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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

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