident, it's hard to understand what can or can't be done and at what cost, if the rules are applied arbitrarily from homeowner to homeowner.

I grew up on Mercer Island and I am looking forward to moving back and supporting the schools and the City. It is unfair to alter the interpretation without notice since I relied on the wording of the Code in making the financial decision to buy the property.

Thank you for your consideration. I strongly urge the City of Mercer Island to do what's best for the environment and the community and allow homeowners to repair their docks to create safer environments for their family, friends and the community.

Very Respectfully,

Elizabeth Goodrich
8424 Benotho Place
Mercer Island, WA 98040

From: Frank Blethen
To: [Evan Maxim](#)
Cc: [Charlene Blethen](#)
Subject: Dock repair application for Blethen' s @ 9850 35th. Pl. SE
Date: Saturday, August 11, 2018 6:39:55 AM

Good morning Mr. Maxim ,

My wife and I have lived at the above address for 28 years. About 26 years ago we bought the vacant waterfront lot just south of us. We saved all the trees, some of which provide over the water shade for the entire shoreline of the lot.

Additionally, we added three cedars mid lot and nursed back to health three very large Douglas firs on the top slope of the lot. This lot is a shaded oasis for birds and fish.

Members of our family have lived continuously on the Island since shortly after 1923 when the East Channel bridge opened and my maternal grandparents bought a small cabin on the south end.

I share the above as someone who has a long rich history with the Island and a very strong interest in the health of Lake Washington and its fish and bird populations.

Having always tried to do right by our waterfront , we are perplexed by the proposed requirement that in order to repair our 30 year old dock and environmentally upgrade the decking that we would : 1] be forced to unnecessarily replace several support piles . A costly and environmentally insensitive requirement: 2] Reduce the first 30 feet of the dock to a 4 foot width. This makes no sense and would negatively affect the functioning use of the dock.

We are more than willing to comply with other required dock changes and requested reasonable mitigation. But must rethink our willingness to go forward with the two items above.

Thank for your time and consideration. We assume this letter will be included in the public comments pertaining to DCI18-001 Development Code Interpretation .

Sincerely,
Frank & Charlene Blethen
206.972.8502 & 206.399.1001

p.s. We have read Marc Chatalas email to you and concur with his well articulated points.

From: Josh Knopp Miany
To: [Evan Maxim](#)
Cc: [Josh Knopp Miany](#)
Subject: DC118-001 - Comments
Date: Tuesday, July 31, 2018 2:18:51 PM

Hello Evan,

I am a property manager of waterfront property that has a degrading wood surface. We are looking at options to resurface this dock and know that the grating option is the direction everybody is being directed for the benefit of a few chosen fish species. So far I have an estimated cost to replace the decking at \$100,000. My client is fine with this but then we heard that this upgrade to the dock and to the water below (now getting a lot more light) is not sufficient. Based on the interpretation of this code of the shoreline master program, we would be forced to spend another \$8,000 to have the first 30ft of dock demo'd, pilings pulled out of the ground disturbing the soil beds; installing new piling; and reducing part of our dock entry to half the width it is already been approved for. This is more disruptive to the surroundings and adds a lot of time restrictions and costs to a routine project. It will also make the dock structure look terrible. There is no good way to transition our offset dock to have a toothpick connecting a strong structure to moor/protect our vessels.

We also have family members that require ADA access that we take out in our vessels. This needs to be taken into consideration when restricting structure dimensions. They need to be able to be comfortable maneuvering on the dock in their wheelchair.

At this time the client will not upgrade our dock if we are required to rebuild our dock to a smaller dimension. We will replace the few rotten boards and leave this structure as is.

Please let me know if there is anything you need in order to process this information in your public hearing for the interpretation of this code. I hope we can find a solution that allows a positive outlook for everybody.

Thanks,
Josh Knopp
206-335-8227

From: Marc Chatalas
To: [Evan Maxim](#)
Subject: DC118-001 – Development Code Interpretation
Date: Monday, July 30, 2018 7:44:02 PM

Mr. Maxim,

I am a Mercer Island resident residing at 2841 60th Avenue SE. I'm contemplating some repairs and upgrades to my dock but I'm struggling to understand the stance the city is taking with respect to the issue. At issue is the amount of disruption and disincentive your code imposes on the project. I'm willing to upgrade my decking to a more transparent material, to remove the skirting on my 30 year old dock and to remove a large swim platform. All of this is going to be a massive improvement for the shoreline shading and the aquatic life in front of my house. However, the code requiring me to reduce the width of my dock for the first 30 feet doesn't make sense to me. I'm willing to make all these environmentally friendly upgrades but what you require is for me to totally disrupt the environment by driving a bunch of new piles in to accept this reduced width dock—unnecessary spending money to reduce the width of my dock by 60 square feet. This is not good for the environment and, truth be told, I'm probably just going to make small repairs to my decking on my own if this is the requirement. The effect will be that my light blocking skirting, swim platform (>100sf itself) and wood decking will continue into perpetuity as I repair it on my own to avoid your onerous requirements. Is that really what you want or would you prefer I invest in making the situation 100% better not disrupt the shoreline at the same time?

I'm happy to talk more if you'd like, you have my contact information—please feel free to contact me at any time.

Thanks for listening and reconsidering these illogical and harmful changes to the code.

MARC CHATALAS 425.233.5690
On Point Hospitality Co.

Cactus | www.CactusRestaurants.com
Tavern Hall | www.Tavern-Hall.com

From: Marc Chatalas
To: [Evan Maxim](#)
Subject: RE: DCI18-001 – Development Code Interpretation
Date: Monday, October 15, 2018 1:47:19 PM

Excellent, thanks.

I think the big thing for the city to consider is the unintended consequences of the code. This is summed up in my last sentence far below:

I'm probably just going to make small repairs to my decking on my own if this is the requirement. The effect will be that my light blocking skirting, swim platform (>100sf itself vs the 60sf if you'd let me do the project and take down my platform) and wood decking will continue into perpetuity as I repair it on my own to avoid your onerous requirements. Is that really what you want or would you prefer I invest in making the situation 100% better not disrupt the shoreline at the same time?

Your code will prevent me from significantly improving the environmental impact of my dock. Additionally, it will stop me from investing a significant sum in permits, fees, taxes and, with the contractor (jobs etc).

Where is the win for anyone with that outcome? Fish lose. City loses. Despite saving a ton of money, I lose by embarking on a multiyear home improvement project with a less than optimal outcome for my property.

This is where you'd like to count on the power of human decision making vs. bureaucratic codes that don't neatly generate the best outcome 100% of the time.

Take care.

-M.
425-233-5690

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Monday, October 15, 2018 1:33 PM
To: Marc Chatalas <marc@ophco.net>
Subject: RE: DCI18-001 – Development Code Interpretation

Dear Marc,

I do not have a firm update quite yet – we are still working on the putting the interpretation together and research. I anticipate that it will be issued soon (my goal is Monday of next week or sooner).

Regards,

Evan Maxim

Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at
<https://mercerisland.nextrequest.com/>.

From: Marc Chatalas <marc@ophco.net>
Sent: Monday, October 15, 2018 12:40 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Subject: RE: DCI18-001 – Development Code Interpretation

Hi Evan,

Following up on this issue. Was the code interpretation completed and a determination made?

-M.
425-233-5690

From: Evan Maxim <evan.maxim@mercergov.org>
Sent: Tuesday, July 31, 2018 11:49 AM
To: Marc Chatalas <marc@ophco.net>
Subject: RE: DCI18-001 – Development Code Interpretation

Dear Marc Chatalas,

Thank you for taking the time to comment. I thought the email below would be useful in helping to understand the City's stance with respect to this interpretation.

We are reviewing a section of law related to the repair of docks – which reads:

“If more than 50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:...”

The first part of this section appears to set a threshold for how a dock may be repaired (*50 percent of the structure’s exterior surface (including decking) or structural elements (including pilings)*) before the dock has to be modified to comply with additional standards (*must also comply with the following standards:...*)

These regulations were prepared by the City in consultation with the Department of Ecology,

Department of Fish and Wildlife, and other agencies a few years ago (the update was in 2015).

However, I have also heard the concern you mention – that the driving of new piles will create more environmental harm than the benefit created by a narrower dock. I am also concerned about the unintended results you describe (and others have mentioned).

Ultimately, I think there are two questions that the City will need to come to a conclusion on:

1. How should the current code be adopted (what is the legal requirement currently)?
2. Does this code section make sense from an ecological (and other) standpoint for Mercer Island?

The purpose of the code interpretation process is really to answer both questions in my opinion – and I appreciate your comments and thoughts.

Again, thank you for taking the time to comment. Please let me know if you have any questions.

Regards,

Evan Maxim

Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at <https://mercerisland.nextrequest.com/>.

From: Marc Chatalas <marc@ophco.net>
Sent: Monday, July 30, 2018 7:44 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Subject: DCI18-001 – Development Code Interpretation

Mr. Maxim,

I am a Mercer Island resident residing at 2841 60th Avenue SE. I'm contemplating some repairs and upgrades to my dock but I'm struggling to understand the stance the city is taking with respect to the issue. At issue is the amount of disruption and disincentive your code imposes on the project. I'm willing to upgrade my decking to a more transparent material, to remove the skirting on my 30 year old dock and to remove a large swim platform. All of this is going to be a massive improvement for the shoreline shading and the aquatic life in front of my house. However, the code requiring me to reduce the width of my dock for the first 30 feet doesn't make sense to me. I'm willing to make all these environmentally friendly upgrades but what you require is for me to totally disrupt the

environment by driving a bunch of new piles in to accept this reduced width dock—unnecessary spending money to reduce the width of my dock by 60 square feet. This is not good for the environment and, truth be told, I'm probably just going to make small repairs to my decking on my own if this is the requirement. The effect will be that my light blocking skirting, swim platform (>100sf itself) and wood decking will continue into perpetuity as I repair it on my own to avoid your onerous requirements. Is that really what you want or would you prefer I invest in making the situation 100% better not disrupt the shoreline at the same time?

I'm happy to talk more if you'd like, you have my contact information—please feel free to contact me at any time.

Thanks for listening and reconsidering these illogical and harmful changes to the code.

MARC CHATALAS 425.233.5690
On Point Hospitality Co.

Cactus | www.CactusRestaurants.com
Tavern Hall | www.Tavern-Hall.com

From: Karen Walter
To: [Evan Maxim](#)
Subject: RE: DCI18-001, Notice of application
Date: Tuesday, August 21, 2018 2:35:14 PM

Evan,

Thanks for getting back to us on this NOA. We appreciate the City of Mercer Island's careful consideration of our comments. Please make us a party of record to this project so that we can receive all of the project information and decisions timely.

Have a nice day!

Karen Walter
Watersheds and Land Use Team Leader

*Muckleshoot Indian Tribe Fisheries Division
Habitat Program
39015-A 172nd Ave SE
Auburn, WA 98092
253-876-3116*

From: Evan Maxim [mailto:evan.maxim@mercergov.org]
Sent: Tuesday, August 21, 2018 2:33 PM
To: Karen Walter
Cc: Misty Blair (Misty.blair@ecy.wa.gov); Reinbold, Stewart G (DFW)
Subject: RE: DCI18-001, Notice of application

Dear Karen,

Thank you for taking the time to comment on this interpretation request.

In the order listed below:

1. The referenced file was a portfolio including both the request and the application form. I have updated the online folder to include both individually (instead of the portfolio).
2. This may prompt a code amendment as part of the update. The request is for an interpretation of the current shoreline regulations – I will need to act on the interpretation before we update the SMP. Ecology will have an opportunity to review this request – I met with Misty Blair and Maria Sandercock last week.
3. Comment acknowledged.
4. The City's intent is to interpret the code consistent with the original SMP. If the code is changed as part of the upcoming SMP update, which I currently do not anticipate, then you are correct additional technical and environmental analysis will be required.
5. Comment acknowledged.

I anticipate that I will reach out to the applicant in the next day or three to discuss their proposed interpretation. Much of it is framed as a "this does not make environmental sense" argument, rather than "this is how you should interpret the SMP requirements". My [initial opinion](#) is that it may make sense: A) to clarify the standard now and B) amend the SMP to state the standard more clearly as part of our update next year.

Regards,

Evan Maxim

Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at
<https://mercerisland.nextrequest.com/>.

From: Karen Walter <KWalter@muckleshoot.nsn.us>
Sent: Tuesday, August 21, 2018 1:03 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Cc: Misty Blair (Misty.blair@ecy.wa.gov) <Misty.blair@ecy.wa.gov>; Reinbold, Stewart G (DFW) <Stewart.Reinbold@dfw.wa.gov>
Subject: DCI18-001, Notice of application

Evan,

We are reviewing the proposed Code interpretation regarding piers and docks in Mercer Island under DCI18-001 – Development Code Interpretation (<https://mieplan.mercergov.org/Public/DCI18-001/>).

We have some questions and initial comments as noted:

1. Per the link, there is an attachment that currently won't download correctly. Can someone reload it? The link shown on the City's website is <https://mieplan.mercergov.org/Public/DCI18-001/DCI18-001-SUB1-SUPP-071018.pdf>
2. Also, isn't this request better served under the City's forthcoming re-evaluation of its Shoreline Master Program? It seems out of sequence to consider a code change under the Shoreline Master Program for a particular group of shoreline actions separate from the rest of the program. Does Ecology get an opportunity to review this request, too?
3. We would also like to note that one of the early recommendations in the WRIA 8 plan and Lake Washington Studies was a reduction of piers and docks in both Lakes Washington and Sammamish both in terms of numbers and sizes. (see http://www.govlink.org/watersheds/8/pdf/LWGI_SalmonSyn123108.pdf). We have seen little evidence that the number of piers and docks have been reduced in either lake. From the permits we have reviewed to date, piers and docks have been reduced on some properties and increased on others in both lakes.
4. The City's own restoration plan for its SMP specifically noted to reduce pier numbers and sizes in Section 7.4. How would the proposed changes to the code be consistent with these recommendations? Shouldn't there be a technical and environmental assessment of the proposed changes to ensure that they do not adversely affect juvenile Chinook and other salmon?
5. The applicant argues that pier reductions have resulted in the need to replace piling, too. While there may be short term impacts from removing and replacing piling, generally if the project results

in fewer and smaller number of piles, we would expect there would be benefits to juvenile Chinook by reductions in predator habitat, particularly for small-mouth bass that are associated with pier. (see <http://www.govlink.org/watersheds/8/pdf/Fresh03.pdf>; <http://www.govlink.org/watersheds/8/pdf/Fresh-Abstract03.pdf>)

We appreciate the opportunity to review this proposal and may have further comments subsequently.

Thank you,
Karen Walter
Watersheds and Land Use Team Leader

*Muckleshoot Indian Tribe Fisheries Division
Habitat Program
39015-A 172nd Ave SE
Auburn, WA 98092
253-876-3116*

Administrative Interpretation review

Local government: City of Mercer Island

Ecology review sent to local government: 11/1/18

Final date of Local Interpretation: expected to be 11/5/18

Ecology Staff: Maria Sandercock, Regional Planner, NWRO

This document summarizes Ecology's review and consultation of a local Administrative Interpretation consistent with [WAC 173-26-140](#).

Local government request

Notice: email received 10/29/2018.

City of Mercer Island submitted a request for consultation on a draft administrative interpretation titled:

RE: Repairs of Non-Conforming Moorage Facilities

The City received a request from Water Front Construction for an interpretation of Mercer Island City Code (MICC) 19.07.110(E)(6)(b)(ix). The purpose of the interpretation is to clarify why a repair of a moorage facility will require compliance with subsections (A) through (C). MICC 19.07.110(E)(6)(b)(ix) states:

"If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:..."

The City's interpretation includes an interpretation of the "50 percent" threshold and the "five years" threshold.

Ecology analysis and consistency determination

The City's interpretation clarifies how to implement MICC 19.07.110(E)(6)(b)(ix) and when a repair to a moorage facility is required to comply with additional standards.

This interpretation is consistent with the purpose and intent of RCW 90.58.020 to protect the resources and ecology of the shoreline by ensuring that existing nonconforming docks become consistent with the City's Shoreline Master Program over time.

This interpretation is also consistent with Ecology's guidelines on shoreline modifications (WAC 173-26-231).

Ecology notes

1. One suggested change for consideration is under "Conclusion and Interpretation" item #5. This is to clarify that prior work permitted under other permits is included (assuming this is the intent).
 - b. "The five-year time period is intended to include the cumulative total of the work authorized by a permit application, and any replacement ~~the~~ work conducted within the five years immediately prior to the demolition authorized by the permit application."
2. This administrative interpretation could inform a future amendment to the SMP to better convey the intent of this section.