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## MEMO B-11, Part 2

**DATE:** May 22, 2020

**TO:** Portland Planning and Sustainability Commission

**FROM:** Debbie Bischoff, Senior Planner

**CC:** Sallie Edmunds, Planning Manager, Jeff Caudill, City Planner, Mindy Brooks, City Planner

**SUBJECT:** Residential Docks

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### INTRODUCTION

At your May 12 meeting staff presented Table B item B-11 and Memo B-11. Staff described the preponderance of private residential docks in the South Reach, especially south of the Sellwood Bridge. These overwater structures adversely impact threatened and endangered fish species and their habitat and reduce the area for public use on the Willamette River. At the work session, the PSC approved staff's four conceptual recommendations for addressing residential docks by a straw poll.

The purpose of this memo is to provide you with and explain the latest BPS staff recommendations. A few recommendations have been revised from those presented on May 12 based on further discussions with City staff. We look forward your review of these final staff recommendations.

### REVISED STAFF RECOMMENDATIONS

The following are staff's revised recommendations with an explanation of why a recommendation has changed.

#### **Recommendation 1: Update Residential Dock Development Standard**

The recommendation for a River General overlay zone development standard for residential docks is to address new docks only. Existing docks are addressed in the River Environmental overlay zone recommendations below. Staff proposes limiting the size of the floating boat docking structure to 200 square feet and prohibiting adjustments to this standard. Staff also proposes that the floating boat



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docking structure not be located in shallow water habitat, with adjustments prohibited but modifications allowed through River Review. This means that an applicant would need to meet the approval criteria in River Review to locate a new floating boat docking structure in shallow water habitat. Additionally, the purpose statement is updated to more specifically state the reasons for limiting the impacts of new private residential docks on fish and other species and their necessary habitat.

This standard limits the adverse effects of new residential docks by limiting the size of the floating boat docking structure and the location outside of shallow water habitat areas. There is an allowance for a modification to the location of the floating boat docking structure in shallow water habitat area. However, this standard will be difficult to modify given the approval criteria under river review. Staff finds that there are a small number of sites in the South Reach that could apply for a new residential dock compared to the many existing residential docks that could seek significant repair or replacement over time.

**Recommendation 2: Revise the Exemption Provision for Normal Repair, and Maintenance of Docks.**

Staff proposes code language in the River Environmental overlay zone that changes the current exemption language. The recommendation would continue to exempt alteration and repair of a residential floating boat docking structure when less than 50 percent of the combined constituent systems are updated. Repair, replacement or alteration of greater than 50 percent of the combined constituent systems would be required to meet a new standard (see 33.475.440.P. below) or go through River Review. The term “constituent systems” is already used in the definition of repair in the Zoning Code.

To clarify, replacement applies to the entire floating boat docking structure, including all constituent parts of the system. Alterations of more than 50% of the constituent systems means altering or repairing some but not all of the floating boating dock structure.

This recommendation does not include the two-year time period for exempt repair and maintenance of less than 50% of the floating boat docking structure discussed in the May 12 work session because it was determined that it would be difficult to track when permits are not required.

**New Recommendation 3: Add an Existing Residential Docks Standard**

BPS staff recommends a new River Environmental overlay zone development standard, 33.475.440.P., that applies to existing residential docks when over 50% of the constituent systems of the floating boat docking structure is replaced. This standard seeks to reduce the environmental impacts of private residential docks by reducing the size of the floating boat docking structure portion of the new residential dock standard to 200 square feet or by at least 25% of its existing size. The non-floating portion of the residential dock must remain in the same location and can not increase in size. This is to ensure that adverse impacts of gangways on riparian habitat areas, for example, are not increased. If an



applicant can not meet this standard, they would need to go through River Review to mitigate for impacts of the significantly repaired or replaced floating boat docking structure.

**Recommendation 4: Approval Criteria under River Review.** Since May 12 planners learned that there are ample mitigation credits available at a Willamette River restoration site (formerly Linnton Plywood). Therefore, it was determined that adding a fee-in-lieu program in the approval criteria in South Reach code is not necessary. Revised code for River Review, 33.865.100.A.2.d., Mitigation, excludes mention of a fee-in-lieu program.

Staff's latest recommendation includes a reorganization of this code section, and the addition of a new provision that allows a proposed development to count mitigation required by state or federal permits toward the city's mitigation requirements. This is allowed as long as the mitigation adequately compensates for impacts to identified natural resources and functional values.

**Recommendation 5: New Plan Action to Develop and Implement a South Reach In-Lieu Fee.** Per the information provided in Recommendation 4, staff finds that there is no need for a new action plan item related to establishing a fee-in-lieu program, as recommended on May 12.

Attachment: BPS Revised Residential Dock Standards Language



## ATTACHMENT: BPS REVISED RESIDENTIAL DOCK C

### **33.475.225 Residential Docks** (In the River General Overlay zone)

**A. Purpose.** The residential dock standard is intended to:

- Limit the impacts of new docks on shallow water habitat areas, which are critical for the survival of a variety of aquatic species;
- Minimize harmful shading that predatory fish species use to prey on fish species listed under the Endangered Species Act;
- Minimize disruption to water flow patterns and natural sediment transport along the shoreline; and
- Maintain access to important foraging areas for waterfowl and other wildlife.

**B. Residential dock standards.** The following standards apply to new floating boat docking structures located in a residential zone.

1. The total square footage of the new floating boat docking structure must not exceed 200 square feet. Adjustments are prohibited; and
2. The new floating boat docking structure may not be located within shallow water habitat. Adjustments are prohibited. Modifications are allowed through river review.

### **33.475.405 Items Exempt from These Regulations** (In River Environmental Overlay Zone)

- D.** Operation, maintenance, alterations, repair, and replacement of existing structures, exterior improvements, irrigation systems, stormwater facilities, non-potable water systems, roads, utilities, public trails and paths, public viewpoints, public interpretive facilities, and erosion control measures. Alterations, repair and replacement is not exempt whenever total square footage, building coverage or utility size is increased. Replacement of an existing floating boat dock structure located in a residential zone and alteration or repair of more than 50 percent of the combined constituent systems of an existing floating boat dock structure located in a residential zone is not exempt;

### **33.475.440 Development Standards** (In River Environmental Overlay Zone)

**P. Standards for existing residential docks.** The following standards apply to replacing or altering or repairing floating boat dock structures that existed on [insert effective date of ordinance] that are located in a residential zone:

1. If the floating boat dock structure has a total square footage greater than 200 square feet, the total square footage of the floating portions must be reduced by at least 25 percent; and



2. The non-floating portions of the floating boat dock structure must remain in the same location and must not be increase in size.

**33.865.100 Approval Criteria** (In River Review) [NOTE: Section has been reorganized. Only specific changes to text have been highlighted.]

**A. Development within the River Environmental overlay zone.** The applicant's supplemental narrative must demonstrate that all of the following are met:

d. Mitigation:

- (1) The mitigation plan demonstrates that all significant detrimental impacts on identified scenic and natural resources and functional values, and the interim loss of functional value will be compensated for. In addition, for proposed development within the riparian buffer area that is not river-dependent or river-related, the mitigation plan must result in a significant improvement of at least one of the following functional values: channel complexity, floodplain connectivity, or floodplain complexity;
- (2) The amount of natural resource mitigation due as compensation is based on the amount and relative condition of the resources and functional values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio of no less than 1.5:1 (mitigation area to project disturbance area) for onsite mitigation or mitigation bank credits and no less than 3:1 for offsite mitigation but may be more to address the following:
  - The uniqueness of the resources and functional values impacted;
  - The relative condition of the mitigation area;
  - The distance between the impact area and mitigation area; and
  - The time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;
- (~~2~~3) To the extent practicable, the natural and scenic resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functions as the lost resource. In addition, the mitigation plan must demonstrate that mitigation for tree removal in the 100-year floodplain or 1996 Flood Inundation Area must meet or exceed the replacement requirements of Table 475-2 and occur within the 100-year floodplain and or 1996 Flood Inundation Area;
- (4) Mitigation must occur on-site in the River Environmental overlay zone, or an area that is contiguous to the River Environmental overlay zone, when practicable and ecologically beneficial. Factors to be considered when

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evaluating this criterion include:

- The potential for the long-term success of the restored resources and functional values in the mitigation area;
- The amount, size, shape, and connectivity potential of on-site mitigation areas;
- The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
- Contamination; and
- Any other site-specific issue or constraint;

(5) If on-site mitigation is not practicable or ecologically beneficial, then off-site mitigation is allowed as follows:

- Through the purchase of credits from a city approved mitigation bank located along the Lower Willamette River as close as possible to the disturbance area;
- Through offsite mitigation in the River Environmental overlay zone. If the offsite mitigation compensates for significant detrimental impacts located within the 100-year floodplain or the 1996 Flood Inundation Area, then the offsite mitigation area must also be located within the 100-year flood plain or 1996 Flood Inundation Area. The applicant must own the area where the mitigation will occur or possess a legal instrument that is approved by the City as sufficient to carry out and ensure the success of the mitigation plan (such as an easement or deed restriction); and

(6) In cases where the proposed development is subject to mitigation as the result of obtaining permits from the Oregon Department of State Lands or the U.S. Army Corps of Engineers, the mitigation required for those permits can count toward meeting this mitigation requirement as long as that mitigation is found to adequately compensate for impacts to the identified natural resources and functional values.

