



Public Services Department Memorandum

Date: June 14, 2019
To: Department of Ecology – Shorelines Planner Sarah Cassel
From: Nate Schildmeyer – City of Bonney Lake Assistant Planner
Re: **Proposed changes as a part of the 2019 Shoreline Master Program (SMP) periodic update.**

PURPOSE:

The purpose of this memorandum is to explain the proposed changes to the City’s SMP as a part of the City’s required 2019 periodic update by fulfilling the requirements of WAC 173-26-110(4).

BACKGROUND:

As required in RCW 90.58.080(4)(b)(i), the City of Bonney Lake is required to undertake a periodic review and update of the Shoreline Master Program (SMP). The shoreline jurisdiction consists of all landward areas within 200 linear feet of the Ordinary High Water Mark (OHWM), as designated by the State of Washington. The City’s adopted SMP is composed of three parts: the regulatory requirements of BLMC Chapter 16 Division III, the policies found in the Shoreline Element (chapter 8) of the City’s comprehensive plan *Bonney Lake 2035*, and the *Shoreline Restoration Plan* which was adopted at the time of the City’s comprehensive update and is not being updated as a part of this effort. During this on-going periodic review process, the City has completed an initial checklist and determined that the current SMP meets the requirements for continued consistency with the Shoreline Management Act and State law; however, the City has elected to take this opportunity to make some minor revisions and modifications to the regulations and policies of the SMP for the purpose of internal consistency with the comprehensive plan (in the case of the revisions to the shoreline element) and for greater effectiveness based on experience with the regulations as-written.

The City submitted a set of draft regulatory changes and a revised version of the Shoreline Element to the Department of Ecology (ECY) for their initial review on April 5th, and had a phone call with the ECY reviewer on April 9th to discuss the proposed changes to the Shoreline Element and the City’s shoreline regulations. A copy of the staff-drafted regulatory changes sent to ECY at that time is attached as **Attachment 1**. The City also provided copies of those draft changes to Cascade Water Alliance

(CWA) at that time and to the Department of Fish and Wildlife (WDFW) in order to adjudge whether those organizations, because of their positions as primary lakebed and shore land property owner (CWA) and overwater regulatory authority (WDFW), had special concerns based on their unique prerogatives. The City received a handful of suggestions from CWA, and no specific response from WDFW. The City received feedback on the regulatory proposed changes from ECY on May 2nd. No feedback related to the proposed revisions to the Shoreline Element of *Bonney Lake 2035* was included in the response from ECY.

DISCUSSION:

As a brief reminder, the three primary issues that staff is attempting to better address with these changes are 1) adding additional incentives that can effectively induce private residential property owners adjacent to Lake Tapps to plant and maintain native vegetation in the vegetation conservation zone, 2) legalizing non-conforming structures and development as allowed under State law, and 3) simplifying requirements for dock design. These factors were the primary issues raised at the Kick-off Open House held on November 1, 2018, and are anecdotally the primary issues that staff find to be commonly raised by proponents of development related to projects in the shoreline jurisdiction.

City staff have now revised the proposed regulations to incorporate much of the feedback received from ECY, and the draft materials are being presented tonight for discussion and comment by the Planning Commission. The resulting draft revisions are included as **Attachment 2**. A summary of the comments that were received from ECY on May 2nd is included below, along with a description of how those comments were incorporated into the revised draft regulations in Attachment 2. If the suggestions were not incorporated into the draft regulations, an explanation of why those suggestions were not incorporated is provided.

1. City's proposed change: Make the word “development” plural within the definition by adding an “s” to the end of it. In the context of the sentence, it seemed appropriate to make development plural.

ECY's response: To point out that this definition, which appears in the requirements of the WAC related to the listed exemptions from getting a shoreline development permit, is related to the exemptions section.

Resulting change: Withdraw proposal of any change. The revised version does not include any proposed change to this definition.

2. City's proposed change: Remove the phrase “over the water” from the definition of “Boat House,” and add the phrase “water-related recreational equipment” related to the storage use of such a structure. This alteration relates to the new incentives that would allow an upland storage building under revised section BLMC 16.56.040.F.

ECY's response: To point out that there is a discrepancy between “Boat House,” “Dry Boat Storage,” and some other terminology in the code related to prohibited overwater storage of boats.

Resulting change: Staff has decided to stick with the definition of “Boat House” as the small upland storage building that will be allowed under the new incentive in BLMC 16.56.040.F, and to keep the changes proposed to ECY on the 5th of April while deleting “dry boat storage” from the definitions section.

3. City's proposed change: Add a definition for “Detached house” in order to keep the replacement phraseology throughout the code consistent as the City moves away from the term “single family residence.”

ECY's response: Elsewhere in the update the term “detached dwelling” is used, while “detached house” is not.

Resulting change: Staff revised the term per the recommendation of Ecology.

4. City's proposed change: Staff proposed revising the definition of “Duplex” to specify the difference between a duplex and a detached dwelling with an ADU.

ECY's response: Ecology pointed out that ADU was not defined in the SMP.

Resulting change: No change. The definition of ADU currently appears in the SMP and is not being revised here.

5. City's proposed change: Staff had deleted the definition of “Float” as a part of the effort to simplify the dock requirements. Staff also removed terms like “ells” and “Finger pier” as well, in order to make the dock and pier requirements less convoluted.

ECY's response: Ecology questioned this deletion, especially since the City is proposing to allow more temporary floating recreational equipment during the warmer months of the year when the water level of Lake Tapps is generally at ‘full pool.’ Much of that floating recreational equipment could be encompassed under this definition.

Resulting change: Staff revised the proposed regulatory change and re-inserted the definition without change.

6. City's proposed change: The City proposed combining the existing definitions of “Nonconforming development” and “Nonconforming use” in such a way to align with the changes to the “Nonconforming uses and developments” section in BLMC 16.56.150.

ECY's response: Ecology felt that these two elements of the nonconforming regulations needed to remain separated to draw a clear distinction between uses and development (specifically *structures*).

Resulting change: Staff re-separated the two terms as suggested by Ecology, with alterations to the existing language to both terms. The definition for “nonconforming development” has been restricted to development that has been issued a shoreline variance or conditional use permit, while the “nonconforming use” definition has had the term “constructed” removed. These changes reflect the new language that is in BLMC 16.56.0150 related to what development is considered “conforming” as opposed to “nonconforming.”

7. City's proposed change: In the **Prohibited shoreline uses and modifications** section of BLMC 16.50.030, “Boat Houses” are a part of that list in the existing code. Now, the City is proposing to redefine them as strictly upland storage structures and, in coordination with CWA, allow them as an incentive to getting property owners to choose to provide planting of native vegetation within the vegetation conservation area adjacent to the OHWM. The City changed the term in the “prohibited” section to “Overwater boat houses.”

ECY's response: Ecology pointed out that the City is defining “Boat houses” as strictly upland storage buildings, and points out the conflict.

Resulting change: Staff revised the term in the prohibitions section to “Enclosed overwater storage buildings.”

8. City's proposed change: Staff removed “Launching Rails” from the prohibited structures section. This change was made due to the fact that so many homeowners have some version of launching rails that this prohibition is effectively impossible to enforce, and there has been negative public comment and angst against this prohibition received during the update process. In many cases, what constitutes “launching rails” are two 4x4s attached to a bulkhead temporarily to launch personal water craft into Lake Tapps which can be put in the water or taken out of the water at a moment's notice. Property owners are often able to effectively evade enforcement of this prohibition by moving/removing the rails whenever is convenient to avoid observation.

ECY's response: Ecology questioned the purpose of this change generally.

Resulting change: Staff has modified the approach to prohibition of “Permanent launching rails.” This way, the permanent attachments used for these types of things can be identified as the prohibited development features, whether or not the actual rails are in the water or out of the water at the time of observation. This will help staff target enforcement of this prohibition.

9. City's proposed change: The City had not proposed a change to section BLMC 16.54.030.B which reads "Renting, leasing, or selling moorage space associated with a single family, duplex, or multifamily residence dock or pier is prohibited."

ECY's response: Ecology suggested that "single family, duplex, or multifamily residence dock or pier" be replaced with "residential use."

Resulting change: This phraseology is more succinct and seems to encapsulate the intent of the section comprehensively. The City has adopted this change in the current draft under consideration.

10. City's proposed change: The City proposed changing the term "single family residential" to "detached dwelling unit" in BLMC 16.54.030.D.

ECY's response: Ecology suggested replacing the term "detached dwelling unit" with "one (1) detached dwelling unit."

Resulting change: The change seems unnecessary. Staff has decided to stick with the original revision.

11. City's proposed change: The City modified the piers and docks dimensional standards found in 16.54.030.G to remove the specific requirements of pier and dock elements, without changing the overall dimensional limits for the structure as a whole.

ECY's response: Ecology has suggested that their interpretation of the wording of WAC 173-26-231(3)(b) means that the maximum width of a dock or pier element should be six (6) feet; however, no justification for this arbitrary limit is given except to rely on this language from the referenced section of the WAC: "Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use."

Resulting change: The City does not agree with Ecology's interpretation of this section and did not incorporate this suggested change into the referenced section of this draft code.

12. City's proposed change: BLMC 16.54.030.I, which deals with pier and dock design standards generally, was amended to include a section that states: "No part or portion of a pier or dock, nor any accessory to a pier or dock such as a boat lift, shall extend beyond the limit of the shoreline frontage of a lot as determined using the methodology specified in BLMC 16.56.090. The width of a pier and/or dock may not exceed 40% of the length of a property's shoreline frontage or 12 feet, whichever is less." Staff had determined the appropriateness of these standards based on the fact that it would allow a property with a lengthy section of shoreline frontage to build a 12-foot-wide by 30-foot-long dock (at the maximum allowed 360 square foot area) and tie a boat or two personal water craft to the end of the dock without exceeding the 50 foot length limit. Conversely, a property owner with little shoreline frontage based on the

geography of the OHWM would not be restricted below the 40% of the length of the frontage level. These dimensions are also not out of character with the existing development patterns that can be observed along the shoreline of Lake Tapps already.

During the City's conversation with Ecology on April 9th to discuss the proposal, Ecology expressed concern with property owners building what amounted to overwater "decks" that were intended for recreational purposes other than "as a facility for access to watercraft," as required in WAC 173-26-231(3)(b), and the "minimum size necessary to meet the needs of the proposed water-dependent use" standard could be violated.

ECY's response: Ecology's response to the City's regulatory proposal was to state a blanket limit of 6 feet in width should apply to all pier/dock elements, citing WAC 173-26-231(3)(b) as the justification.

Resulting change: The City would still like to divorce our regulations from the arbitrary assignment of limits on the width of piers and docks. Some justified limits are appropriate to protect some separation between structures to provide space for safe operation of watercraft and water-related recreation. In the revised draft, the City has reduced the percentage proposed to 25% which mirrors the allowed width of the upland access corridor allowed to property owners through the native vegetation zone and 10 feet of maximum width, whichever is less. At ten feet of width, residents that need space to pull watercraft such as kayak or canoes out of the water safely or that may need to use a wheelchair can better use the dock or pier for the water-dependent, watercraft access purposes for which they are intended. The interpretation provided by Ecology that there is a six (6) foot maximum width is not justified, so it has not been incorporated into the latest regulatory draft.

13. City's proposed change: The City has proposed allowing additional temporary recreational equipment such as floating platforms, beyond what is already allowed in BLMC 16.54.030.K, during the period between May 1 – September 30. Conditions on this allowance are that the recreational equipment "may not impede navigation routes on Lake Tapps" and shall not "be allowed to rest on the shore lands during times of water 'drawdown'."

ECY's response: Ecology pointed out that the use of the word "may" would not compel compliance and suggested changing to "shall."

Resulting change: Changed per the suggestion from Ecology.

14. City's proposed change: BLMC 16.54.030.N.1 currently allows, as accessories to residential docks, "two Jet Ski lifts per single-family lot." The City changed the term "single-family" to "residential," and changed the term "Jet Ski," which is technically a trademarked type of personal water craft, to "personal water craft."

ECY's response: Ecology felt that the change from "Jet Ski" to "personal water craft" was increasing ambiguity, and should be returned to the original language.

Resulting change: The City will retain the change to "personal water craft," since it is more accurate to what is being regulated by this section. The lifts in question are generally designed to work with many brands of personal water craft.

15. City's proposed change: The City added two additional planting incentives in order to encourage private property owners to plant native vegetation in the vegetation conservation areas adjacent to the OHWM. In the *Shoreline Restoration Plan*, it was specified that the primary opportunity to maintain and improve ecological functions related to Lake Tapps was to incentivize/require planting of native vegetation at the OHWM, so adding these incentives is directly in line with that adopted plan and the ideas generated by members of the public.

One is in proposed section BLMC 16.56.040.E that would allow property owners, with the cooperation of CWA, to include areas of CWA's property in calculating impervious surfaces allowed on their property in exchange for providing vegetation planting. The other is to allow a small storage "boat house" upland from the OHWM to allow property owners to store water-related recreational equipment at the water's edge in exchange for the same planting requirements mentioned above.

ECY's response: Ecology commented on the second of these incentive ideas and added what they feel are appropriate modifying conditions. These included an explicit restriction on creating habitable space, rooftop decks, and limiting the placement to the specified access corridor areas. They also suggested reducing the allowed square footage of the structure from 200 square feet to 150 square feet.

Resulting change: City staff slightly modified the specific suggestions, but for the most part has adopted the suggestions from Ecology in the current draft.

16. City's proposed change: BLMC 16.56.060.F deals with tree removal, and as written has caused confusion in its application because of dissonance between its intent and its language. It was written as a means to regulate tree clearing within the vegetation conservation area; however, the way that it is written applies it to the entire 200' shoreline jurisdiction. As a somewhat 'happy accident,' it has been effective in its application in discouraging disallowed tree removals in the areas of the shoreline jurisdiction outside of the vegetation conservation areas on shoreline lots. Because the shoreline exemption application generally costs \$50 and takes days/weeks to issue, it has been a useful way for the City to review, authorize, and mitigate for tree removal in the shoreline jurisdiction areas outside of the vegetation conservation area.

The proposed change was written to formalize our standing practice: require review through a shoreline exemption request and replace removed trees at a 1:1 ratio of like-for-like tree species when feasible (based on a simple standard of no-net-loss).

ECY's response: Ecology suggested that the way this is written was confusing, and suggested a different alternative regulatory strategy that would combine the sections dealing with tree removal within the vegetation conservation area and outside of the vegetation conservation area.

Resulting change: Instead of implementing Ecology's suggested method, the City has inserted the language "For trees outside of the vegetation conservation area," to apply specifically to BLMC 16.56.060.F, to better differentiate the requirements within the vegetation conservation area and outside of that area. Staff feel that this is adequate and straightforward enough to accomplish the same objective.

17. City's proposed change: The City altered the existing **Nonconforming uses and developments** section found in BLMC 16.56.150 to better reflect the presence of development that has been constructed, altered, improved, repaired, etc. prior to the establishment of the ecological baseline conditions that were considered as a part of the comprehensive update that took effect on October 16, 2014. The City's ability or inability to establish what specific development was "legally established" and what development was not is often compromised based on regulatory changes that have happened over the years, records retention and destruction schedules, transfers of property ownership, etc. There are many residential properties where there is just no information available to determine what was done when and by whom. Based on applicable language in the State's regulations, staff reworded the section to tie the existence of development at the time of SMP adoption on October 16, 2014 to status as "legally established," based on the fact that by existing at that time, that development was part of our ecological baseline. No net loss of ecological function can result from previously-existing development remaining in place.

ECY's response: State statutes allow local jurisdictions to determine which established structures, uses, and development is considered conforming, but not necessarily to define those structures or development as "legally established."

Resulting change: City staff have made the appropriate changes to change language i.e. the status of development that was part of the ecological baseline condition upon adoption of the current SMP regulations from "legally established" to "legally conforming."

18. City's proposed change: The City removed "substantial development permits" from the requirement in current section BLMC 16.58.120.A.3 for SEPA review. Even though City staff still need to determine whether or not a SEPA review is required for the shoreline development permit, a formal review is not required since that would involve submittal of a SEPA checklist, a formal review process, and the appropriate fees per BLMC 3.68. Staff will still determine if SEPA is required even with this change to code language happens; however, there are some

upland projects that would require a shoreline permit but would be SEPA exempt (below the applicable threshold) if we adopt this change.

ECY's response: Ecology expressed concern that the City would fail to carry out SEPA review when required if shoreline development permits are struck from this section, writing in the review comments: "What SEPA Review to me means, that you looked at the parameters of the proposal and decided if it was exempt or not and took the appropriate action."

Resulting change: Since the expressed concern from Ecology is addressed in practice, and the current language requires formal SEPA review when upland projects would otherwise be exempt, the City is choosing to retain the original draft language. The exclusion of shoreline development permits from this section does not exempt projects that are non-exempt from SEPA review from getting the appropriate review—it merely allows exempt projects to remain exempt.