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s.14;s.16;s.13

**MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
INFORMATION NOTE**

Date: April 17, 2015

File: 12495-20/86/B001

CLIFF/tracking #: 214257

**PREPARED FOR:** Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations

**ISSUE:** Pender Harbour Draft Dock Management Plan for Public Review

**BACKGROUND:**

A public open house was held on Saturday, April 11, 2015, in Madeira Park at the Pender Harbour Community Hall. The open house team included staff from the Ministry of Forests, Lands, and Natural Resource Operations (FLNR), the Ministry of Aboriginal Relations and Reconciliation (MARR), and the shishalh Nation. The open house was advertised to the public through letters to all dock tenure holders and applicants in the Pender Harbour area, notices on both the FLNR and shishalh websites, and advertisements in two local papers. The draft Dock Management Plan (DMP) was made available to the public in advance of the open house on April 7, 2015, on FLNR's website. During the open house, attendees could pick up a copy of the draft DMP, a question and answer fact sheet, as well as view several large maps and informational posters and slides. There was several staff positioned around the room to help answer questions. The open house was well attended by an estimated 400 people.

**DISCUSSION:**

s.13

## **NEXT STEPS:**

s.13

## **RESPONSE:**

- British Columbia is reviewing early feedback on the draft DMP. A number of comments received requested an extension to the comment period; British Columbia is responsive to requests of this nature, and will post an extension in the coming days.
- The draft DMP has been shared with the public specifically to learn about some of the concerns being raised. We appreciate the input from the local community with site-specific knowledge, as this will ensure a better final plan that supports consistent and robust decisions on private moorage in Pender Harbour.
- Staff from FLNR would be available to attend a future meeting with residents, later in the review period, to clarify proposed provisions and to share a summary of what we are hearing through the review process.

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<b>Reviewed by</b>	<b>Initials</b>	<b>Date</b>
DM	TS	April 17, 2015
DMO		
A/ADM	HM	April 17, 2015
RED/ED	HM	April 17, 2015
Dir./Mgr.	KH	April 17, 2015
Author	JC	April 16, 2015

**MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
INFORMATION NOTE**

Date: April 23, 2015

File: 12495-20/86/B001

CLIFF/tracking #: 214568

**PREPARED FOR:** Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations (FLNR)

**ISSUE:** Meeting with Jordan Sturdy, MLA, West Vancouver-Sea to Sky, and Ralph Sultan, MLA, West Vancouver-Capilano on Monday, April 27, 2015 regarding the Pender Harbour Dock Management Plan.

**BACKGROUND:**

s.13,s.16

A public open house was held on Saturday, April 11, 2015, in Madeira Park at the Pender Harbour Community Hall. The open house was advertised to the public through letters to all dock tenure holders and applicants in the Pender Harbour area, notices on both the FLNR and shishalh websites, and advertisements in two local papers. The draft Dock Management Plan (DMP) was made available to the public in advance of the open house on April 7, 2015, on FLNR's website. During the open house, attendees could pick up a copy of the draft DMP, a question and answer fact sheet, as well as view several large maps and informational posters and slides. There was several staff positioned around the room to help answer questions. The open house was well attended by an estimated 400 people.

**DISCUSSION:**

s.13

Based on public feedback, an extension to the timeframe for public comment has been implemented, adding an additional 30 days to the comment period to a total of 60 days.

### **CONCLUSION:**

The draft DMP has been shared with the public specifically to learn about some of the concerns. FLNR appreciates the input from the local community with site-specific knowledge, as this will ensure a better final plan that supports consistent and robust decisions on private moorage in Pender Harbour.

s.13,s.16

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**Attachments:** Draft Pender Harbour Dock Management Plan Fact Sheet  
Draft Pender Harbour Dock Management Plan

<b>Reviewed by</b>	<b>Initials</b>	<b>Date</b>
DM	TJ for TS	April 24/15
DMO		
ADM	CS	April 23/15
RED/ED	HM	April 23/15
Dir./Mgr.		
Author	KH	April 23/15



April 11, 2015

## **Draft Pender Harbour Dock Management Plan Fact Sheet**

The draft Pender Harbour Dock Management Plan was developed co-operatively by the *shíshálh* Nation and the Province.

The dock management plan, if approved, would apply to private moorage, group and strata or condominium facilities, commercial docks and marinas. The draft dock management plan provides both mandatory requirements and recommended guidelines for dock design and construction and also defines zones in Pender Harbour where there are additional requirements or restrictions.

### **What is the purpose of the dock management plan?**

The dock management plan is part of a greater reconciliation process between the Province and the *shíshálh* Nation. The purpose of the plan is to help ensure that areas of cultural and environmental significance in Pender Harbour are protected and to promote rehabilitation as well as responsible and appropriate dock development and maintenance.

### **What area does the dock management plan apply to?**

The dock management plan applies to the foreshore in Pender Harbour. For the purposes of the plan, the harbour has been divided into four zones, each with different requirements.

### **Why is the harbour divided into four zones?**

There are four zones because the requirements in each zone are based on levels of impact to environmental factors.

### **How do I apply for a new dock? If I complete these steps will I be guaranteed a dock approval?**

In order to apply for a dock in Pender Harbour you will need to:

- Check your location against the zone requirements and restrictions;
- We encourage you to contact the *shíshálh* Nation regarding your intent to apply for a dock
- Hire a Qualified Professional to assist in the design of the dock and development of a management plan, which must be consistent with the template available on the ministry's website.
- Commission an archaeology assessment of the project footprint;
- Submit an application to the Province.

Proponents must also comply with other relevant provincial policies which can be found at the following website:

[http://www.for.gov.bc.ca/Land\\_Tenures/crown\\_land\\_application\\_information/policies.html](http://www.for.gov.bc.ca/Land_Tenures/crown_land_application_information/policies.html)

If the above steps are completed your application will be considered complete and ready for review. This does not guarantee that your application will be approved as there are other important steps in the review process.

**How do I provide comments on the draft dock management plan?**

You can provide comments on the draft dock management plan on or before May 11, 2015 online at the Province's Applications and Reasons for Decision website:

<http://www.arfd.gov.bc.ca/ApplicationPosting/index.jsp>

search for file # 2410736,

OR

By mail to:

Section Head, Crown Land Authorizations

Ministry of Forests, Lands and Natural Resource Operations

Suite 200 – 10428 153<sup>rd</sup> Street, Surrey BC, V3R 1E1

**Do my comments matter?**

After the public consultation period has ended on May 11, 2015, the Province and the *shíshálh* Nation will review and consider comments received from the public. A final document will then be submitted to both governments for approval.

**When will the dock management plan take effect?**

If approved, the Pender Harbour Dock Management Plan could be implemented by Fall 2015.





## PENDER HARBOUR DOCK MANAGEMENT PLAN

### 1.0 INTENT OF DOCK MANAGEMENT PLAN

The Pender Harbour Dock Management Plan (the DMP) is an instrument of policy that provides guidance in relation to docks authorized or proposed under the *Land Act* within the Management Area, as identified in Appendix A.

### 2.0 PRINCIPLES AND OBJECTIVES

In addition to the principles and objectives outlined in other applicable provincial Operational Land Use Policies, the objective of the DMP is to promote responsible and appropriate dock development by:

- helping to minimize and mitigate impacts to marine resource values;
- protecting archaeological resources from future disturbance;
- contributing to address impacts, including cumulative impacts, of dock development on Aboriginal interests; and
- advancing collaborative management between the *shishálh* Nation and the Province of British Columbia.

### 3.0 DEFINITIONS

**"Commercial Dock"** means a Dock operated year-round or seasonally as ancillary to a commercial operation and may include breakwaters;

**"Critical Habitat"** means habitat that is important for: (a) sustaining a subsistence, commercial, or recreational fishery, or (b) any species at risk (e.g., terrestrial or aquatic red- and blue-listed species, those designated by the Committee on the Status of Endangered Wildlife in Canada, or those SARA-listed species), or (c) its relative rareness, productivity, or sensitivity (e.g. eelgrass meadows, kelp forests, foreshore salt marsh vegetation, herring spawning habitat, and potential forage fish spawning beach habitat);

**"Dock"** means a structure used for the purpose of mooring boats and for providing pedestrian access to and from the moored boats, and may consist of a single dock, wharf or pier (including walkway ramp) and includes Private Moorage Facilities, Group Moorage Facilities, Strata Title or

Condominium Moorage Facilities, Commercial Docks and Marinas, but does not include Industrial Docks;

**“Dock Footprint”** means the area that lies directly under the Dock;

**“Dock Management Zones”** means those zones within the Management Area and as depicted in Appendix B.

**“Foreshore”** means that land in tidal areas lying between the high tide and the mean low tide and that land in non-tidal areas that is alternatively covered by water and exposed with the normal rise and fall of the level of the body of water, i.e. that land between the ordinary high and low water mark;

**“Group Moorage Facility”** means a multi-berth moorage similar to a private moorage facility but for the personal use of a group or association of residents from the surrounding community;

**“Industrial Dock”** means a dock providing moorage that is ancillary to an upland general industrial use as defined under the Province’s General Industrial Use Land Use Policy;

**“Management Area”** means the Pender Harbour area identified in Appendix A;

**“Management Plan”** means the management plan as described in section 7.

**“Marina”** means a dock providing moorage on a fee for service basis, includes ancillary uses (e.g. marine way, boat ramp, etc) and may include: the sale of gasoline, groceries, or supplies to the boating public whether provided on the dock or on the upland; and provision of scheduled service by float plane companies;

**“Natural Boundary”** means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

**“Preliminary Field Reconnaissance”** means a field survey that is designed to assess the archaeological resource potential of the study area, and to identify the need and appropriate scope of further field studies, and is performed by a Qualified Professional under the *Heritage Conservation Act*;

**“Private Moorage Facility”** means a dock that is:

- (a) permanently affixed to aquatic Crown land and any ancillary structures such as a boat lift and anchor lines; and
- (b) is for the personal and private use by one or a number of individuals or a family unit for boat moorage;

**“Project Footprint”** means the area approved under an existing authorization, or the area under application for authorization under the *Land Act*;

**“Qualified Professional”** means an applied scientist or technologist, acting alone or together with another qualified professional, if

- (a) the individual is registered and in good standing in BC with an appropriate professional organization constituted under an Act, acting under that associations code of ethics and subject to disciplinary action by that association, and
- (b) the individual is acting within that individual’s area of expertise.

**“Replacement Tenure”** means a subsequent Tenure agreement issued to the Tenure holder for the same area and purpose as under the original Tenure;

**“Riparian”** means the vegetated transitional area between terrestrial and aquatic ecosystems, and is delineated from the natural boundary upland for a distance of 15 metres;

**“Strata Title or Condominium Moorage Facility”** means a multi-berth moorage similar to a Private Moorage Facility but used by the residents of a waterfront strata or condominium development;

**“Tenure”** means

- (a) any interest in Crown land that is granted or otherwise established under a prescribed instrument, or
- (b) a prescribed designation or other status that, under an enactment, is given to, conferred on, or made or otherwise established in relation to Crown land.

and includes those Tenures which terms may have expired but are authorized by the Province to continue on a month-to-month basis.

**“Tenured Dock”** means a Dock that is authorized by a Tenure.

#### **4.0 APPLICATION OF PENDER HARBOUR DOCK MANAGEMENT PLAN**

4.1 This DMP applies to applications within the Management Area for authorization of:

- (a) the construction of a new Dock;
- (b) the relocation of a Tenured Dock within a Project Footprint;
- (c) changes to the dimensions of a Tenured Dock;
- (d) an existing Dock that was not previously authorized under Tenure; and
- (e) the repair or rebuilding of Tenured Docks damaged or destroyed by fire, explosion, flood, or other casualty. These applications will be considered and treated as applications for Replacement Tenures and will require a Management Plan.

- 4.2 This DMP does not apply to an application for a Replacement Tenure except in the following circumstances:
- (i) section 6.2 applies where no archaeological assessment over the Project Footprint was completed in the past, and
  - (ii) section 7.1(f) applies where no Management Plan is attached to the Tenure or where the Management Plan attached to the Tenure does not include information on how ongoing maintenance activities will be conducted or where such information is not consistent with the Best Management Practices as set out in section 8.0 as supported by the opinion of a Qualified Professional.
- 4.3 This DMP does not apply to applications for:
- (a) an assignment of a Tenure to a different Tenure holder;
  - (b) a consent to mortgage; and
  - (c) subject to 4.1(b) and 4.1(c), the modification of the provisions of a Tenure.

## **5.0 DOCK MANAGEMENT ZONES**

- 5.1 The Dock Management Zones within the Management Area are shown in Appendix B.
- 5.2 If a Project Footprint crosses the boundary between two Dock Management Zones, the more stringent zone requirements will apply.
- 5.3 The management objectives for each Dock Management Zone are set out in Table 1.

<b>Table 1 – Dock Management Zones</b>		
<b>Zone</b>	<b>Intent</b>	<b>Description</b>
1	The intent is to not allow new Dock Tenures in this zone due to the significant natural and cultural resources.	New Dock Tenures will not be issued.
2	The intent is to limit new Dock Tenures to those that can be shared by multiple parties or used for commercial purposes, and which are consistent with the Dock Management Plan, in order to reduce the impact on the natural and cultural resources in the area.	New tenures for Private Moorage Facilities will not be issued.
3	The intent is to allow new Dock Tenures of all types provided that they are consistent with the Dock Management Plan and the Project Footprint does not overlap with Critical Habitat.	No restrictions on the type of Dock Tenures that may be issued. The application must demonstrate that the dock does not overlap with Critical Habitat. New dock applications in which the proposed Project Footprint overlaps Critical Habitat will not be accepted.  In order to reduce the environmental impact of multiple private moorages, residents will be encouraged to pursue Group Moorage facilities or Strata Title Moorage Facilities.
4	The intent is to allow new Dock Tenures of all types provided they are consistent with the Dock Management Plan.	No restrictions on the type of Dock Tenures that may be issued.

## 6.0 APPLICATION REQUIREMENTS

### 6.1 APPLICATIONS FOR NEW TENURES

- (a) The Province will encourage prospective applicants for new dock tenures to engage with the shíshálh Nation early, prior to submitting an application.
- (b) An applicant must provide the following information as part of the application:
  - (i) the identification of any Critical Habitat within the Project Footprint and the plan for the protection of any identified Critical Habitat;
  - (ii) a Preliminary Field Reconnaissance assessment of archaeological resources in the Foreshore area of the Project Footprint; and
  - (iii) a Management Plan, including specifications regarding the design of the Dock.
- (c) The Province will initiate First Nation consultation on the application once it receives the information identified in section 6.1 (b).

### 6.2 APPLICATIONS FOR REPLACEMENT TENURES

Where an applicant seeks a Replacement Tenure the Province will:

- (a) encourage the prospective applicant to engage with the shíshálh Nation early, prior to submitting an application;
- (b) require the tenure holder to submit a Preliminary Field Reconnaissance assessment as part of the application for a Replacement Tenure where one has not been completed in the past;
- (c) require the Management Plan submitted in support of a Replacement Tenure describe how ongoing maintenance activities will be consistent with the Best Management Practices set out in Section 8.0 and supported by the opinion of a Qualified Professional, where no Qualified Professional opinion was obtained in the past.

6.3 The Province may require the applicant to submit additional archaeological assessments depending on the results of a Preliminary Field Reconnaissance of the Project Footprint and the potential impact of the proposal on First Nation interests.

6.4 Cultural materials recovered during the course of archaeological investigations should be deposited to the *shíshálh* Nation *tem's swiya* Museum, subject to the requirements of the *Heritage Conservation Act*.

## **7.0 MANAGEMENT PLAN REQUIREMENTS**

- 7.1 A Management Plan for a proposed Dock or Replacement Tenure must demonstrate the following:
- (a) structures will not unduly block access along the foreshore for public access, or for First Nations harvesting of marine resources for food, social and ceremonial purposes;
  - (b) Dock construction will not include the use of native beach materials (e.g. boulders, cobble, gravel, sand, logs);
  - (c) filling, dredging, or blasting will not be undertaken within the Project Footprint;
  - (d) the Dock and Dock Footprint will be kept in a safe, clean and sanitary condition;
  - (e) all work, including dock construction, dock use, refueling of machinery and washing of buckets and hand tools, will be conducted in a manner that will not result in the deposit of toxic or deleterious substances (e.g. sediment, un-cured concrete, fuel, lubricants, paints, stains).
  - (f) ongoing maintenance activities will be consistent with the Best Management Practices set out in section 8.0, and supported by the opinion of a Qualified Professional.
  - (g) For docks that fall under 4.1, the design of the Dock is consistent with the Best Management Practices set out in section 8.0 and supported by the opinion of a Qualified Professional.
- 7.2 For new Docks, and Docks rebuilt under Sec. 4.1(e), an applicant must submit written confirmation by a Qualified Professional, confirming that the Dock was constructed in accordance with the approved Management Plan.

## **8.0 DOCK CONSTRUCTION AND MAINTENANCE GUIDELINES – BEST MANAGEMENT PRACTICES**

- 8.1 Applicable Crown Land Use policies, as amended from time to time, will apply to all applications for Tenures as well as existing Tenures in the Management Area.
- 8.2 Critical Habitats should be avoided within the Dock Footprint. Docks should not be installed over these habitats unless the design mitigates for potential impacts and does not result in losses to these habitats.
- 8.3 Design of a Dock should not include components that block the free movement of water along the shoreline. Crib foundations or solid core structures made of cement or steel sheeting should be avoided as these types of structures result in large areas of vegetation removal and erosion in Riparian areas.
- 8.4 The bottom of all floats should be a minimum of 1.5 metres above the sea bed during the lowest tide. Dock height above lowest water level should be increased if deep draft

vessels are to be moored at the Dock. The Dock and the vessel to be moored at the Dock should not come to rest on the foreshore sea bed during the lowest tide of the year.

- 8.5 Access ramps or walkways should be a minimum of 1.0 metre above the highest high water mark of the tide and not exceed a maximum width of 1.5 metres.
- 8.6 All improvements should be a minimum of 5.0 meters from the side property line (6.0 meters if adjacent to a dedicated public beach access or park) and at least 10 meters from any existing dock or structures, consistent with Federal requirements under Transport Canada's *Navigable Waters Protection Act*. All Docks should be orientated at right angles to the general trend of the shoreline.
- 8.7 Docks should be constructed to allow light penetration under the structure. Light penetration is important and can be facilitated by spacing the decking surface of the Dock and minimizing the width of the structure. North/south Dock alignments are encouraged whenever possible to allow light penetration.
- 8.8 Grating should be incorporated into ramps, walkways, or floats to increase light and reduce shading of the bottom. When grating is impractical, deck planking measuring 15cm (6 in) and spaced at least 2.5cm (1 in) should be used to allow light penetration.
- 8.9 The replacement of the decking surface of a Dock should be undertaken in a manner that is consistent with sections 8.7 and 8.8.
- 8.10 Concrete, steel, treated, or recycled timber piles are acceptable construction materials although steel is preferred. Detailed information on treated wood options can be obtained on-line from the Fisheries and Oceans Canada website (*Guidelines to Protect Fish and Fish Habitat from Treated Wood Used in the Aquatic Environment in the Pacific Region*).
- 8.11 Access to the Foreshore for construction purposes should be from the adjacent upland property wherever possible. If heavy equipment is required to work on the Foreshore or access is required along the Foreshore then the advice of a Qualified Professional or Fisheries and Oceans Canada should be obtained.
- 8.12 Works along the Foreshore should be conducted when the site is not wetted by the tide.
- 8.13 Applicants are advised to contact Fisheries and Oceans Canada to ensure proposed activities, and the scheduling of those activities, complies with Fisheries and Oceans Canada requirements including the fisheries works window.
- 8.14 The upland design of the Dock, including anchor points, should avoid disturbing riparian vegetation adjacent to the Dock Footprint due to its role in bank stabilization and erosion control.



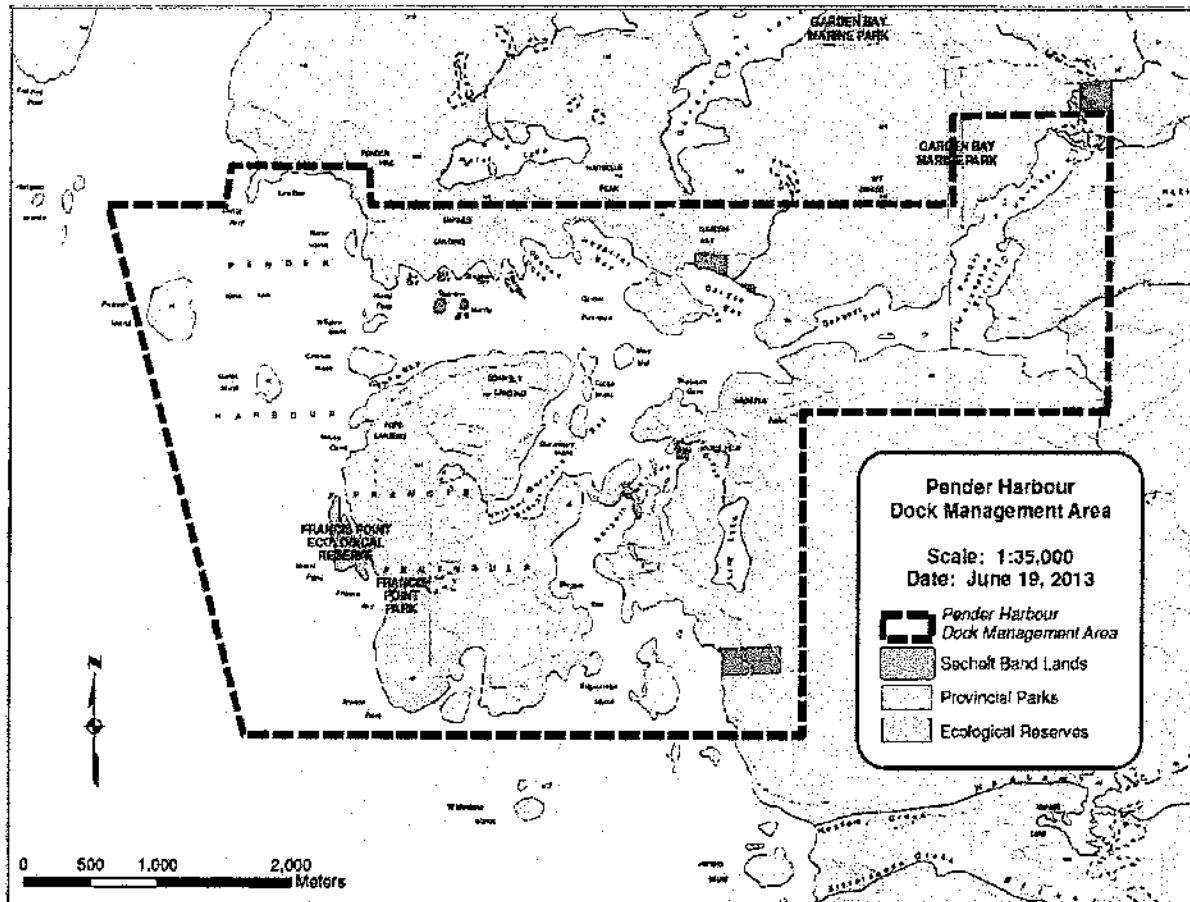
## **9.0 APPENDICES**

**Appendix A Pender Harbour Dock Management Area Map**

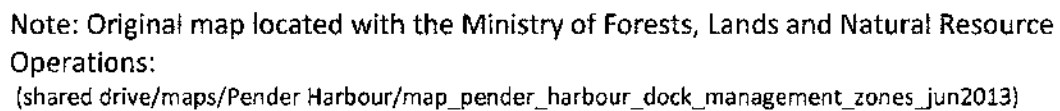
**Appendix B Pender Harbour Dock Management Zone Map**



## Appendix A - Pender Harbour Dock Management Area Map



Note: Original map located with the Ministry of Forests, Lands and Natural Resource Operations:  
(shared drive/maps/Pender Harbour/map\_pender\_harbour\_dock\_management\_area\_jun2013)



## 2013/14 Estimates Debate

Ministry of Forests, Lands and Natural Resource Operations

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***Issue:*** Pender Harbour Docks

***Key Facts Regarding Issue:***

s.13,s.16

***Advice and Recommended Response:***

s.13,s.16

**Date Prepared/Revised:** June 14, 2013

**Ministry Executive Sponsor:**

Name: Craig Sutherland

Phone: 250-387-0600

**Alternate Contact for Issue:**

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Phone: 604-586-2892

## 2014/15 Estimates Debate

Ministry of Forests, Lands and Natural Resource Operations

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***Issue:*** Pender Harbour Docks

***Key Facts Regarding Issue:***

s.13,s.16

***Advice and Recommended Response:***

s.13,s.16

**Date Prepared/Revised:** February 11, 2014

**Ministry Executive Sponsor:**

Name: Craig Sutherland

Phone: 250-387-0600

**Alternate Contact for Issue:**

Name: Heather MacKnight

Phone: 604-586-2892

## 2015/16 Estimates Debate

Ministry of Forests, Lands and Natural Resource Operations

.....

**Issue:** Pender Harbour Docks

**Key Facts Regarding Issue:**

s.13,s.16

**Advice and Recommended Response:**

s.13,s.16

**Date Prepared/Revised:**

**Ministry Executive Sponsor:**

Name: Craig Sutherland

Phone: 250-387-0600

**Alternate Contact for Issue:**

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## REGIONAL DISTRICT OF EAST KOOTENAY

### BYLAW NO. 2418

A bylaw to amend Bylaw No. 2061 cited as "Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2061, 2008."

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WHEREAS the Board of the Regional District of East Kootenay has determined a need to proceed with the proposed amendment to said Bylaw;

AND WHEREAS the Board deems it desirable to make this amendment as aforementioned;

NOW THEREFORE, the Board of the Regional District of East Kootenay in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as "Regional District of East Kootenay - Lake Windermere Official Community Plan Bylaw No. 2061, 2008 – Amendment Bylaw No. 13, 2012 (LWMP Implementation/RDEK)".

2. Section 3 is amended by adding the following:

- (t) Schedule M1 – Development Permit Area #3 - Lake Windermere (South)
- (u) Schedule M2 – Development Permit Area #3 - Lake Windermere (Windermere)
- (v) Schedule M3 – Development Permit Area #3 – Lake Windermere (North)

3. Schedule A Section 10.1 is amended by adding the following paragraph:

The Lake Windermere Management Plan (LWMP) was initiated by the Regional District in November 2008. The LWMP was prepared in partnership with the District of Invermere in recognition of the shared jurisdiction. The development of the LWMP facilitated the opportunity for discussion with the community about the future of Lake Windermere from the environmental, social, recreational and management perspectives. The recommendations contained within the LWMP were developed in consideration of the goals and objectives identified through the consultation process. Following the adoption of the LWMP in February 2011 the implementation of priority recommendations was undertaken by the RDEK. The priority recommendations that were implemented were the establishment of a Lake Windermere Management Committee and the drafting of a new Development Permit Area and surface water zoning regulations.

4. Schedule A Section 10.2 (2) is repealed and the following added:

- (2) To establish criteria for considering future amendments to the surface water zoning regulations for Lake Windermere.

5. The following sections of Schedule A are repealed:

- |           |           |         |
|-----------|-----------|---------|
| 10.3 (1)  | 10.3 (2)  | 10.3(7) |
| 10.3 (14) | 10.3 (15) |         |

6. Schedule A Section 10.3 (13) is repealed and the following added:

- (13) The water testing and monitoring program, stewardship initiatives and education activities by the Lake Windermere Ambassadors are supported.

7. Schedule A Section 10.3 is amended by adding the following:

- (16) Applications to amend the surface water zoning for Lake Windermere will be considered in regard to the goals, objectives and recommendations of the Lake Windermere Management Plan (LWMP) (2011).

- (17) Rezoning applications for the following shall be considered in relation to the LWMP:

- (a) new group moorage facilities, including commercial marinas;
- (b) new day use facilities managed by a community association or strata council;
- (c) additional moorage;
- (d) expansion of existing day use facilities managed by a community association.

Demonstration of how the proposed development assists in meeting the goals, objectives and recommendations of the LWMP must be integrated into all surface water rezoning applications.

- (18) A rezoning application to accommodate a group moorage facility accessed from Highway Drive along Stoddard Boulevard may be supported subject to the following:

- (a) application is made by a community association;
- (b) written confirmation of support from the Ministry of Transportation and Infrastructure;
- (c) removal of the existing individual docks along Stoddard Boulevard; and
- (d) issuance of a Licence of Occupation or Lease by the Province.

Access to the group moorage facility for moorage or day use purposes for the entire Calberly Beach community is encouraged.

- (19) In recognition of established individual moorage in the Rushmere area by Rushmere residents and property owners, a rezoning application to accommodate the existing individual moorage in the Rushmere area may be supported subject to the following:

- (a) application is made by a community association;
- (b) confirmation of legal access and authorization from Canadian Pacific Railway (CPR) for a designated rail crossing is provided;
- (c) written authorization to make application is provided by the upland land owner, either the province or CPR, as applicable;
- (d) the moorage being located within the area designated as yellow shoreline colour zone in the East Kootenay Integrated Lakes Management Partnership (EKILMP) Shoreline Management Guidelines for Fish and Wildlife Habitat (2009); and
- (e) issuance of a Licence of Occupation or Lease by the Province.

The consolidation of the existing individual docks into a group moorage facility is preferred.

- (20) In recognition of the established recreational uses by the residents of Timber Ridge, a rezoning application to accommodate the existing recreational uses along the property owned by the Timber Ridge Property Owners Association and Terridian Utilities may be supported subject to the following:

- (a) application is made by the Timber Ridge Property Owners Association;
- (b) issuance of the applicable Licence of Occupation or Lease by the Province; and
- (c) compliance of all proposed development with the Shoreline Development Permit guidelines.

- (21) While not generally supported within the LWMP, the consideration of a rezoning application to accommodate a new group moorage facility in the Baitac / Pedley Heights area may be supported subject to the following:

- (a) issuance of the applicable Licence of Occupation or Lease by the Province;
- (b) compliance of all proposed development with the Shoreline Development Permit guidelines;
- (c) the new group moorage facility is restricted to a net increase of no more than 10 additional moorage spaces than identified in the August 2012 inventory in the bay adjacent to the Pedley Heights Community Association property;
- (d) bylaws or policies are in place to manage the allocation of moorage spaces amongst the members of the applicable community association(s);



- (e) management of moorage spaces must provide for the shared use or rotating occupancy of moorage spaces;
  - (f) identification of mitigation options to reduce impacts on legally non-conforming mooring buoys in the adjacent bay; and
  - (g) demonstration of pre-application consultation at the expense of the community association(s) making application with legally non-conforming mooring buoy owners. A reduction in the overall number and congestion of mooring buoys in the adjacent bay is supported. Additional consultation related to the legally non-conforming mooring buoys may be required.
- (22) Applications to vary the surface water zoning regulations for Lake Windermere shall be considered on a site specific basis in consideration of the following:
- (a) potential impact on neighbouring property owners or residents;
  - (b) site specific constraints that require the variance;
  - (c) confirmation of ability to meet provincial and federal requirements;
  - (d) if required, issuance of a special permission, lease or licence of occupation by the province.
- (23) The placement of structures in areas zoned LW-3, Lake Windermere (Institutional) Zone is not generally supported, except within Windermere Beach Regional Park for recreational purposes or to facilitate public access to the lake. The placement of all structures must be in accordance with a Licence of Occupation or Lease issued by the Province and authorized by the upland landowner.
- (24) The LW-2, Lake Windermere (Group Moorage) Zone within the Zoning Bylaw is intended for the purpose of accommodating communal moorage or day use docking under the direction of a community association, strata council or shared interest development. In recognition of the demand for on-water boat storage the responsible organization is expected to manage the community's moorage spaces amongst the applicable membership.
- (25) The LW-2(A), Lake Windermere (Group Moorage) Zone within the Zoning Bylaw has been developed to specifically recognize the current Lease held by the Windermere Community Association and Hidden Bay Marina Association. The Lease limits the maximum number of boats that can be accommodated within the Lease area. This zone is not appropriate for other areas of the lake. Future applications for rezoning to the W-2(A) zone will not be supported.
- (26) The LW-4, Lake Windermere (Commercial) Zone within the Zoning Bylaw has been developed to recognize the current commercial uses operated by Shadybrook Resort and Marina. Future rezoning applications to accommodate commercial marinas will generally not be supported.
8. The first sentence of Schedule A Section 21.2 is repealed and the following substituted:
- Development Permits are not required within Development Permit Areas #1 and #2 under the following conditions:
9. Schedule A Section 21 is amended by adding the following:
- 21.5 Development Permit Area #3 – Protection of the Natural Environment (Lake Windermere Shoreline)**

**(1) Area**

Development Permit Area #3 applies to those portions of the shoreline of Lake Windermere designated as red and orange shoreline zones on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan. Where the shoreline is designated as a red or orange shoreline zone the Development Permit Area extends 30 m into the lake and 15 m upland from the natural boundary.

**(2) Purpose**

The purpose of Development Permit Area #3 is for the protection of the natural environment, its ecosystems and biological diversity under Section 919.1(1)(a) of the *Local Government Act*.

**(3) Requirements**

- (a) For land located within Development Permit Area #3, an owner shall obtain a Development Permit prior to proceeding with any of the following:
  - (i) Construction, addition or alteration of a building or other structure; or
  - (ii) Alteration of land, including the removal of riparian or aquatic vegetation, site grading, deposition of fill, beach creation, or dredging.

**(4) Exemptions**

- (a) A Development Permit is not required within Development Permit Area #3 under the following conditions:
  - (i) The proposed activity is limited to internal alterations to buildings or structures.
  - (ii) The proposed activity is limited to the reconstruction of, renovation of, repair of, existing buildings or structures upland of the natural boundary, or addition to existing buildings or structures which increase the development footprint by an amount less than 25% of the area existing at the time this DPA was implemented.
  - (iii) The proposed activity is limited to the installation, repair or placement of utilities infrastructure within the highway right of way.
  - (iv) The proposed activity is limited to general road or railway construction or maintenance within the right of way.
  - (v) The proposed activity is limited to the removal or pruning of hazardous trees as identified by a qualified hazard tree assessor, ecosystem restoration project approved by a Qualified Environmental Professional (QEP), supplementing native vegetation, or maintaining existing vegetation above the natural boundary.
  - (vi) The proposed activity is considered to be normal agricultural practice as defined in the Farm Practices Protection (Right to Farm) Act or designated as farm use within the Agricultural Land Commission Regulation.
  - (vii) The proposed activity is conducted under the direction of the Provincial Emergency Program, and is intended to resolve emergency situations that present an immediate danger to life or property including procedures related to flooding or erosion.
  - (viii) The proposed activity is limited to emergency repairs to buildings or structures where there is a demonstrable and immediate risk to public safety and property.
  - (ix) Routine maintenance of existing beach areas, including the periodic deposition of new sand and removal of encroaching upland vegetation on the existing beach areas managed by the following:
    - (A) Regional District of East Kootenay (RDEK);
    - (B) Trethewey Beach Society;

- (C) Timber Ridge Property Owners Association;
- (D) Lakeview Meadows Community Association;
- (E) Pedley Heights Community Association; and
- (F) Cardiff Cove Recreation Society;

prior to the adoption of this Development Permit Area.

**(5) Justification**

- (a) The Lake Windermere Official Community Plan area includes natural ecosystems that are unique to the Lake Windermere foreshore. The East Kootenay Integrated Lake Management Partnership (EKILMP) undertook a Sensitive Habitat Inventory Mapping (SHIM) project for Lake Windermere to identify these natural ecosystems and explore the alteration of the shoreline. The SHIM process has been developed in British Columbia as a tool to assist in conserving and protecting sensitive ecosystems and critical habitats. The SHIM methodology was originally utilized for mapping fish and wildlife habitat associated with watercourses and has been developed and refined for application on lake shorelines. The revised methodology for lake shorelines is now being used throughout British Columbia and on Lake Winnipeg. During the SHIM process the importance of balancing environmental considerations with the community's social, economic and development needs was identified (McPherson and Hlushak, 2008).

Within the SHIM process the shoreline of the lake was assessed to determine a current ecological value and an ecological potential value utilizing a Habitat Index. The Habitat Index considered the physical and biological elements of an area as well as human induced disturbances, such as in-water structures, and assigned a rating ranging from very high to low for each segment of the lake. Generally, with increasing disturbances the current ecological value of a segment went down. The Habitat Index calculation was repeated for each segment in consideration of the removal of in-water structures to determine the ecological potential values (McPherson and Hlushak, 2008). If in-water structures were removed, each segment of the lake would have a higher ecological potential value, which highlights the importance of managing in-water structures to maintain or enhance the habitat along the shoreline.

During the SHIM process several habitat types were identified as being highly important to fish and wildlife and with the potential to be negatively impacted by development. These habitats were designated as Zones of Sensitivity (ZOS). The habitats determined to be ZOS for the Lake Windermere area included: wetlands, creek mouths, native grasslands, wildlife habitat and corridors, gravel/cobble habitat, biologically productive areas, and unimpacted/natural areas. Areas of overlapping ZOS were determined to be Key Habitat areas. The intent of the ZOS identification is to enable a trigger for investigation if development is proposed in these areas (McPherson & Hlushak, 2008).

In consideration of the current ecological values, as determined by the Habitat Index for the shoreline and the overlapping presence of ZOS or Key Habitat areas, the shoreline of Lake Windermere was assigned a shoreline colour zone that is reflective of the level of sensitivity to development and presence of environmentally sensitive areas and natural ecosystems. The shoreline colour zone categorization recognizes that, despite the cumulative impact of alteration of the foreshore, natural ecosystems remain around Lake Windermere that warrant special consideration prior to development.

- (b) Development Permit Area #3 is applicable to the red and orange shoreline colour zones. These zones have been identified as being sensitive to development pressure and essential to the long term maintenance of key habitat and fish and wildlife values.

**Red Shoreline Zone** – is defined by portions of the shoreline that were identified to have 'very high' or 'high' existing ecological

values that overlap with Key Habitat areas. The SHIM process identified these areas as being essential for the long term maintenance of fish and/or wildlife values. The zone includes creek mouths (unless substantially degraded) for 250 m along the lake, on both sides of the creek (or a topographic or ecological break); contiguous wetlands; natural grasslands; cliffs/bluffs; gravel/cobble areas; areas of high productivity; and remnant natural areas (EKILMP 2009). Red shoreline zones are recommended for conservation use.

**Orange Shoreline Zone** – is defined by portions of the shoreline that have been identified as Key Habitat areas for fish and/or wildlife. The SHIM process identified that these areas are sensitive to development and continue to provide important habitat functions, but may be at risk from adjacent development pressures. Restoration opportunities within the orange shoreline zone were identified to potentially exist, which could increase the ecological value of the shoreline.

- (c) The objective of Development Permit Area #3 is the protection, preservation, restoration and enhancement of the natural ecosystem along the shoreline of Lake Windermere. Activities within and along the shoreline must be undertaken in a manner that minimizes the disruption or alteration of the natural ecosystems that create fish and wildlife habitat and maximizes the opportunity for restoration and enhancement. The intent is not to preclude all development in these areas, but to provide notice that these portions of the shoreline provide unique characteristics that warrant special review and consideration, and to ensure appropriate mitigation or protection measures are prescribed where identified by a Qualified Environmental Professional (QEP).

#### (6). Guidelines

Proposed development must comply with the Guidelines. Development Permits issued shall be in accordance with the following:

##### (a) General

The following guidelines apply to all areas identified as red and orange shoreline zones on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan:

- (i) All development proposals are subject to the applicable requirements and approval processes under the federal *Fisheries Act*, *Navigable Waters Protection Act* and *Canadian Environmental Assessment Act* and the provincial *Land Act*, *Water Act*, *Health Act* and *Environmental Management Act*. The identification of the permits and approvals required must be submitted with the development permit application. The submission of proof of acquiring all required permits and approvals from the responsible jurisdictions may be a condition of the issuance of the Development Permit.
- (ii) The Regional District may require an Environmental Impact Assessment report prepared by a Qualified Environmental Professional in accordance with "Regional District of East Kootenay – Development Approval Information Bylaw No. 2122, 2008".
- (iii) For development proposals that are located in an area identified as cobble/gravel habitat on **Schedules M1, M2 and M3** an assessment report from a Qualified Environmental Professional (QEP) must identify the extent of the cobble/gravel habitat and the areas of greatest importance for fish habitat in the area under application. Recommendations to protect the fish habitat and mitigate the impact of the proposed development on the fish habitat must be included in the assessment report.
- (iv) Proposals that offer to register a conservation covenant on the title of the lands in order to permanently protect shoreline ecosystems

are encouraged. The covenant should be registered before any development occurs. The covenant should be registered in favour of the RDEK, and may include another public agency, including the province.

- (v) All structures must be constructed with materials that do not have the potential to negatively impact water quality, fish, aquatic organisms or aquatic vegetation. Applicants are encouraged to utilize western red cedar, redwood, cypress, eastern white cedar, or plastic lumber. Use of real wood for the in-water portion of the dock is encouraged. Appropriate materials should be selected in consideration of Fisheries and Oceans Canada's (DFO) *The Dock Primer*.
- (vi) In order to facilitate implementation of a recommendation contained within a report by a Qualified Environmental Professional, the applicable zoning regulations may be varied as part of the Development Permit approval.
- (vii) To soften the shoreline and create fish habitat, bioengineered features are required to be integrated into the design of new or replacement of existing retaining walls. A report by a Qualified Environmental Professional (QEP) must be provided to identify the appropriate bioengineered features for the proposed development site.

Applicants will be exempt from this guideline when it can be demonstrated that a vertical retaining wall structure is required for stabilization of the shoreline for the protection of upland structures. The need for a vertical structure or retaining wall must be documented in a report by a Qualified Geotechnical Professional or Engineer.

- (viii) When stabilization of the shoreline is required due to natural erosion processes, the use of rock or rip-rap above the ordinary high water mark for shoreline stabilization is encouraged. The placement of the rock should be done in such a manner as to not require the placement of fill, where feasible. The planting of deeply rooted native vegetation above and immediately behind the rock is encouraged to increase the life span of the wall.
- (ix) All approved development should follow the applicable best management practices (BMP) of the province and the Regional Operating Statement (ROS) of Fisheries and Oceans Canada (DFO), unless a letter of advice or *Fisheries Act* authorization under section 35(2) has been issued.
- (x) Riparian and emergent vegetation should be maintained where intact, and restored where disturbed or invasive weeds have intruded. Habitat restoration, including the removal of invasive weeds, should be completed under the direction of a Qualified Environmental Professional (QEP) and in accordance with the required federal and provincial approvals under the *Fisheries Act* and *Environmental Management Act*.

(b) Red Shoreline Zone Guidelines

The following guidelines apply to portions of shoreline identified as red shoreline zone on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan:

- (i) In consideration of the impact resulting from the alteration of land; removal of vegetation; placement or construction of in-water structures on aquatic organisms, fish, fish habitat, aquatic vegetation and emergent vegetation; the area **below** the natural boundary must remain free from development, unless an assessment report from a Qualified Environmental Professional (QEP) concludes that the site under application no longer possesses the characteristics that would warrant the red colour zone designation due to previously **approved** development.

- (ii) All applications for development **above** the natural boundary within the red shoreline zone must be accompanied by a report from a Qualified Environmental Professional (QEP). The assessment report must identify the extent of the proposed development, any constraints on the timing of the development to minimize impacts on riparian vegetation, upland vegetation and wildlife habitat and demonstrate that the proposed development has been designed to mitigate impact on the adjacent fish and riparian habitat.

Opportunities to restore or enhance habitat should also be identified, where appropriate. All approved development must be completed in accordance with the recommendations of the report.

- (iii) Despite section 21.5 (6)(b)(i) activities that include the following are permissible in the red shoreline zone:
  - (A) habitat restoration or removal of aquatic invasive species as identified within a report by a Qualified Environmental Professional (QEP) and completed under the direction of trained persons; and
  - (B) traditional First Nation uses.

(c) Orange Shoreline Guidelines

The following guidelines apply to portions of shoreline identified as orange shoreline zone on **Schedules M1, M2, and M3** of the Lake Windermere Official Community Plan:

- (i) In consideration of the impact resulting from the alteration of land, removal of vegetation and placement or construction of in-water structures on aquatic organisms; fish; fish habitat; riparian, aquatic and emergent vegetation the following types of activities or structures are generally not permitted:
  - (A) beach creation (above or below the natural boundary);
  - (B) boathouses;
  - (C) dredging, in areas not previously authorized by the province or Fisheries and Oceans Canada (DFO); and
  - (D) deposition of fill;
    - (i) unless an assessment report from a Qualified Environmental Professional (QEP) concludes that the site under application no longer possesses the characteristics that would warrant the orange colour zone designation due to previously **approved** development.
- (ii) All applications for development must be accompanied by a report from a Qualified Environmental Professional (QEP). The assessment report must identify the extent of the proposed development, any constraints on the timing of the development to minimize impacts on riparian vegetation, upland vegetation, and wildlife habitat, and demonstrate that the proposed development has been designed to mitigate impact on the adjacent fish and riparian habitat. Opportunities to restore or enhance habitat should also be identified, where appropriate. All approved development must be completed in accordance with the recommendations of the report.
- (iii) Maintenance dredging for docks or marinas that have prior approval under the federal *Fisheries Act* or provincial *Water Act* or *Environmental Management Act* must be done in accordance with the

recommendations made by a Qualified Environmental Professional and any requirements of the province or Fisheries and Oceans Canada (DFO).

**(7) Applicable Definitions**

Within Development Permit Area #3:

**BIOENGINEERED** means the incorporation of natural materials and native plants into the shoreline stabilization design of retaining walls or structures.

**GROYNE** means a protective structure that is used to stop sediment from shifting along the shoreline. Groynes are generally constructed perpendicular to the shoreline.

**HABITAT INDEX** means a ranking system based upon the biophysical attributes of the shoreline. The index is comprised of parameters, such as shore type, substrate type, presence of retaining walls, docks or other structures to determine the relative habitat value based on a mathematical relationship between the parameters.

**FISH HABITAT** means the spawning grounds and nursery, rearing, food supply and migration areas on which fish rely directly or indirectly to carry out their life cycle.

**IN-WATER STRUCTURE** means any structure that is or extends below the high water mark of the lake.

**NATURAL BOUNDARY** means the visible high water mark where the presence and action of water are so common and usual and continued in all ordinary years as to mark upon the soil of the bed of a lake, river or stream or other body of water a character distinct from that of the banks thereof, in respect to vegetation as well as in respect to the nature of the soil itself.

**RETAINING WALL** means any structure that is used to retain fill material. Retaining walls are commonly used for erosion protection along the shoreline. Retaining walls may include vertical concrete or wood structures or bioengineered structures.

**QUALIFIED ENVIRONMENTAL PROFESSIONAL** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- (b) the individual's area of expertise is recognized as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and
- (c) the individual is acting within that individual's area of expertise.

**Citation:**

McPherson, S. and D. Hlushak. 2008. Windermere Lake Fisheries and Wildlife Habitat Assessment. Consultant report prepared for the East Kootenay Integrated Lake Management Partnership. Prepared by Interior Reforestation Co. Ltd., Cranbrook BC.

10. Schedule A Section 22.4 (2) (iii) is repealed and the following substituted:

**(ii) Natural Environment**

Criteria: Applications for amendments to the zoning bylaw, temporary use permits or development permits under section 21.4, Development Permit Areas #2 – Protection of the Natural Environment or section 21.5, Development Permit Area #3 – Protection of the Natural Environment (Lake Windermere Shoreline), of this plan.

**Rationale:** To consider the impact of the proposed activity or development on environmentally sensitive areas, endangered and threatened species, fish habitat, wildlife habitat and corridors or water resources in order to meet the objectives and policies identified within the following sections of this plan:

- 12.2 - Environmentally Sensitive Areas;
- 12.3 - Wildlife Habitat and Corridors;
- 12.4 - Water Resources;
- 21.4 - Development Permit Area #2 – Protection of the Natural Environment; and
- 21.5 - Development Permit Area #3 – Protection of the Natural Environment (Lake Windermere Shoreline).

11. That portion of Lake Windermere Shoreline identified as red and orange shoreline zone, as shown on the attached Schedule M1, M2 and M3 which are incorporated into and form part of this bylaw is designated as Development Permit Area #3.

READ A FIRST TIME the 7<sup>th</sup> day of December, 2012.

READ A SECOND TIME the 7<sup>th</sup> day of December, 2012.

READ A THIRD TIME the            day of            , 2013.

ADOPTED the            day of            , 2013.

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
CORPORATE OFFICER



**Variance or exemption to relieve hardship**

901 (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that compliance with any of the following would cause the person hardship:

- (a) a bylaw respecting the siting, dimensions or size of a building or structure, or the siting of a manufactured home in a manufactured home park;
- (b) a bylaw under section 8 (3) (c) [*fundamental powers — trees*] of the *Community Charter*, other than a bylaw that has an effect referred to in section 50 (2) [*restrictions on authority — preventing all uses*] of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person;
- (c) the prohibition of a structural alteration or addition under section 911 (5);
- (d) a subdivision servicing requirement under section 938 (1)
- (c) in an area zoned for agricultural or industrial use.

(2) On an application under subsection (1), the board of variance may order that a minor variance be permitted from the requirements of the bylaw, or that the applicant be exempted from section 911 (5), if the board of variance

- (a) has heard the applicant and any person notified under subsection (4),
- (b) finds that undue hardship would be caused to the applicant if the bylaw or section 911 (5) is complied with, and
- (c) is of the opinion that the variance or exemption does not
  - (i) result in inappropriate development of the site,
  - (i.1) adversely affect the natural environment,
  - (ii) substantially affect the use and enjoyment of adjacent land,
  - (iii) vary permitted uses and densities under the applicable bylaw, or
  - (iv) defeat the intent of the bylaw.

(3) The board of variance must not make an order under subsection (2) that would do any of the following:

(a) be in conflict with a covenant registered under section 219 of the *Land Title Act* or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;

(b) deal with a matter that is covered in a permit under Division 9 of this Part or covered in a land use contract;

(b.1) deal with a matter that is covered by a phased development agreement under section 905.1 [*phased development agreements*];

(c) deal with a flood plain specification under section 910 (2);

(d) apply to a property

(i) for which an authorization for alterations is required under Part 27,

(ii) that is scheduled under section 970.1 (3) (b) or contains a feature or characteristic identified under section 970.1 (3) (c), or

(iii) for which a heritage revitalization agreement under section 966 is in effect.

(4) If a person makes an application under subsection (1), the board of variance must notify all owners and tenants in occupation of

(a) the land that is the subject of the application, and

(b) the land that is adjacent to land that is the subject of the application.

(5) A notice under subsection (4) must state the subject matter of the application and the time and place where the application will be heard.

(6) The obligation to give notice under subsection (4) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

(7) In relation to an order under subsection (2),

(a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or

(b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,

the permission or exemption terminates and the bylaw or section 911 (5), as the case may be, applies.

(8) A decision of the board of variance under subsection (2) is final.

**Extent of damage preventing reconstruction as non-conforming use**

902 (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 911 (8) is in error.

(2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 911 (8) in its place.

(3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.

**Non-conforming uses and siting**

911 (1) If, at the time a bylaw under this Division is adopted,

- (a) land, or a building or other structure, is lawfully used, and
- (b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the bylaw.

(2) The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including

- (a) seasonal, market or production cycles,
- (b) the control of disease or pests, or
- (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(3) A building or other structure that is lawfully under construction at the time of the adoption of a bylaw under this Division is deemed, for the purpose of this section,

- (a) to be a building or other structure existing at that time, and
- (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.

(4) If subsections (1) and (2) authorize a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

(5) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 901 (2), must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.

(6) In relation to land, subsection (1) or (4) does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the adoption of the bylaw under this Division.

(7) For the purposes of this section, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by

reason only of the change, affect the use of the land or building or other structure.

(8) If a building or other structure, the use of which does not conform to the provisions of a bylaw under this Division is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, it must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

(8.1) If the use of a building or structure that is on land identified in a phased development agreement under section 905.1 [*phased development agreements*] complies with a zoning bylaw provision specified under section 905.1 (3) for the phased development agreement, subsection (8) does not apply to the building or other structure while the phased development agreement is in effect, unless

- (a) the provision has been repealed or amended, and
- (b) either
  - (i) the developer has agreed in writing under section 905.1 (5) that the changes to the zoning bylaw apply, or
  - (ii) the changes to the zoning bylaw apply under section 905.1 (6) without the written agreement of the developer.

(9) If the use and density of buildings and other structures conform to a bylaw under this Division but

- (a) the siting, size or dimensions of a building or other structure constructed before the bylaw was adopted does not conform with the bylaw, or
- (b) the siting, size, dimensions or number of offstreet parking or loading spaces constructed or provided before the bylaw was adopted does not conform with the bylaw,

the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (10).

(10) A building or other structure or spaces to which subsection (9) applies may be maintained, extended or altered only to the extent that

- (a) the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started, and
- (b) in the case of protected heritage property, the repair, extension or alteration is permitted or authorized in accordance with the provisions governing the heritage protection of the property.

(11) Subsections (5) and (8) do not apply to alterations, additions, repairs or reconstruction of a protected heritage property if the alteration, addition, repair or reconstruction is authorized by a heritage alteration permit under section 972.

## **11.9. Marina Development Permit Area**

### **11.9.1. Designation**

The foreshore areas of Brentwood Bay indicated as Marina on Schedule D: Development Permit Areas is designated as a Development Permit Area under section 919(1) of the *Local Government Act*.

### **11.9.2. Justification**

The District would like to meet the following objectives for these areas:

- To preserve the shoreline area from a proliferation of commercial marina uses.
- To reduce the impact of marina activities on nearby residential uses.
- To maintain a quality marine environment.

### **11.9.3. Development Permit Exemptions**

A development permit is not required for the following:

- Internal alterations to a building.
- External alterations to a building, dock, float or walkway, not exceeding an estimated construction value of \$30,000, which are so similar in their effect on the form and character of development as to not warrant an application in the opinion of the District.

### **11.9.4. Guidelines**

The following development permit guidelines shall apply:

- a) Any expansion or consolidation of existing commercial marine facilities in Brentwood Bay should be subject to submission of satisfactory site plans indicating proposed uses, floats, parking areas and any new permanent or temporary structures;
- b) The development should be compatible with the physical shoreline qualities and not result in loss of valuable habitat or degradation of the natural environment;
- c) The development should be compatible with surrounding upland uses and not result in significant traffic or noise impacts to residential neighbourhoods;
- d) Marina development should provide public access along the shoreline, particularly shoreline walking trails;
- e) Sewage pump-out facilities connecting to the municipal sewage collection system should be installed as part of any marina redevelopment;
- f) No obtrusive signs or storage areas should be permitted;
- g) Removal of any noxious seafloor debris should be required as part of any marina redevelopment.



# Fish-stream Crossing Guidebook

Revised Edition

September 2012

A revision to the former Forest Practices Code of  
British Columbia *Fish-stream Crossing Guidebook*, March 2002



BRITISH  
COLUMBIA

Ministry of Forests, Lands and Natural  
Resource Operations  
Ministry of Environment



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada



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On the cover:

Hotfish Creek (100 Mile House, B.C.) fish-stream crossing functioning as designed. Designed and constructed (2002) in co-operation with licensee as a pilot project to demonstrate fish-stream crossing guidance for an embedded culvert as provided in the 2002 *Fish-stream Crossing Guidebook*. Design Engineers: Brian Chow, PEng, Senior Roads and Structures Engineer, B.C. Ministry of Forests and Range; and George Robison, PE, PhD. Photo taken October 2010 by Roger Packham, RPBio.

For more information on Engineering & Real Estate Operations – Bridges & Major Culverts, and related information, please visit

[http://www.for.gov.bc.ca/hth/engineering/Bridges\\_And\\_Major\\_Culverts.htm](http://www.for.gov.bc.ca/hth/engineering/Bridges_And_Major_Culverts.htm)

Table 1. Definition and indicators of fish habitat types

	Habitat at crossing site		
	Critical	Important	Marginal
<b>Definition</b>	Habitat that is critical in sustaining a subsistence, commercial, or recreational fishery, or any species at risk (i.e., terrestrial or aquatic red- and blue-listed species, those designated by the Committee on the Status of Endangered Wildlife in Canada, or those <i>SARA</i> -listed species), or because of its relative rareness, productivity, and (or) sensitivity. <sup>a</sup>	Habitat that is used by fish for feeding, growth, and migration but is not deemed to be critical. This category of habitat usually contains a large amount of similar habitat that is readily available to the stock.	Habitat that has low productive capacity and contributes marginally to fish production.
<b>Indicators<sup>b</sup></b>	The presence of high-value spawning or rearing habitat (e.g., locations with an abundance of suitably sized spawning gravels, deep pools, undercut banks, or stable debris, which are critical to the population present), or the presence of any <i>SARA</i> -listed species, its residence, or critical habitat. <sup>c</sup>	Important migration corridors. The presence of suitable spawning habitat. Habitat with moderate rearing potential for the fish species present.	The absence of suitable spawning habitat, and habitat with low rearing potential (e.g., locations with a distinct absence of deep pools, undercut banks, or stable debris, and with little or no suitably sized spawning gravels for the fish species present).

<sup>a</sup> See <http://www.env.gov.bc.ca/wld/serisk.htm> or <http://www.cosewic.gc.ca/>.

<sup>b</sup> The indicators provided here are highly generalized and may require regional interpretation. For further information on conducting a habitat assessment, see: Fisheries and Oceans Canada's *Working Near Water in BC and Yukon* website (<http://www.pac.dfo-mpo.gc.ca/habitat/index-eng.htm>) and the B.C. Ministry of Environment's Fish and Fish Habitats website (<http://www.env.gov.bc.ca/wld/fishhabitats/index.html>).

<sup>c</sup> The *Species at Risk Act* prohibits the harming, harassing, capturing, taking, or killing of a species at risk or the destruction of its residence, or critical habitat as defined by act (see glossary). For more information about *SARA*-listed species and their habitat, see: <http://www.sararegistry.gc.ca>.

A qualified professional or technologist with adequate training and knowledge of species at risk, fish, and fish habitat should conduct this habitat evaluation. When determining the appropriate crossing structure and in justifying the classification of marginal habitat, consideration should be given to both physical and biological characteristics at the crossing, as well as upstream and downstream of the crossing. Basic physical characteristics to consider include flow, current, cover, channel depth, channel stability, substrate, and general habitat type. Biological characteristics to consider include aquatic vegetation, riparian vegetation, and fish species (type and life stage).

### 3.2 Step Two: Determine Appropriate Crossing Structure

The choice of crossing structure will depend on the specific conditions at

each site, making formulaic recommendations difficult; however, Figure 1 provides a matrix based on stream gradient and habitat type, which will assist the proponent in selecting the most appropriate crossing structure. Other factors, such as fans and debris potential, may also require consideration when choosing an appropriate structure and assessing its long-term structural integrity. Where economics or other issues warrant, the proponent may default to an OBS.

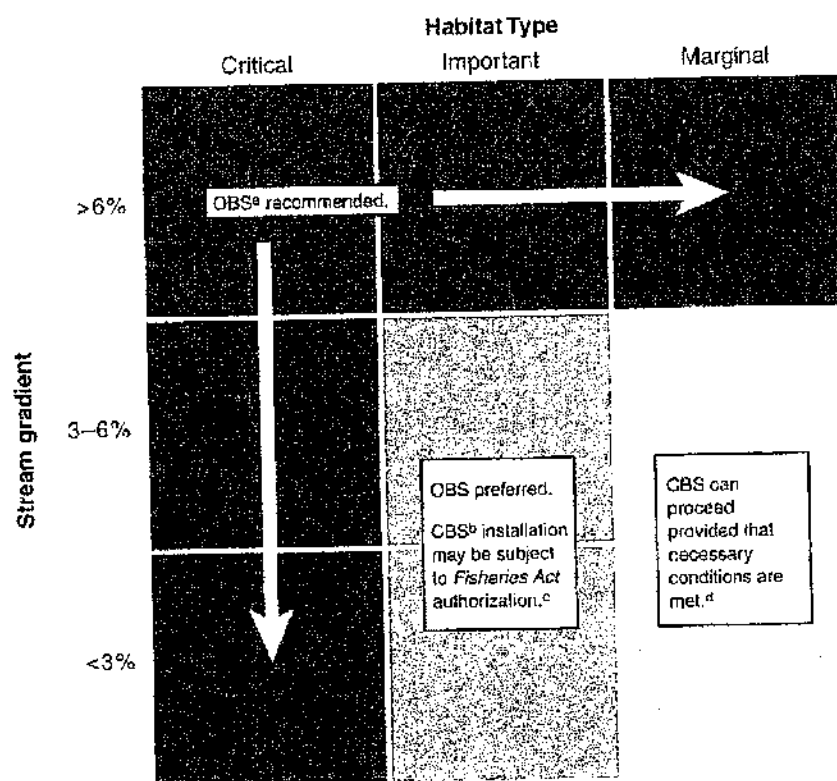


Figure 1. Decision-making matrix for selecting type of new installation acceptable for fish-stream crossings.

**Notes:**

- Open-bottom structures include bridges and open-bottom culverts (log culverts, arch culverts).
- Closed-bottom structures include embedded corrugated metal pipes.
- Seek a review under the *Fisheries Act*.
- Necessary conditions: (1) stream channel width is 2.5 m or less; (2) CBS is embedded to replicate streambed inside pipe; and (3) construction adheres to appropriate fisheries timing windows (see Appendix 1).

*Note: Arch-type structures installed on fish streams that require excavation and reconstruction of the streambed and streambanks are to be treated as closed-bottom structures for review process purposes.*

### Status Summary of Docks

- Listed below is the status of dock applications and authorizations within the Pender Harbour area (private moorage, group moorage, strata moorage, commercial docks/marinas, and industrial marina).
- The 'Unknown' number includes trespass docks and files that require further review and confirmation as to status.

Dock Status	Number
Existing Authorized Docks (includes authorized docks with 2013 expiry date)	311
New Dock Applications (Referred)	7
New Dock Applications (Not Yet Referred)	7
Replacement Applications (Referred)	21
Replacement Applications (Not Yet Referred - 2013 Expiry Dates)	16
Unknown (trespass, anomalies)	59

### Impact of Proposed Zoning on Private Moorage

- No docks of any sort will be allowed in one-third (33%) of Pender Harbour.
- Shoreline available for private moorage will be reduced by 52% or less than half (48%) of Pender Harbour.

SHORELINE IMPACTS			
Moorage Zone	Shoreline Length (metres)	Shoreline Length (km)	% of Total
Zone 1	17733.5	17.7	33%
Zone 2	10315.2	10.3	19%
Zone 3	7334.6	7.3	14%
Zone 4	18633.3	18.6	34%
	Total Length	54.0	100%

June 5, 2013

### Changing uses of nonconforming structures requires a CUP

A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use, approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

- No reasonable alternative conforming use is practical; and
- The proposed use will be at least as consistent with the policies and provisions of the act and the master program compatible with the uses in the area as the preexisting use.

In addition conditions may be attached to the permit to assure compliance with the master program and to assure that not become a nuisance or a hazard.

### Moving a nonconforming structure

A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program or the act.

### Determining the age of a development

Determining exactly when a development, such as a bulkhead, was initially built, can be a difficult task. While technically an applicant which must prove compliance with the regulation, the practical situation is that usually the local government must be sure of the situation. Evidence such as assessor's records, recorded deeds or other documents, historical plat permit records (e.g. building, HPA, short or long plat, etc.) or testimony from contractors, neighbors, officials, etc.) can be used to prove the date of construction or initial use.

### Nonconforming uses and CUPs

The criteria for allowing a Conditional Use Permit (CUP) in 173-27-150(4) prohibits prohibited uses through a CUP. However, section on nonconforming development in 173-27-080(6) allows it. At first blush, this appears to be a conflict. However, the purpose of the nonconforming use rule is to provide reasonable use of a legally existing non-conforming building when no more use can be practically expected to make use of the structure. This is a very limited exception under very limited circumstances necessary to assure that regulations do not either overly compromise policy in order to accommodate some particular use that would overregulate and result in a "taking" of private property.

### Pre-existing uses

If a shoreline development predates the SMA or a local SMP ("pre-existing uses") is consistent with the SMP, permits are required if new substantial development is proposed.

When the use consists of ongoing development activities, such as a gravel mine, the project requires an "active" (use) permit throughout the life of the project. If the use of a pre-existing development is proposed, the new use must be consistent with the SMP. If the proposed use is a conditional use in the master program then a permit is required whether or not new development is required to establish the use.

### Structures placed in navigable waters before 1969

In RCW 90.58.220, the SMA specifically recognizes one class of pre-existing use, in declaring that "Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments in navigable waters prior to December 4, 1969." This language was a response to the State Supreme Court's decision in Gallagher, in which the court held that fill placed in Lake Chelan violated the public's right of navigation under the public trust doctrine.

## Non-conforming uses

A non-conforming use is a use or development that was **lawfully** constructed or established but does not conform to requirements. These "grandfathered" developments may continue as long as they are not enlarged, intensified, increased in a way that increases the nonconformity.

State rules for non-conforming uses (WAC 173-27-080) apply *unless* local governments have adopted different master provisions.

Enlarging uses | Abandoned uses | Repairs | Substandard lots | Variances | Changing uses | Moving structures | Detached uses | Other pre-existing uses | Uses built before 1969

### Enlarging or expanding a nonconforming use

A non-conforming use may be **enlarged or expanded** under very limited circumstances. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances upon approval of a conditional use permit.

It is sometimes important to distinguish between a nonconforming structure with a conforming use and a nonconforming use. If a house is located in an environment that allows residential use but is closer to the water than the environment designation allows, it may be expanded as long as the expansion does not further intrude on the setback. (A further intrusion may be authorized by a variance if the criteria can be met.) Expansion of a structure that houses a nonconforming use cannot be authorized by these provisions or by variance.

If an existing use conforms with SMP use regulations but does not conform with SMP setback, height, or density requirements, it may be enlarged or expanded if the extent of non-conformity is not increased.

### Abandoned uses

Nonconforming uses are considered **abandoned** if they are discontinued for more than twelve consecutive months or months during any two year period. The "grandfathered" rights expire regardless of the owner's intent to abandon or

Any subsequent use must conform to the requirements of the SMA and SMP. Similarly, a nonconforming use may not be replaced by another nonconforming use or moved any distance within the shorelines of the state.

### Repairing damaged nonconforming uses

If a nonconforming use is damaged to an extent not exceeding 75% replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as:

- the applicant applies for permits needed to restore the development within six months of the date the damage occurred;
- all permits are obtained; and
- the restoration is completed within two years of permit issuance.

### Substandard lots

A pre-existing lot or parcel that is substandard with respect to lot size or density requirements may be developed for the other requirements of the SMA and SMP. A reasonable use of the property should be allowed based on the character of the site. Easing of standards other than lot size or density, for example building setbacks, would require a variance permit. Situations of nonconforming developments are an old boat repair yard or industrial warehouse located in a conservation area or a residence encroaching within established SMP setbacks.

### Approved variances

A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of the SMP shall apply as they apply to preexisting nonconformities.



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## Chapter 23.50 APPLICABILITY AND NONCONFORMING USES

### Sections:

- 23.50.010 Application to persons and development.
- 23.50.020 Relationship to other local regulations.
- 23.50.030 Relationship to other state and federal laws.
- 23.50.040 Application within federal reserves.
- 23.50.050 Program effects on property values.
- 23.50.060 Hazardous substance remedial actions.
- 23.50.070 Nonconforming development.
- 23.50.080 Property rights.

### **23.50.010 Application to persons and development.**

- A. This program shall apply to any person as defined in Chapter 23.110 WCC.
- B. This program shall apply to any use or development as defined in Chapter 23.110 WCC. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC.

C. No substantial development as defined in Chapter 23.110 WCC shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 23.60.022. (Ord. 2009-13 § 1 (Exh. 1)).

### **23.50.020 Relationship to other local regulations.**

- A. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.
- B. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single-family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).
- C. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.



D. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.

E. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:

1. Building, plumbing, mechanical, and fire codes.
2. Boating and swimming, WCC Title 11.
3. On-site sewage system regulations, Chapter 24.05 WCC.
4. Solid waste rules and regulations, Chapter 24.06 WCC.
5. Zoning, WCC Title 20.
6. Land division regulations, WCC Title 21.
7. Development standards. (Ord. 2009-13 § 1 (Exh. 1)).

**23.50.030 Relationship to other state and federal laws.**

A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.

B. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.

C. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:

1. Flood Control Zone Act, Chapter 86.16 RCW.
2. Forest Practices Act, Chapter 76.09 RCW.
3. Fish and Wildlife, RCW Title 77.
4. Water Pollution Control Act, Chapter 90.48 RCW.
5. Land Subdivision Act, Chapter 58.17 RCW.
6. Surface Mining Act, Chapter 78.44 RCW.
7. Washington Clean Air Act, Chapter 70.94 RCW.
8. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

9. Camping Resorts Act, Chapter 19.105 RCW.
10. Water Resources Act of 1971, Chapter 90.54 RCW.
11. Growth Management Act, Chapter 36.70A RCW.
12. State Hydraulic Code, Chapter 77.55 RCW.

D. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:

1. Northwest Clean Air Agency regulations.
2. Puget Sound Water Quality Management Plan.

E. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:

1. Rivers and Harbors Act of 1899.
2. Fish and Wildlife Coordination Act of 1958.
3. National Environmental Policy Act of 1969 (NEPA).
4. Coastal Zone Management Act of 1972, as amended.
5. Federal Water Pollution Control Act, as amended.
6. Flood Insurance Act of 1968, as amended.
7. Clean Air Act, as amended.
8. Endangered Species Act (ESA). (Ord. 2009-13 § 1 (Exh. 1)).

**23.50.040 Application within federal reserves.**

A. The shoreline permit procedures, policies and regulations established in this program shall apply to development or use of shorelines of the state within national forests, national parks and national recreation areas by persons other than federal agencies.

B. As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals. (Ord. 2009-13 § 1 (Exh. 1)).

**23.50.050 Program effects on property values.**

A. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the county assessor and the county board of equalization in establishing the fair market value of such properties.

B. Designation of private property as a natural or conservancy shoreline area pursuant to Chapter 23.30 WCC shall qualify the property as meeting the definition of "open space land" under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and Chapter 3.28 WCC. (Ord. 2009-13 § 1 (Exh. 1)).

**23.50.060 Hazardous substance remedial actions.**

The procedural requirements of Chapter 90.58 RCW shall not apply to a project for which a consent decree, order, or agreed order has been issued pursuant to Chapter 70.105D RCW or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall, in consultation with the administrator, assure that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and this program. (Ord. 2009-13 § 1 (Exh. 1)).

**23.50.070 Nonconforming development.**

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this program.

A. The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the program or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC 16.16.290; provided further, that bulkheads shall conform to WCC 23.100.130.

B. An existing use designated as a conditional use that lawfully existed prior to the adoption of this program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.

C. A structure for which a variance has been issued but which does not comply with applicable requirements of this program as amended shall be considered a legal nonconforming structure and the requirements of this section shall apply.

D. Nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased; provided, that a nonconforming development that is moved any distance must be brought into conformance with this program and the Act; provided further, that as a conditional use a nonconforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.

E. Nonconforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this program and the Act; provided, that nonconforming single-family residences may be expanded without a variance where the provisions of subsection I of this section apply; and provided further, that nonconforming structures with conforming uses within commercial or mixed use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to WCC 23.100.050(B) (1)(e).

F. Nonconforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no feasible alternative that allows for compliance with the provisions of this program; provided, that the following are met:

1. The reconstruction process is commenced within 18 months of the date of such damage; and

2. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsections E, H and I of this section.

G. If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land or premises shall be consistent with the provisions of this program.

H. Replacement of any nonconforming structures or buildings or portions thereof within the aquatic shoreline area shall comply with program requirements for materials that come in contact with the water pursuant to WCC 23.90.040(B)(5); provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard provisions of this section.

I. Enlargement or expansion of single-family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 23.110 WCC that would increase the nonconformity and/or encroach further into areas where new structures or developments would not now be allowed under the program may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark.
2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by Chapter 16.16 WCC than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area or the minimum required side yard setback require a variance.
3. The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of WCC 23.90.060.
4. The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

J. A structure that is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. In addition to the conditional use criteria of WCC 23.60.040, before approving a conditional use for a change in nonconforming use, the hearing examiner shall also find that:

1. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
2. The proposed use will be at least as consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;
3. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
4. The structure(s) associated with the nonconforming use shall not be expanded in a manner that increases the extent of the nonconformity including encroachment into

areas, such as setbacks, and any critical areas and/or associated buffers established by Chapter 16.16 WCC, where new structures, development or use would not be allowed;

5. The vegetation conservation standards of WCC 23.90.060(B)(3) are met;
6. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological functions and/or processes; and
7. Uses which are specifically prohibited or which would thwart the intent of the Act or this program shall not be authorized.

K. New single-family development on nonconforming lots consisting of property under contiguous ownership less than 20,000 square feet in size and not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310 may be allowed without a variance in accordance with the following criteria:

1. Nonconforming lots with a building area of 2,500 square feet or more available for a single-family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the provisions of this program. The "building area" means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping.
2. Nonconforming lots that do not meet the requirement of subsection (K)(1) of this section shall provide the maximum setback and buffer dimension feasible while providing for a building area of not more than 2,500 square feet on the portion of the lot farthest from the required setback or buffer; provided, that consideration shall be given to view impacts and all single-family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F of this title.
3. The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of WCC 23.90.060(B)(3).
4. Development may not take place waterward of the ordinary high water mark.
5. Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in Chapter 16.16 WCC.

L. Redevelopment of nonconforming rights-of-way and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent with the provisions of this program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in subsections E and H of this section. (Ord. 2009-13 § 1 (Exh. 1)).

#### **23.50.080 Property rights.**

A. Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.

B. This program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner's permission.

C. Consistent with Whatcom County's high standard of staff conduct, county staff observe all applicable federal and state laws regarding entry onto privately owned property. (Ord. 2009-13 § 1 (Exh. 1)).

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## NON-CONFORMING USES & SITING

Uses and siting which do not conform to the surface water zones and exist at the time of adoption of the bylaw are **grandfathered** and are considered to be legally non-conforming. Non-conforming uses and siting are regulated by section 910 of the *Local Government Act*. The legally non-conforming status is with respect to the RDEK regulations only. If the structure or use does not comply with provincial or federal regulations or does not have the appropriate permits or authorizations, enforcement action may still be pursued by the appropriate provincial or federal agency.

A legally non-conforming use will cease to be legally non-conforming if:

- The use is discontinued for a continuous period of 6 months;
- The building or structure to which the use applies is damaged to an extent of 75% or more of its value; or
- The scale or degree of the non-conforming use is undertaken to a degree that is higher than that which occurred at the time of the adoption of the bylaw.

If the use complies with the new zones, but the size or siting of a building or structure is legally non-conforming then:

- The building or structure may only be repaired, altered, or extended to the point that no further contravention of the bylaw will occur.

Legally non-conforming status is **NOT** impacted by:

- A change in ownership or tenancy; or
- The discontinuation of uses which are associated with seasonal or agricultural practices.

### EXAMPLES

- An existing dock that exceeds the permitted size in the W-1 (Residential) zone would be considered legally non-conforming with respect to **size**. The dock may be repaired, extended or altered as long as it does not result in a further contravention of the bylaw.
- An existing dock that is too close to the property line extension in the W-1 (Residential) zone would be considered legally non-conforming with respect to **siting**. The dock may be repaired, extended or altered as long as it does not result in a further contravention of the bylaw.
- An existing dock in the W-3 (Institutional) zone or W-5 (Recreation) zone would be considered legally non-conforming with respect to **use**. The dock may be repaired or maintained. However, structural alterations or additions require approval by the RDEK Board of Variance. If it were ever damaged or destroyed to the extent of 75% or more of its value above its foundations, it must not be repaired or reconstructed.

## NON-CONFORMING USES & SITING

### EXAMPLES cont...

- An existing boathouse that is located below the natural boundary in any zone would be considered legally non-conforming with respect to *use*. The boathouse may be maintained and repaired. However, structural alterations or additions require approval by the RDEK Board of Variance. If it were ever damaged or destroyed to the extent of 75% or more of its value above its foundations, it must not be repaired or reconstructed.
- An existing mooring buoy in the W-5 (Recreation) zone would be considered to be a non-conforming *use*, even if removed for the winter. It may be placed and removed on an annual basis. However, if it is discontinued for a year, any future use must comply with the bylaw. The mooring buoy may be subject to enforcement action by Transport Canada, if it does not comply with federal regulations.
- A seasonal swimming platform in the W-5 (Recreation) zone would be considered to be a non-conforming *use*. It may be placed and removed on an annual basis. However, if it is discontinued for a year, any future use must comply with the bylaw. The swimming platform may be subject to enforcement action by the province if the use does not comply with a licence, lease or operational policy.



**MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
INFORMATION NOTE**

Date: April 23, 2015  
File: 12495-20/86/B001  
CLIFF/tracking #: 214551

**PREPARED FOR:** Tim Sheldon, Deputy Minister, Ministry of Forests, Lands and Natural Resource Operations

**ISSUE:** Next Steps in Review and Adoption of Pender Harbour Dock Management Plan

**BACKGROUND:**  
s.13,s.16

s.16

consultation on the draft DMP was initiated on April 7, 2015. All dock tenure holders and applicants received a letter inviting comment on the draft DMP. The draft DMP was posted on a public website and a public open house was held in the community on April 11, 2015. The closing date for public comments has been extended to June 10, 2015.

**DISCUSSION:**  
s.13

s.13,s.16

**CONCLUSION:**  
s.13,s.16

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April 11, 2015

## **Draft Pender Harbour Dock Management Plan Fact Sheet**

The draft Pender Harbour Dock Management Plan was developed co-operatively by the *shishálh* Nation and the Province.

The dock management plan, if approved, would apply to private moorage, group and strata or condominium facilities, commercial docks and marinas. The draft dock management plan provides both mandatory requirements and recommended guidelines for dock design and construction and also defines zones in Pender Harbour where there are additional requirements or restrictions.

### **What is the purpose of the dock management plan?**

The dock management plan is part of a greater reconciliation process between the Province and the *shishálh* Nation. The purpose of the plan is to help ensure that areas of cultural and environmental significance in Pender Harbour are protected and to promote rehabilitation as well as responsible and appropriate dock development and maintenance.

### **What area does the dock management plan apply to?**

The dock management plan applies to the foreshore in Pender Harbour. For the purposes of the plan, the harbour has been divided into four zones, each with different requirements.

### **Why is the harbour divided into four zones?**

There are four zones because the requirements in each zone are based on levels of impact to environmental factors.

### **How do I apply for a new dock? If I complete these steps will I be guaranteed a dock approval?**

In order to apply for a dock in Pender Harbour you will need to:

- Check your location against the zone requirements and restrictions;
- We encourage you to contact the *shishálh* Nation regarding your intent to apply for a dock
- Hire a Qualified Professional to assist in the design of the dock and development of a management plan, which must be consistent with the template available on the ministry's website.
- Commission an archaeology assessment of the project footprint;
- Submit an application to the Province.

Proponents must also comply with other relevant provincial policies which can be found at the following website:

[http://www.for.gov.bc.ca/Land\\_Tenures/crown\\_land\\_application\\_information/policies.html](http://www.for.gov.bc.ca/Land_Tenures/crown_land_application_information/policies.html)

If the above steps are completed your application will be considered complete and ready for review. This does not guarantee that your application will be approved as there are other important steps in the review process.

**How do I provide comments on the draft dock management plan?**

You can provide comments on the draft dock management plan on or before May 11, 2015 online at the Province's Applications and Reasons for Decision website:

<http://www.arfd.gov.bc.ca/ApplicationPosting/index.jsp>

search for file # 2410736,

OR

By mail to:

Section Head, Crown Land Authorizations

Ministry of Forests, Lands and Natural Resource Operations

Suite 200 – 10428 153<sup>rd</sup> Street, Surrey BC, V3R 1E1

**Do my comments matter?**

After the public consultation period has ended on May 11, 2015, the Province and the *shíshálh* Nation will review and consider comments received from the public. A final document will then be submitted to both governments for approval.

**When will the dock management plan take effect?**

If approved, the Pender Harbour Dock Management Plan could be implemented by Fall 2015.



## PENDER HARBOUR DOCK MANAGEMENT PLAN

### 1.0 INTENT OF DOCK MANAGEMENT PLAN

The Pender Harbour Dock Management Plan (the DMP) is an instrument of policy that provides guidance in relation to docks authorized or proposed under the *Land Act* within the Management Area, as identified in Appendix A.

### 2.0 PRINCIPLES AND OBJECTIVES

In addition to the principles and objectives outlined in other applicable provincial Operational Land Use Policies, the objective of the DMP is to promote responsible and appropriate dock development by:

- helping to minimize and mitigate impacts to marine resource values;
- protecting archaeological resources from future disturbance;
- contributing to address impacts, including cumulative impacts, of dock development on Aboriginal interests; and
- advancing collaborative management between the *shishálh* Nation and the Province of British Columbia.

### 3.0 DEFINITIONS

**"Commercial Dock"** means a Dock operated year-round or seasonally as ancillary to a commercial operation and may include breakwaters;

**"Critical Habitat"** means habitat that is important for: (a) sustaining a subsistence, commercial, or recreational fishery, or (b) any species at risk (e.g., terrestrial or aquatic red- and blue-listed species, those designated by the Committee on the Status of Endangered Wildlife in Canada, or those SARA-listed species), or (c) its relative rareness, productivity, or sensitivity (e.g. eelgrass meadows, kelp forests, foreshore salt marsh vegetation, herring spawning habitat, and potential forage fish spawning beach habitat);

**"Dock"** means a structure used for the purpose of mooring boats and for providing pedestrian access to and from the moored boats, and may consist of a single dock, wharf or pier (including walkway ramp) and includes Private Moorage Facilities, Group Moorage Facilities, Strata Title or

Condominium Moorage Facilities, Commercial Docks and Marinas, but does not include Industrial Docks;

**"Dock Footprint"** means the area that lies directly under the Dock;

**"Dock Management Zones"** means those zones within the Management Area and as depicted in Appendix B.

**"Foreshore"** means that land in tidal areas lying between the high tide and the mean low tide and that land in non-tidal areas that is alternatively covered by water and exposed with the normal rise and fall of the level of the body of water, i.e. that land between the ordinary high and low water mark;

**"Group Moorage Facility"** means a multi-berth moorage similar to a private moorage facility but for the personal use of a group or association of residents from the surrounding community;

**"Industrial Dock"** means a dock providing moorage that is ancillary to an upland general industrial use as defined under the Province's General Industrial Use Land Use Policy;

**"Management Area"** means the Pender Harbour area identified in Appendix A;

**"Management Plan"** means the management plan as described in section 7.

**"Marina"** means a dock providing moorage on a fee for service basis, includes ancillary uses (e.g. marine way, boat ramp, etc) and may include: the sale of gasoline, groceries, or supplies to the boating public whether provided on the dock or on the upland; and provision of scheduled service by float plane companies;

**"Natural Boundary"** means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

**"Preliminary Field Reconnaissance"** means a field survey that is designed to assess the archaeological resource potential of the study area, and to identify the need and appropriate scope of further field studies, and is performed by a Qualified Professional under the *Heritage Conservation Act*;

**"Private Moorage Facility"** means a dock that is:

- (a) permanently affixed to aquatic Crown land and any ancillary structures such as a boat lift and anchor lines; and
- (b) is for the personal and private use by one or a number of individuals or a family unit for boat moorage;

**"Project Footprint"** means the area approved under an existing authorization, or the area under application for authorization under the *Land Act*;

**"Qualified Professional"** means an applied scientist or technologist, acting alone or together with another qualified professional, if

- (a) the individual is registered and in good standing in BC with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association, and
- (b) the individual is acting within that individual's area of expertise.

**"Replacement Tenure"** means a subsequent Tenure agreement issued to the Tenure holder for the same area and purpose as under the original Tenure;

**"Riparian"** means the vegetated transitional area between terrestrial and aquatic ecosystems, and is delineated from the natural boundary upland for a distance of 15 metres;

**"Strata Title or Condominium Moorage Facility"** means a multi-berth moorage similar to a Private Moorage Facility but used by the residents of a waterfront strata or condominium development;

**"Tenure"** means

- (a) any interest in Crown land that is granted or otherwise established under a prescribed instrument, or
  - (b) a prescribed designation or other status that, under an enactment, is given to, conferred on, or made or otherwise established in relation to Crown land.
- and includes those Tenures which terms may have expired but are authorized by the Province to continue on a month-to-month basis.

**"Tenured Dock"** means a Dock that is authorized by a Tenure.

#### 4.0 APPLICATION OF PENDER HARBOUR DOCK MANAGEMENT PLAN

4.1 This DMP applies to applications within the Management Area for authorization of:

- (a) the construction of a new Dock;
- (b) the relocation of a Tenured Dock within a Project Footprint;
- (c) changes to the dimensions of a Tenured Dock;
- (d) an existing Dock that was not previously authorized under Tenure; and
- (e) the repair or rebuilding of Tenured Docks damaged or destroyed by fire, explosion, flood, or other casualty. These applications will be considered and treated as applications for Replacement Tenures and will require a Management Plan.

- 4.2 This DMP does not apply to an application for a Replacement Tenure except in the following circumstances:
- (i) section 6.2 applies where no archaeological assessment over the Project Footprint was completed in the past, and
  - (ii) section 7.1(f) applies where no Management Plan is attached to the Tenure or where the Management Plan attached to the Tenure does not include information on how ongoing maintenance activities will be conducted or where such information is not consistent with the Best Management Practices as set out in section 8.0 as supported by the opinion of a Qualified Professional.
- 4.3 This DMP does not apply to applications for:
- (a) an assignment of a Tenure to a different Tenure holder;
  - (b) a consent to mortgage; and
  - (c) subject to 4.1(b) and 4.1(c), the modification of the provisions of a Tenure.

## **5.0 DOCK MANAGEMENT ZONES**

- 5.1 The Dock Management Zones within the Management Area are shown in Appendix B.
- 5.2 If a Project Footprint crosses the boundary between two Dock Management Zones, the more stringent zone requirements will apply.
- 5.3 The management objectives for each Dock Management Zone are set out in Table 1.



**Table 1 -- Dock Management Zones**

Zone	Intent	Description
1	The intent is to not allow new Dock Tenures in this zone due to the significant natural and cultural resources.	New Dock Tenures will not be issued.
2	The intent is to limit new Dock Tenures to those that can be shared by multiple parties or used for commercial purposes, and which are consistent with the Dock Management Plan, in order to reduce the impact on the natural and cultural resources in the area.	New tenures for Private Moorage Facilities will not be issued.
3	The intent is to allow new Dock Tenures of all types provided that they are consistent with the Dock Management Plan and the Project Footprint does not overlap with Critical Habitat.	No restrictions on the type of Dock Tenures that may be issued. The application must demonstrate that the dock does not overlap with Critical Habitat. New dock applications in which the proposed Project Footprint overlaps Critical Habitat will not be accepted.  In order to reduce the environmental impact of multiple private moorages, residents will be encouraged to pursue Group Moorage facilities or Strata Title Moorage Facilities.
4	The intent is to allow new Dock Tenures of all types provided they are consistent with the Dock Management Plan.	No restrictions on the type of Dock Tenures that may be issued.

## 6.0 APPLICATION REQUIREMENTS

### 6.1 APPLICATIONS FOR NEW TENURES

- (a) The Province will encourage prospective applicants for new dock tenures to engage with the shíshálh Nation early, prior to submitting an application.
- (b) An applicant must provide the following information as part of the application:
  - (i) the identification of any Critical Habitat within the Project Footprint and the plan for the protection of any identified Critical Habitat;
  - (ii) a Preliminary Field Reconnaissance assessment of archaeological resources in the Foreshore area of the Project Footprint; and
  - (iii) a Management Plan, including specifications regarding the design of the Dock.
- (c) The Province will initiate First Nation consultation on the application once it receives the information identified in section 6.1 (b).

### 6.2 APPLICATIONS FOR REPLACEMENT TENURES

Where an applicant seeks a Replacement Tenure the Province will:

- (a) encourage the prospective applicant to engage with the shíshálh Nation early, prior to submitting an application;
  - (b) require the tenure holder to submit a Preliminary Field Reconnaissance assessment as part of the application for a Replacement Tenure where one has not been completed in the past;
  - (c) require the Management Plan submitted in support of a Replacement Tenure describe how ongoing maintenance activities will be consistent with the Best Management Practices set out in Section 8.0 and supported by the opinion of a Qualified Professional, where no Qualified Professional opinion was obtained in the past.
- 6.3 The Province may require the applicant to submit additional archaeological assessments depending on the results of a Preliminary Field Reconnaissance of the Project Footprint and the potential impact of the proposal on First Nation interests.
- 6.4 Cultural materials recovered during the course of archaeological investigations should be deposited to the *shíshálh* Nation *tem's swiya* Museum, subject to the requirements of the *Heritage Conservation Act*.

## **7.0 MANAGEMENT PLAN REQUIREMENTS**

- 7.1 A Management Plan for a proposed Dock or Replacement Tenure must demonstrate the following:
- (a) structures will not unduly block access along the foreshore for public access, or for First Nations harvesting of marine resources for food, social and ceremonial purposes;
  - (b) Dock construction will not include the use of native beach materials (e.g. boulders, cobble, gravel, sand, logs);
  - (c) filling, dredging, or blasting will not be undertaken within the Project Footprint;
  - (d) the Dock and Dock Footprint will be kept in a safe, clean and sanitary condition;
  - (e) all work, including dock construction, dock use, refueling of machinery and washing of buckets and hand tools, will be conducted in a manner that will not result in the deposit of toxic or deleterious substances (e.g. sediment, un-cured concrete, fuel, lubricants, paints, stains).
  - (f) ongoing maintenance activities will be consistent with the Best Management Practices set out in section 8.0, and supported by the opinion of a Qualified Professional.
  - (g) For docks that fall under 4.1, the design of the Dock is consistent with the Best Management Practices set out in section 8.0 and supported by the opinion of a Qualified Professional.
- 7.2 For new Docks, and Docks rebuilt under Sec. 4.1(e), an applicant must submit written confirmation by a Qualified Professional, confirming that the Dock was constructed in accordance with the approved Management Plan.

## **8.0 DOCK CONSTRUCTION AND MAINTENANCE GUIDELINES – BEST MANAGEMENT PRACTICES**

- 8.1 Applicable Crown Land Use policies, as amended from time to time, will apply to all applications for Tenures as well as existing Tenures in the Management Area.
- 8.2 Critical Habitats should be avoided within the Dock Footprint. Docks should not be installed over these habitats unless the design mitigates for potential impacts and does not result in losses to these habitats.
- 8.3 Design of a Dock should not include components that block the free movement of water along the shoreline. Crib foundations or solid core structures made of cement or steel sheeting should be avoided as these types of structures result in large areas of vegetation removal and erosion in Riparian areas.
- 8.4 The bottom of all floats should be a minimum of 1.5 metres above the sea bed during the lowest tide. Dock height above lowest water level should be increased if deep draft

vessels are to be moored at the Dock. The Dock and the vessel to be moored at the Dock should not come to rest on the foreshore sea bed during the lowest tide of the year.

- 8.5 Access ramps or walkways should be a minimum of 1.0 metre above the highest high water mark of the tide and not exceed a maximum width of 1.5 metres.
- 8.6 All improvements should be a minimum of 5.0 meters from the side property line (6.0 meters if adjacent to a dedicated public beach access or park) and at least 10 meters from any existing dock or structures, consistent with Federal requirements under Transport Canada's *Navigable Waters Protection Act*. All Docks should be orientated at right angles to the general trend of the shoreline.
- 8.7 Docks should be constructed to allow light penetration under the structure. Light penetration is important and can be facilitated by spacing the decking surface of the Dock and minimizing the width of the structure. North/south Dock alignments are encouraged whenever possible to allow light penetration.
- 8.8 Grating should be incorporated into ramps, walkways, or floats to increase light and reduce shading of the bottom. When grating is impractical, deck planking measuring 15cm (6 in) and spaced at least 2.5cm (1 in) should be used to allow light penetration.
- 8.9 The replacement of the decking surface of a Dock should be undertaken in a manner that is consistent with sections 8.7 and 8.8.
- 8.10 Concrete, steel, treated, or recycled timber piles are acceptable construction materials although steel is preferred. Detailed information on treated wood options can be obtained on-line from the Fisheries and Oceans Canada website (*Guidelines to Protect Fish and Fish Habitat from Treated Wood Used in the Aquatic Environment in the Pacific Region*).
- 8.11 Access to the Foreshore for construction purposes should be from the adjacent upland property wherever possible. If heavy equipment is required to work on the Foreshore or access is required along the Foreshore then the advice of a Qualified Professional or Fisheries and Oceans Canada should be obtained.
- 8.12 Works along the Foreshore should be conducted when the site is not wetted by the tide.
- 8.13 Applicants are advised to contact Fisheries and Oceans Canada to ensure proposed activities, and the scheduling of those activities, complies with Fisheries and Oceans Canada requirements including the fisheries works window.
- 8.14 The upland design of the Dock, including anchor points, should avoid disturbing riparian vegetation adjacent to the Dock Footprint due to its role in bank stabilization and erosion control.

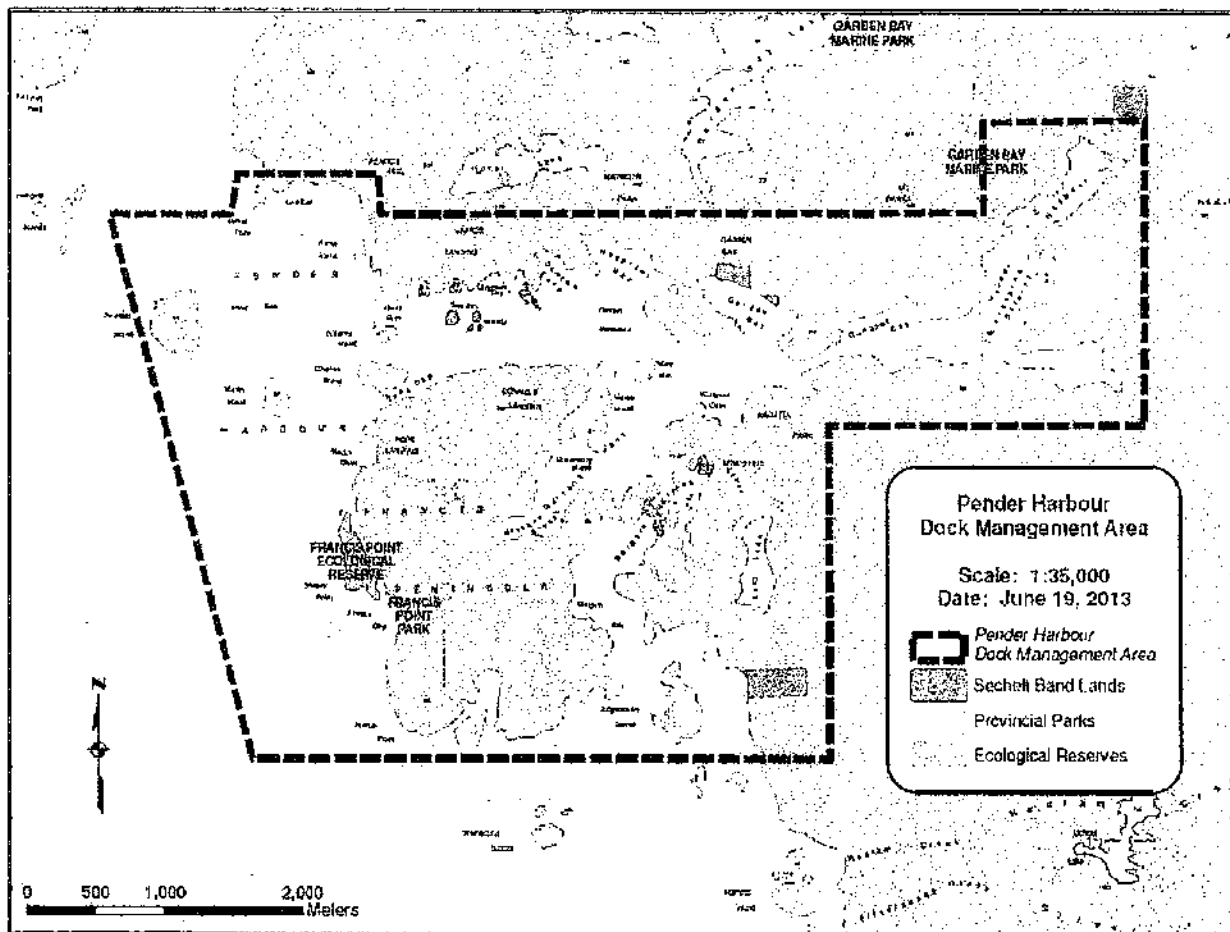
## 9.0 APPENDICES

Appendix A Pender Harbour Dock Management Area Map

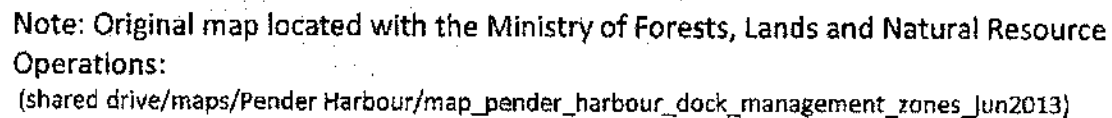
Appendix B Pender Harbour Dock Management Zone Map



## Appendix A - Pender Harbour Dock Management Area Map



Note: Original map located with the Ministry of Forests, Lands and Natural Resource Operations:  
(shared drive/maps/Pender Harbour/map\_pender\_harbour\_dock\_management\_area\_jun2013)



Page 050 to/à Page 052

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s.16;s.13



Page 053 to/à Page 054

Withheld pursuant to/removed as

s.14;s.16;s.13



# Draft Pender Harbour Dock Management Plan – Frequently Asked Questions

## Introduction

The draft Pender Harbour Dock Management Plan (DMP) was developed co-operatively by the *shishálh* Nation and the Province.

The draft DMP provides mandatory requirements for dock design and construction and also defines zones in Pender Harbour where there are additional requirements or restrictions.

### **Q1. Why is the Province involved in the management of docks in Pender Harbour?**

Waterfront property owners in British Columbia enjoy the Common Law Right of riparian access to their properties. Broadly speaking this is the right to access any part of their property by boat without the interference of manmade structures. However, being the owner of a water front property does not give the right to construct a dock, wharf or other moorage facility on Crown land, such as the water over the bed of Pender Harbour. Private moorage authorizations can be granted or refused based on the circumstances prevalent in any given location.

### **Q2. Why is the Province working with *shishálh* Nation to develop the DMP?**

The Province has jointly drafted the dock management plan with the *shishálh* Nation to address the cumulative impacts of docks and dock construction in Pender Harbour due to its environmental and cultural significance.

### **Q 21. Does the Crown have to work with shishalh Nation to develop a DMP? Will the dock management plan allow the shishalh Nation to collect a fee on all dock construction?**

The Province is seeking to develop a New Relationship with the shishalh Nation and other First Nations across British Columbia. The Constitution, as well as case law, has outlined the requirement to consult with First Nation and to develop new and collaborative approaches to engagement.

Rental fees for tenures will remain consistent with current Provincial policy.

### **Q3. Does the draft DMP apply to other areas in the South Coast?**

The draft Pender Harbour dock management plan is a proposed stand-alone policy document for Pender Harbour due to the cultural and environmental significance of the area. As per Section 8.1 of the draft DMP, applicable Crown Land Use policies will apply to all applications for tenures as well as existing tenures in the Management Area.

**Q4. Has the Province considered the impact of the DMP on property values?**

The Province has received a number of comments and feedback regarding the impact to property values. These comments will be considered on the draft plan.

**Q5. I built my dock many years ago, do I have to re-construct my dock?**

No. Authorized docks (i.e. docks with an active or expired tenure) may continue; however, maintenance activities must be consistent with the DMP. The intent of the plan is to improve the standard of docks in Pender Harbour over time through ongoing maintenance activities.

**Q6. What are the significant natural and cultural resources within Zone 1? Why is a prohibition on docks needed to protect these resources? Were any experts or professionals involved in creating the Zones? What information/data/studies were used to create the zones?**

The Province has received a number of questions regarding the natural and cultural significance of Zone 1 and the designation of the Zones.

The Zones were developed following the completion of various studies (e.g. environmental and archaeological) within the Pender Harbour area. Consistent with laws and protocols, much archaeological information is kept confidential to protect archaeological resources.

**Q7. What happens when a dock crosses through two zones?**

Where a tenure crosses two zones, the more stringent criteria of the two zones will be applied.

**Q8. What will happen to water only access properties located in Zone 1 with unauthorized docks?**

The Province has received a number of comments and feedback regarding water only access properties located within Zone 1. *shíshálh* Nation and the Province will consider these concerns.

## **Requirements**

**Q9. How would I apply for a new Dock? If I complete these steps would I be guaranteed a dock approval?** In order to apply for a dock in Pender Harbour you would need to:

- Check your location against the zone requirements and restrictions;
- We encourage you to contact the *shíshálh* Nation regarding your intent to apply for a dock
- Hire a Qualified Professional to assist in the design of the new dock and development of a management plan, which must be consistent with the template available on the ministry's website.
- Commission an archaeology assessment of the project footprint;
- Submit an application to the Province.

Proponents must also comply with other relevant provincial policies which can be found at the following website: [http://www.for.gov.bc.ca/Land\\_Tenures/crown\\_land\\_application\\_information/policies.html](http://www.for.gov.bc.ca/Land_Tenures/crown_land_application_information/policies.html)

If the above steps are completed your application would be considered complete and ready for review. This does not guarantee that your application would be approved as there are other important steps in the review process.

**Q10. How do I apply to renew my existing dock tenure?**

- Once the DMP has been finalized, the Province will contact tenure holders whose tenures have expired or whose tenures are nearing expiry.
- Tenure holders will be provided information on how to renew their tenure; this includes a replacement tenure application package containing an application form, and a management plan template
- The Province encourages applicants to engage with the *shishálh* Nation prior to submitting an application.
- The applicant will be required to submit an archaeology assessment of the project footprint if one has not been completed in the past.
- The applicant will also be required to submit a management plan describing how ongoing maintenance activities will be consistent with the Best Management Practices set out in the DMP supported by the opinion of a Qualified Professional. A management plan template will be supplied with the replacement tenure application package.
- The management plan, archaeology assessment, and replacement application form is submitted to the Province.

**Q11. Who is a qualified professional?**

A qualified professional is an applied scientist or technologist, acting alone or together with another qualified professional, if (a) the individual is registered and in good standing in BC with an appropriate professional organization constituted under an Act, acting under that associations code of ethics and subject to disciplinary action by that association, and (b) the individual is acting within that individual's area of expertise.

**Q12. Why is an archaeological assessment required?**

Pender Harbour is significant for the richness of its cultural resources. The DMP requires an archaeological assessment in order to identify, record and protect the archaeological sites located in this area. A trained and certified archaeologist will assess the likelihood of a proposed development or ongoing use of a site disturbing archaeological remains and/or artifacts. Archeological resources are protected under the *shishálh* Heritage Policy and the *Heritage Conservation Act*.

**Q13. What if archaeological materials are found during the Preliminary Field Reconnaissance?**

If archaeological materials are found during the Preliminary Field Reconnaissance, further archaeological work may be required; the archaeologist performing the work will be able to provide advice on the next steps. Materials should be deposited to the *shíshálh* Nation's *tems swiya* museum.

**Q14. Why and when do existing tenure holders need to complete assessments?**

Under the *Land Act* (Section 35.1), land applications may be subject to further assessments or studies. The draft plan would require existing tenure holders to complete an archaeology assessment prior to replacement of their tenure, if one has not been completed in the past. You would only be asked to do the archaeological assessment once; however, if found, there may be additional requirements to deal with any archaeological materials.

Further, according to the draft DMP, an existing tenure holder is not required to complete an environmental assessment unless changes to the location (footprint) or dimensions of the dock are proposed.

## **Administration of Docks**

**Q15. Will the rent or application fees differ in Pender Harbour vs. the rest of the Province?**

Application fees and rent for tenures within the Management Area will remain the same as the rest of the Province. These fees are set out in the fee schedules contained in the Crown Land Fees Regulation and can be located at the following link:

[https://www.for.gov.bc.ca/Land\\_Tenures/crown\\_land\\_application\\_information/fees.html](https://www.for.gov.bc.ca/Land_Tenures/crown_land_application_information/fees.html)

**Q16. How is the Province currently dealing with expired tenures?**

If your tenure has expired you are deemed to be a monthly occupier of the tenure area subject to the provisions set out in your tenure document.

**Q17. How long will the dock tenures be issued for under the DMP?**

We are considering a tenure term of five years.

**Q 23: Will new tenure rates and length of tenure be applied province-wide?**

The rent applied to the private moorage tenures in Pender Harbour is consistent with provincial policy. The length of tenure is also consistent with policy and can vary on a case by case basis.

**Q 24: Are existing docks, tenured or untenured, grandfathered within the plan?**

Existing tenured docks will remain. Upon renewal of the tenure, dock tenure holders will be required to comply with the DMP for replacement applications. Tenure holders will be required to complete a Preliminary Field Reconnaissance, if none has been completed in the past, and to submit a Management Plan describing how ongoing maintenance activities will be consistent with the Best Management Practices set out in the DMP supported by the opinion of a Qualified Professional.

Untenured docks will be required to comply with the draft DMP.

**Q 25. Isn't the governance over water a federal issue?**

As between the federal and provincial jurisdiction, land covered by water below the natural boundary is governed by the Land Act in BC. For use of water below the natural boundary, an individual or company is required to obtain approval from the Province to permit this use (such as docks).

Federal legislation covers the ability to navigate through water which is under the Navigable Waters Act.

**Q 26. Why are additional studies required by dock owners, if studies have already been completed?**

The studies that informed the draft DMP are based on the overall area of Pender Harbour and the current status of the area. The intent of the studies required through the draft DMP is to identify the impacts of the new improvements on a site specific basis, including the cumulative impact of numerous dock sites.

**Q 27. What is the scope of the Preliminary Field Reconnaissance assessment of archaeological resources? Will it extend beyond the foreshore or beyond the physical footprint of the dock and ramp?**

The PFR's scope remains within the tenure boundary footprint and should not extend beyond the natural boundary (i.e onto private property).

**Q 28. The Plan says that there must be a minimum distance of 1.5 metres of water under the dock. What will happen to the current docks that cannot meet the 1.5 metre requirement?**

Existing, tenured docks are 'grandfathered' unless construction is proposed.

**Q 29. Can dock tenures be inherited or transferred?**

Yes, dock tenures can be assigned/transferred to your estate (children) or to the new property owner. This follows the standard tenure administration process.

## **Public Consultation Process**

### **Q18. Why was there no public consultation on the draft DMP until now?**

Although there has been a moratorium on docks for several years in Pender Harbour, the draft DMP is a recent collaboration between the *shíshálh* Nation and the Province. The open house, held in Pender Harbour on April 11, 2015 and subsequent request for public comments, constitute public consultation, and were intended for information sharing with the community at the draft stage of the DMP. The comments provided by the community will be reviewed for consideration on the DMP.

### **Q19. Why was there no presentation at the public meeting?**

We appreciate that there are many different formats for holding a public meeting. Due to the number of expected attendees with various questions, an open house format provided an opportunity to help answer and listen to a majority of the attendees' questions and comments individually.

### **Q20. Will the public consultation period be extended?**

We have extended the opportunity to comment for an additional 45 days. We request that all comments are submitted for review and consideration to FLNR by June 24, 2015. We intend to proceed quickly with our review subsequent to the public comment period, and cannot guarantee that responses received after June 24<sup>th</sup> will be considered.

### **Q 30. Who was in attendance at the table when the DMP was drafted? Why was our elected representative, Nicholas Simons, not included in negotiations?**

**Why were negotiations conducted at the operational level without input from local residents or elected representatives?**

Those involved with the drafting of the DMP included – Crown Land Authorizations staff, South Coast Natural Resource Region Executive, *shíshálh* Nation staff and support biologist, and Ministry of Aboriginal Relations and Reconciliation staff.

Nicholas Simons was not included in the drafting of the DMP because the document has been drafted by operational staff. Thorough review of the Plan was completed by *shíshálh* Chief and Council throughout the process. We are now seeking further input on the draft from all residents and elected representatives.

We are currently in the middle of the public consultation stage to obtain input from the public. In order to obtain input from the community, we followed a similar process for most proposals that solicit input from the public. For example, a proposal is formulated, the public is notified, an informational meeting is held, questions are answered and comments are received. This ensures that we solicit informed input and receive comments from all residents rather than select individuals.

June 11, 2015

**Q 31. Why was the SCRD not involved in the creation of the DMP when it involved so many of their constituents?**

As per SCRD and the *shishalh*'s joint letter, the SCRD has no jurisdiction over docks and was, therefore, not involved in developing the draft DMP.

**Q 32. shishalh Nation fee simple islands are not part of any zone, why?**

All islands in the Harbour were intended to be included in the purple zone. The map will be corrected to reflect this understanding.





## SECHELT INDIAN BAND

The *shíshálh* Operational Best Management Practices (BMP) for marine docks within *shíshálh* Nation territory is a compilation of requirements from Fisheries and Oceans Canada and the Resource Management Department of the *shíshálh* Nation. The BMP's are intended to help minimize impacts to marine foreshore resources within the *shíshálh* Nation territory by promoting responsible and appropriate development. It is expected that MFLNRO will honor the following practices with regard to all private moorages:

1. Wherever possible proponents are encouraged to develop dock facilities that can facilitate numerous upland owners. In pursuing multi-owner/use facilities the footprint on the sub/intertidal habitats is minimized. These types of facilities also help to alleviate potential cumulative impacts from high density individual dock infrastructures within the *shíshálh* Nation territory.
2. Access to sub/intertidal resources cannot be impeded or restricted from any dock/float structure within the *shíshálh* Nation territory. This is to ensure access for the harvest of marine resources for food, and for social and ceremonial purposes.
3. The *shíshálh* Nation requires assurance that no critical habitats such as eelgrass meadows will be impacted within the immediate vicinity of the proposed dock. Docks/floats must not be installed over eelgrass, kelp fields, or salt marsh vegetation.
4. Eelgrass meadow protection is a high priority for the *shíshálh* Nation and if a meadow exists near the proposed structure the *shíshálh* Nation expects the proponent to identify and delineate the meadow, and provide a plan for the protection of the meadow. This includes the immediate area surrounding the new pilings and anchors.
5. The bottom of all floats must be a minimum of 1.0 m above the sea bed during the lowest water level or tide. Dock/float height above lowest water level will need to be increased if deep draft vessels are to be moored at the dock/float. The dock/float structure and the vessel to be moored at the structure are not to come to rest on the intertidal sea bed during the lowest tide or lowest water period of the year.
6. Access ramps or walkways should be a minimum of 1.0 metre above the highest high water mark of the tide and a maximum width of 1.5 metres.

7. Docks/floats are to be constructed to allow light penetration under the structure. North/South dock alignments are encouraged whenever possible to allow light penetration.
8. Light penetration is important and can be facilitated by spacing the decking surface of the dock and minimizing the width of the structure.
9. Grating incorporated into ramps, walkways, or floats will increase light and reduce shading of the bottom. When grating is impractical, deck planking measuring 15-cm (6in) and spaced at least 2.5-cm (1 in) should be used to allow light penetration.
10. Concrete, steel, treated, or recycled timber piles are acceptable although the *shishálh* Nation prefers to support steel. Detailed information on treated wood options can be obtained on-line from the Fisheries and Oceans Canada website (*Guidelines to Protect Fish and Fish Habitat from Treated Wood Used in the Aquatic Environment in the Pacific Region*).
11. Construction must never include the use of native beach materials (boulders, cobble, gravel, sand, logs).
12. Access to the beach for construction purposes is to be from the adjacent upland property wherever possible. Use of heavy equipment required to work on the beach or access is required along the beach requires advice of a Professional Biologist and DFO to ensure that fish habitat, including riparian, intertidal salt marsh, or in-water vegetation, is not adversely affected during construction. Access or construction along beach front also requires notification sent to the *shishálh* Nation and its Rights and Title Department in order to ensure cultural sites are not impacted or disturbed.
13. Filling, dredging, or blasting below the High Water Mark is not supported by the *shishálh* Nation. Un-authorized filling, dredging and blasting noted by the *shishálh* Nation will be reported to Fisheries Enforcement Officers immediately.
14. Works along the upland/water interface must be conducted when the site is not wetted by the tide. All work is to be conducted in a manner that does not result in the deposit of toxic or deleterious substances (sediment, un-cured concrete, fuel, lubricants, paints, stains) into waters frequented by fish. This includes refueling of machinery and washing of buckets and hand tools. These activities may result in the Harmful Alteration, Disruption or Destruction (HADD) of fish habitat and will be reported to Fisheries Enforcement.
15. The *shishálh* Nation supports the DFO works window for marine foreshore. Construction activities should take place between June 1 and February 15 of any calendar year.

16. Terrestrial riparian vegetation and intertidal salt marsh must not be harmfully affected by access or construction. The *shishálh* Nation encourages proponents to seek the advice of a Professional Biologist if vegetation will be affected in any way by your proposed works.
17. The upland design of the dock including anchor points should not disturb the riparian area except at the immediate footprint. An effort should be made to maximize riparian cover adjacent to the dock helping reduce erosion and exposure to the foreshore.



## Land Use Operational Policy Private Moorage

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**NAME OF POLICY:** Private Moorage

**APPLICATION:** Applies to inland and coastal aquatic Crown lands. This policy does not apply to industrial or commercial facilities


**ISSUANCE:** Assistant Deputy Minister, Tenures, Competitiveness and Innovation

**IMPLEMENTATION:** Ministry of Forests, lands and Natural Resource Operations

**REFERENCES:** *Land Act* (Ch. 245, R.S.B.C., 1996)  
*Ministry of Lands, Parks and Housing Act* (Ch. 305, R.S.B.C., 1996)

**RELATIONSHIP TO PREVIOUS POLICY:**

**POLICY AMENDMENT:** Any formal request for an amendment to this policy is to be directed in writing to the Director, Land Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations

  
\_\_\_\_\_  
Dave Peterson, ADM  
Tenures, Competitiveness and Innovation  
Ministry of Forests, Lands and Natural  
Resource Operations

MAY 26 2011

Date:

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**EFFECTIVE DATE:** June 1, 2011  
**AMENDMENT:**

**FILE:** 12565-00  
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**APPROVED AMENDMENTS:**

Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011
July 31, 2011	BN 178816	Updated application information to support Coastal pilot
August 8, 2013	BN 199474	Updated to increase size threshold for General Permissions to 24m <sup>2</sup>

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## 1. POLICY APPLICATION

This policy applies to the allocation of all aquatic Crown land (inland and coastal) for private moorage facilities (as defined below) that are affixed to and/or occupy aquatic Crown land.

The policy does not apply to mooring buoys used for private moorage. These are regulated by Transport Canada under the federal *Navigable Waters Protection Act*.

Moorage facilities for strata title or condominium developments of over three berths are administered under the provisions of the Residential policy where they have no related commercial facilities (e.g. gas bars) and are intended for private use of tenants.

Group moorage facilities of over three berths are administered under the provisions of Residential policy only where they have no related commercial activities. Group moorage with commercial activities are administered under the Commercial Marina policy.

*The italicized text in this document represents information summarized from standard Crown land management policies and procedures. This material has been inserted where it provides necessary direction or context. As well, website links offer access to the full text of the relevant land management policies and procedures. Text in standard script is applicable to this policy only.*

## 2. PRINCIPLES AND GOALS

The objectives of the policy are to:

- reduce risk of impacts associated with the construction and use of private moorage facilities;
- ensure that policy and procedures compliment other provincial agency, federal agency and local government requirements;
- provide flexibility to allow regional and site specific issues and conditions to be considered and addressed;
- provide dock owners with best management practices and requirements; and,
- provide for different forms of allocation, with a range of rights, interests and obligations to meet a variety of circumstances and proponent needs.

## 3. DEFINITIONS

**Application-only area** means a specified area where private moorage facilities on freshwater must be authorized by granting of a Specific Permission or a lease and are not covered by granting of a General Permission.

**Aquatic Crown land** means that land below the visible high water mark of a body of water extending offshore to the recognized limit of provincial jurisdiction, including the foreshore.

**Authorizing Agency** means the Provincial ministry responsible for the specific land use authorization.

**Dock** means a structure used for the purpose of mooring boats and for providing pedestrian access to and from the moored boats, and can consist of a single dock, wharf or pier (including walkway ramp).

**Foreshore** means that land in tidal areas lying between the high tide and the mean low tide and that land in non-tidal areas that is alternatively covered by water and exposed with the normal rise and fall of the level of the body of water, i.e. that land between the ordinary high and low water mark.

**First Nation** is a term that refers to the Indian peoples in Canada, both Status and non-Status. Although the term First Nation is widely used, no legal definition of it exists. Some Indian peoples in British Columbia have adopted the term "First Nation" to replace the word "band" in the name of their community.

**Group moorage facility** means a multi-berth moorage similar to a private moorage facility but for the personal use of a group or association of residents from the surrounding community.

**Private moorage facility** means a dock and/or a permanent way (i.e. boat ramp) that is permanently affixed to aquatic Crown land and any ancillary structures such as a boat lift and anchor lines. It is for the personal and private use by one or a number of individuals or a family unit for boat moorage.

**Riparian rights** means certain rights which run with an upland property, include access to and from the water, protection of the property from erosion, ownership of naturally accreted material and use of water of undiminished flow and quality for domestic purposes.

#### **4. ABBREVIATIONS**

FCBC – FrontCounter BC

#### **5. APPLICANT ELIGIBILITY**

Applicants for General and Specific Permissions, new tenures, tenure or permission assignments, or tenure replacement must be 19 years of age or older. Applicants are not required to be a Canadian Citizen or permanent resident of Canada.

#### **6. FORM OF LAND ALLOCATION**

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for private moorage.

For more detailed standard policy information on some of the available instruments see [Form of Crown Land Allocation](#).

##### **6.1 Permission**

A Permission is the normal form of authorization granted for private moorage.

Permissions do not convey rights to the land. A Permission conveys non-exclusive use for the purpose described, is not a registerable interest that can be mortgaged and does not require a survey.

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A Permission does not allow the holder to curtail public access over the permission area. However, this requirement does not preclude the permission holder from protecting improvements from damage resulting from causes other than natural wear and age. The permission holder must ensure improvements are constructed or located to permit public passage around or over the structure on the foreshore (e.g. a raised walkway can be readily crossed or there is a path around the end of the walkway on the beach).

Government may authorize overlapping and layering of tenures on the permission area.

Permissions typically do not have a fixed term or expiry date. They are granted for as long as the dock owner requires or until such time as the Authorizing Agency terminates or withdraws the permission. However, in limited circumstances it may be necessary to put a fixed term in place, e.g. to match the term of tenure remaining for the adjacent non fee-simple upland property or to run with the term of an upland owners consent.

The Minister (or delegate) can withdraw Permission at any time without restriction. Notice of a withdrawal of a Permission should be given as long as possible in advance (e.g. 12 months), however, it is recognized that in some circumstances less notice time may be given.

There are two types of Permission available: General Permissions and Specific Permissions.

#### **6.1.1 General Permission**

The General Permission is only granted for lake and river docks of less than 24m<sup>2</sup> in surface area. Walkways that provide pedestrian access to and from moored boats and are not themselves used for mooring boats are not to be included in the calculation of the surface area of the dock. These docks are granted without the need for an application. Instead, if a person constructs and uses their dock in accordance with the terms and conditions contained in the General Permission document they will be deemed authorized. If the proposed dock does not meet the conditions and requirements stated in the General Permission, an application for a Specific Permission will be required.

A General Permission does not apply to marine (coastal) docks nor to lake and river areas that are designated as application-only areas (refer to Section 8.3 for more details).

A General Permission is only granted to owners of waterfront property with riparian rights to the adjacent Crown foreshore where the dock is located.

#### **6.1.2 Specific Permission**

The Specific Permission is the normal form of authorization granted upon application approval for private moorage facilities. Specific Permissions are available for:

- lake and river docks over 24 m<sup>2</sup> in surface area;
- lake and river docks less than 24 m<sup>2</sup> that are within designated application-only areas;

- lake and river docks less than 24 m<sup>2</sup> that do not satisfy the conditions of the General Permission;
- all docks located on the marine (coastal) foreshore; and,
- any private moorage facility that includes a permanent way/boat ramp, or a boat lift that is not attached to the dock.

Specific Permissions are only available to owners or Crown lessees of waterfront property with riparian rights. However, in exceptional circumstances an exemption may be given, in which case upland or adjacent owner consent will be required (e.g. local government, Ministry of Transportation) as per section 11.1.4.

Specific Permissions may be granted for strata title moorage or group moorage facilities of three berths or less (refer to section 8 for more details).

## 6.2 Lease

*A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid conflicts.*

*The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure contract. The tenure holder is granted quiet enjoyment of the area (exclusive use).*

*A legal survey will generally be required at the applicant's expense to define the tenured area.*

*A lease can be issued in a form that is registerable in the Land Title Registry (whereas, a Licence of Occupation is not.) Registered leases for a term of 30 years or more may be considered a fully taxable transfer of interest in property and may be subject to Property Transfer Tax in accordance the Property Transfer Tax Act.*

*Where a lease is not registered in the Land Title Registry, Property Transfer Tax does not apply.*

*In most cases, a tenure holder may apply for a replacement tenure at any time following the mid-term of the lease. Replacement of tenures is at the Authorizing Agency's discretion.*

*Where a replacement lease is for the same land, will result in a total duration of more than 30 years, and the replacement lease is registered in the Land Title Registry, the leases may be viewed as a single transaction and may be subject to Property Transfer Tax.*

*Where the term of a registered lease is less than 30 years or the total duration of all leases does not exceed 30 years, Property Transfer Tax exemption is available.*

*A lease can be a registerable interest in the land that is mortgageable.*

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A lease may be issued where the applicant is intending to make a substantial investment in major improvements which warrant this form of tenure.

The standard term for a lease is 20 years.

A lease for a private moorage facility is not issued for a period greater than the remaining term of the Crown land residential tenure on the adjacent upland property.

The leaseholder will not be able to interfere with public access over the lease area, or interrupt passage by the public over the intertidal area.

## **7. SURVEY**

Requirements for legal survey of the proposed aquatic tenure area will be at the discretion of the Authorizing Agency. Survey is not normally required where natural features define the land, or where the likelihood of boundary conflict is minimal. As the duration/intensity of use and the level of investment increase, so does the advisability of survey.

## **8. AUTHORIZATIONS FOR SMALL MULTI-BERTH MOORAGE FACILITIES**

Group moorage facilities or strata title moorage facilities, with three berths or less may be issued a Specific Permission. For facilities with more than three berths owners must apply under the Residential Policy.

Group moorage will be available to local resident groups/associations or community organizations where:

- local government has given their support and approval; and,
- the area has boat access only, no public transportation and there is very limited availability of public and commercial moorage; or,
- group moorage may reduce cumulative impacts that could result from waterfront property owners developing multiple single docks.

Important considerations when locating a group moorage facility include availability of adjacent parking, as well as impact on neighbouring property owners and public access.

Commercial activity is prohibited at group moorage sites including the renting or selling berths, but not including any necessary membership fees to cover maintenance and administrative costs.

A riparian agreement is required between the members of any association or group and the owner of an upland property that the group moorage facility is fronting. If the facility is located adjacent to a road allowance, consent by the Ministry of Transportation will be required.

## **9. FORESHORE FILLS, BREAKWATERS AND NON-MOORAGE STRUCTURES**

Proposals are normally not accepted for foreshore fills, breakwaters or permanent foreshore improvements (e.g. sun decks, boat houses) that are not part of a private moorage facility (as defined). However, in exceptional circumstances authorization may be considered (e.g. where fill or breakwater was historically established) in accordance with the Residential Policy.

## **10. PRICING POLICY**

### **10.1 Administrative Fees**

*Application fees for tenures, and other administrative fees, are payable to the Province of BC. These fees are set out in the fee schedules contained in the Crown Land Fees Regulation.*

A General Permission does not require an application fee. An application fee of \$250 applies to Specific Permissions and leases.

### **10.2 Rentals**

#### **10.2.1 Permission**

There is no rent charged for General or Specific Permissions.

#### **10.2.2 Lease**

A nominal charge of \$200 per annum is levied for a private moorage facility lease. Where the area of aquatic Crown land required for a lease exceeds 2000 square metres, an additional annual charge of \$1.00/square metre is levied to a maximum total annual charge of \$400.

## **11. ALLOCATION PROCESSES**

### **11.1 Applications**

*New and replacement tenures are normally offered in response to individual applications.*

New Specific Permissions are offered in response to an application. General Permissions will not require an application. General Permission documents will be made available to proponents by the Authorizing Agency, normally through FCBC.

Although applications will not be required for many small lake and river docks under 24 m<sup>2</sup>, clients must first contact FrontCounter BC prior to commencement of construction to ensure that they are fully informed of the conditions and requirements of a General Permission, and to ensure that a proposed dock is not located in an application-only area. Clients may be required to provide additional information to help staff determine whether an application is needed (e.g. a draft site plan showing design, location or orientation). In addition, clients may need other agency authorizations, such as a notification of works in and about a stream in accordance with Section 9 of the *Water Act*.

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### **11.1.1 Application Package**

Applications must be complete before they can be accepted for processing. A complete application package will include all the material defined in the Application Requirements list (freshwater or marine), available on the private moorage program webpage.

Applications for a specific permission are only accepted for docks limited to a single elevated pier leading to a ramp and one moorage float.

### **Management Plan and Tenure Boundaries**

A management plan is required for private moorage applications.

In issuing tenures or permissions, staff are to ensure that permission or tenure boundaries encompass the minimum area required to authorize the placement of necessary improvements (including boat lifts and anchor lines). The permission or tenure area should not include unoccupied open water or tidal areas between structural improvements.

Refer to Section 12.5.1, Development Requirements, as well as the Private Moorage Requirements and Best Management Practices (Appendix 3) for additional factors that may affect the placement and design of a private moorage facility.

### **Identification of Users**

Where application for a private moorage facility is made by more than one individual, the names of all individuals should be included on the application form and will be included in the tenure document. The exception will be for moorage facilities under the name of registered community organizations.

If possible group moorage tenures should be in the name of a registered society or association to avoid having to undertake assignments every time a member of the group changes.

### **11.1.2 Application Acceptance**

*New applications will be reviewed for acceptance based on application package completeness, compliance with policy and program criteria, preliminary statusing and other information which may be available to provincial staff. The acceptance review is to be completed within 7 calendar days. Applications that are not accepted will be returned to the applicant.*

### **11.1.3 Clearance/Statusing**

*After acceptance, provincial staff undertake a detailed land status of the specific area under application to ensure all areas are available for disposition under the Land Act and to identify potential issues.*

### **11.1.4 Referrals**

*Referrals are a formal mechanism to solicit written comments on an application from recognized agencies and groups. Referrals are initiated as per legislated responsibilities and formal agreements developed with other provincial and federal government agencies. Referrals may also be used to address the interests of local governments and First Nations. Referral agencies, organizations and identified special interest groups*

*provide their responses to the Authorizing Agency within 30 days (45 days for First Nations).*

#### **11.1.5 Advertising/Notification**

*At the time of application acceptance, provincial staff will notify applicants if advertising is required and provide the necessary instructions.*

#### **Upland Owner Consent**

*Owners of waterfront property have certain "riparian rights" which include the right of access to and from the upland (see Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Land). Provincial staff will advise applicants if there is a need to obtain a letter indicating the upland owner's consent to their application.*

#### **Adjacent Owner Notification**

*New applications to tenure foreshore adjacent to privately owned property, including Indian Reserves, are brought to the adjacent property owner's attention through referrals or direct contact. In certain circumstances, provincial staff may advise applicants that there is a need to obtain a letter indicating adjacent owner's consent to their application.*

#### **Riparian Agreement**

*A riparian agreement is normally required between parties if a private moorage facility infringes on the riparian rights of an adjacent property owner, and the property owner is willing to grant consent. This avoids some issues that may occur when the adjacent property owner sells their property, and the new owner is unwilling to provide consent.*

#### **11.1.6 Aboriginal Interests Consideration**

*The Authorizing Agency is responsible for ensuring the Province's obligations to First Nations are met in the disposition of Crown land. Provincial staff carry out consultations in accordance with the consultation guidelines of the Province to identify the potential for aboriginal rights or title over the subject property and to determine whether infringement of either might occur.*

#### **11.1.7 Field Inspections**

*Field inspection means the on-site evaluation of a parcel of Crown land by Provincial staff. The need to conduct a field inspection will vary and the decision to make an inspection ultimately lies with the Authorizing Agency.*

#### **11.1.8 Decision/Report**

*The applicant will be notified in writing of the Government's decision. Reasons for Decision are posted on the relevant website.*

#### **11.1.9 Issuing Documents**

*If the application is approved, tenure documents are offered to the applicant. All preconditions must be satisfied prior to the Authorizing Agency signing the documents. It is the applicant's responsibility to obtain all necessary approvals before placing improvements or commencing operations on the tenure.*

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## **11.2 Planned Tenure Dispositions**

*Planned tenure dispositions involve the Province actively investigating and developing opportunities for Crown land tenures, followed by announced openings within specific geographic areas. Under a planned disposition project or study, Crown lands will be allocated by the Authorizing Agency in accordance with standard application procedures or by a competitive process.*

### **Designated application-only areas**

In certain designated areas General Permissions will not apply. In these areas, docks less than 24 m<sup>2</sup> in size will require an application for a Specific Permission. The application process will allow for site specific evaluation and consideration to address local circumstances and conditions before authorization is granted.

Application-only areas will cover lakes, rivers or portions of either that will generally have a higher risk of impacts or user conflicts related to the construction and use of any size dock.

Regional operations of the Authorizing Agency may work with local governments, provincial and federal resource agencies and First Nations to identify appropriate application-only areas. Once designated, information on these specific areas will be available from the Authorizing Agency.

Refer to Appendix 4 for a detailed description of the process and criteria for designating application-only areas.

## **12. TENURE ADMINISTRATION**

### **12.1 Insurance**

An authorized user is required to ensure that they keep in force a homeowner's insurance policy or other residential insurance policy, including general liability, in an amount specified in the tenure or permission document.

### **12.2 Security/Performance Guarantee**

*A security deposit or bond may be required to be posted by the tenure holder where any improvements on, or changes to, the land are proposed. The security deposit is collected to insure compliance and completion by the tenure holder of all the obligations and requirements specified in the tenure. Some examples where such security may be used are for any type of clean-up or reclamation of an area and/or to ensure compliance with development requirements.*

### **12.3 Assignment and Sub-Tenuring**

*Assignment is the transfer of the tenure holder's interest in the land to a third party by sale, conveyance or otherwise. Sub-tenuring means an interest in the Crown land granted by a tenant of that Crown land rather than the owner (the Province).*

*Assignment or sub-tenuring requires the prior written consent of the Authorizing Agency. The assignee or sub-tenure holder must meet eligibility requirements. The Authorizing*

*Agency may refuse the assignment of existing tenures if the details of the assignment or sub-tenure are not acceptable to the province.*

Assignment of a Specific Permission will follow the same process as assignment of a lease.

Assignment of a General Permission is not required. If ownership of the associated upland property changes, the new owner will only need to ensure that the dock satisfies the conditions of the General Permission to be deemed the grantee.

## **12.4 Tenure Replacement**

*Replacement tenure means a subsequent tenure document issued to the tenure holder for the same purpose and area.*

*In most cases, tenure holders may apply for a tenure replacement at any time following the mid-term of the tenure. Replacement of tenures is at the Authorizing Agency's discretion. The province may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure. For tenure terms and conditions see Section 6.*

Permissions do not have a fixed term and will not require replacement. However, significant modification of a private moorage facility (e.g. increasing the size or dimensions, changing the orientation, adding other structures) may require replacing an existing General Permission with a Specific Permission, or replacing an existing Specific Permission with a new Specific Permission. Some modifications may only require consent of the Authorizing Agency without the need for replacement.

### **12.4.1 Transition of Tenure Issued Under Former Private Moorage Policy**

An existing license of occupation issued under the previous private moorage policy is valid to term expiry. At the time of tenure expiration, if a lake or river dock is less than 24m<sup>2</sup> in area and satisfies the conditions of the General Permission, the dock will be deemed to have a General Permission. If the dock is over 24 m<sup>2</sup> in an application-only area, or the private moorage facility is on the marine coast, the dock owner may apply for and replace the license with a Specific Permission or in some circumstances a lease.

There is no change to the application process for a new or replacement lease. The holder of a lease or a license of occupation may replace their existing tenure with a Permission at any time (i.e. in accordance with the conditions of their tenure and this policy). The replacement application fee will apply. Refunds will not be provided for any prepaid tenure rental.

## **12.5 Monitoring and Enforcement**

*Tenure terms and conditions, including requirements contained in approved management/development plan; act as the basis for monitoring and enforcing specific performance requirements over the life of the tenure.*

### **12.5.1 Development Requirements**

Lease and Permission documents will contain development requirements and restrictions associated with providing for public access, protecting the environment, avoiding navigation hazards and protecting community values.

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The General Permission has an established set of requirements that cannot be varied from, whereas the Specific Permission provides for more flexibility which is facilitated through review and consideration of the application and proposed management plan. Refer to Appendix 3, Private Moorage Requirements and Best Management Practices for further information on development requirements, restrictions and guidelines.

Private moorage facilities must also be developed and used in compliance with local government bylaws and zoning, and federal and provincial legislative requirements.

Private moorage facilities may also have to comply with other agency requirements and permits (e.g. Transport Canada, Ministry of Environment and Federal Fisheries and Oceans). These may be identified through the application referral process; however, it is ultimately up to the applicant to ensure that they are in compliance and have the appropriate approvals in place with these other agencies.

#### **12.5.2 Legalization of Unauthorized Use**

The Authorizing Agency should establish a plan of action before taking action regarding unauthorized private moorage facilities in a given area. The plan should identify priority areas for legalization, outline a sequence of procedures with timelines to be followed and establish implementation guidelines including: informing local government, informing area residents and advertising of public meetings to be held.

Occupational rent is not normally charged for an existing facility prior to issuance of tenure or permission under this policy.

### **13. VARIANCE**

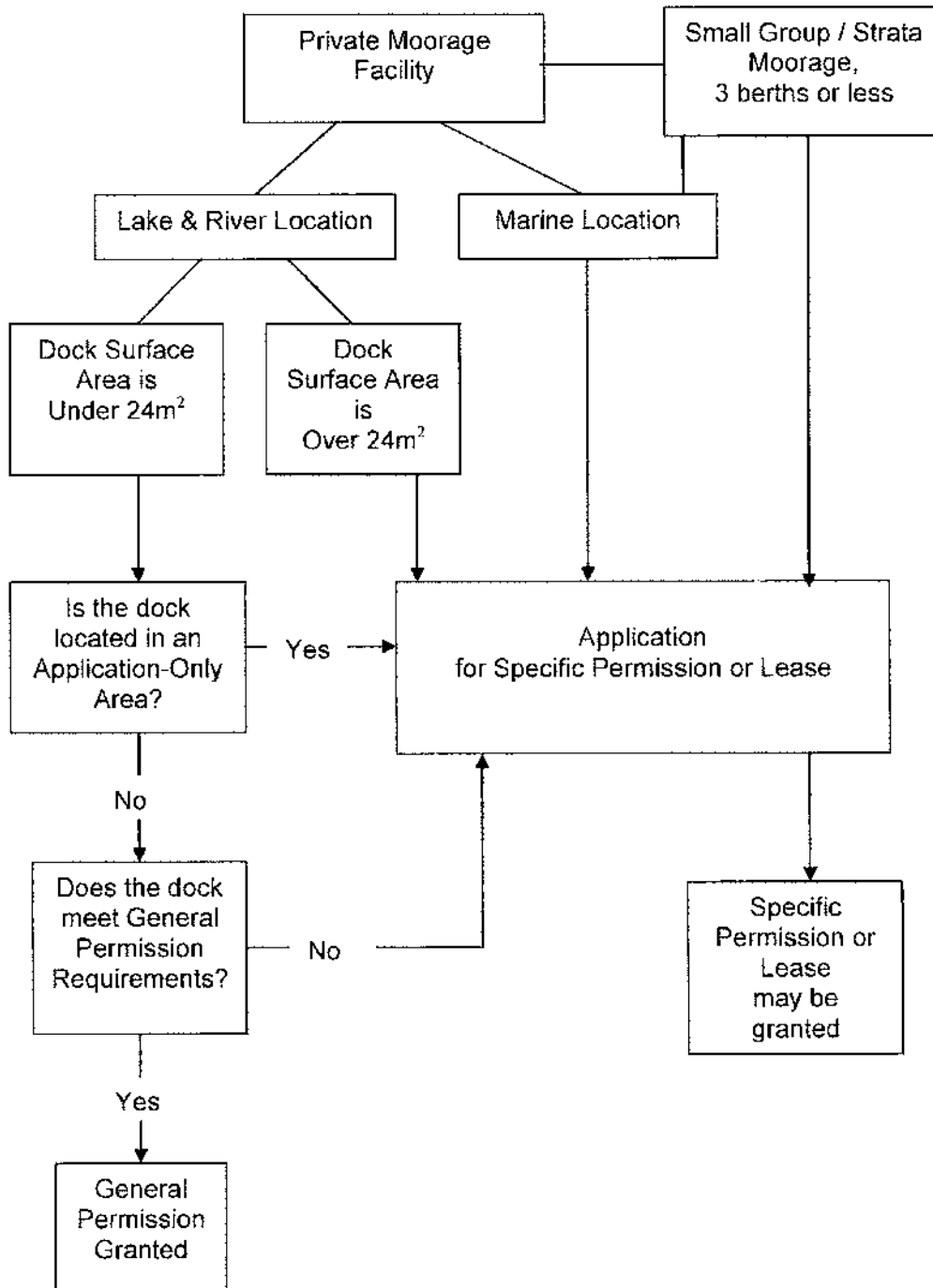
*Variances to this policy must be completed in accordance with the Policy Variance Procedure.*

## APPENDIX 1. PRIVATE MOORAGE POLICY SUMMARY

FORM OF AUTHORIZATION	NORMAL TERM	VALUATION	PRICING	METHOD OF DISPOSITION
General Permission	No fixed term or expiry date <sup>1</sup>	n/a	No rent	No application.
Specific Permission	No fixed term or expiry date	n/a	No rent	Application
Lease	20 year term	Fixed amount	\$200 per annum, plus \$1.00/sq. m for areas in excess of 2000 sq. m to a maximum total of \$400 per year. \$200 minimum annual rent.	Application

<sup>1</sup> Fixed terms may be put in place in limited circumstances, e.g. to match the term of tenure remaining for the adjacent non fee-simple upland property.

## APPENDIX 2: PRIVATE MOORAGE PROGRAM – ALLOCATION OVERVIEW



## APPENDIX 3 REQUIREMENTS AND BEST MANAGEMENT PRACTICES

### Designing Your Dock or Boat Launch

#### Protecting Our Shores and Coastlines

Crown land is a public asset and the Province has a responsibility to ensure it is managed to maximize and sustain the flow of economic, social and environmental benefits to British Columbians, now and in the future. Crown land is available for the use, benefit and enjoyment of all British Columbians.

The Private Moorage policy is intended to provide owners and Crown tenure holders of waterfront property an opportunity to occupy and use the Crown foreshore fronting their property for personal and private use, and guide that use so that it does not impact the environment, navigation, safety, community values, public and First Nation interests and the legal rights of others.

This document is intended to help ensure compliance with the *Land Act* and other agency requirements. In addition, it provides recommended practices that have been demonstrated to be an effective and practical means of preventing or limiting harmful impacts associated with the construction and maintenance of private moorage facilities.

#### For all shoreline improvement projects, always remember:

**Contact Your Local FrontCounter BC Office.** FrontCounter BC staff will review the proposal and confirm whether an application is required. FrontCounter BC will also provide information on other authorizations or approvals that may be required. Call FrontCounter BC toll free at 1-877-855-3222 or visit [www.frontcounterbc.gov.bc.ca](http://www.frontcounterbc.gov.bc.ca) to find your local office.

**Your project plan may require approval from more than one provincial or federal agency,** such as the Ministry of Environment for works that fall under the *Water Act*, Transport Canada that fall under the *Navigable Waters Protection Act*, or the federal Department of Fisheries and Oceans for works that fall under the *Fisheries Act*. For further information, consult the links on page 3.

**Your project must adhere to local government requirements.** Consult your local bylaws and official community plans to ensure your improvement is in compliance with all applicable laws and zoning. Local requirements will supersede any less restrictive provincial or federal government requirements.

#### Requirements for All Private Moorage Facilities

##### **Do not:**

- **Interfere with navigation.** This can be a particular issue on rivers, coves and other narrow water bodies. Offshore end of the structure should be at least 30 metres (100 feet) from navigation channels. Ensuring this distance will help avoid contravening the federal *Navigable Waters Protection Act*.
- **Use fill below the present natural boundary.**
- **Dredge on the foreshore.**

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- **Use roofed or covered structures** on or adjacent to the dock unless permitted by local bylaw.
- **Use crib foundations or solid core structures made of cement or steel sheeting.** These types of dock structures block the free flow of water and can cause erosion and impact habitat.
- **Unduly impede public access along foreshore.** Between high water and low water mark, structures cannot block public access along a beach or foreshore area, unless reasonable alternative means of passage are available to enable going around or across the structure (e.g. stairs over a dock).
- **Use structures for non-moorage purposes.** Non-moorage uses are prohibited. These uses include beach houses, storage sheds, patios, sun decks, retaining walls and hot tubs, which should only be placed on private land. In exceptional circumstances some non-moorage uses may be considered for tenure under the Residential policy; these will be considered on a case by case basis only.

**Do:**

- **Construct only one private moorage facility per property.** If it is located in a marine environment ensure that it is limited to a single dock which consists of an elevated pier leading to a ramp and one moorage float only.
- **Ensure that all structures (i.e. dock, boat launch, boat lifts) are 5 metres from the side property line (6 metres if adjacent to a dedicated public beach access or park), and at least 10 metres from any existing dock or structure.** This is a federal requirement under Transport Canada's *Navigable Waters Protection Act*. All docks should be oriented at right angles to the general trend of the shoreline.
- **Ensure dock structures are not grounded at low water/low tide.** All docks must be on pilings/suspended or floating at all times.
- **Work in the water outside of spawning and nursery periods.** Consult local work timing windows, available through the Ministry of Environment: [http://www.env.gov.bc.ca/esd/esd\\_reg\\_ops.html](http://www.env.gov.bc.ca/esd/esd_reg_ops.html)
- **Work away from the water.** To avoid water contamination in the construction of your dock, conduct as many construction activities as is practicable, well back from the water.
- **Remain sensitive to views, impacts on neighbours, and orientation to neighbouring docks.**
- **The owner of the Dock keeps the Dock and the Crown land beneath the Dock in a safe, clean and sanitary condition.**

**General Permission - Requirements**

Individuals cannot build on or develop aquatic Crown land, including Crown foreshore, without the province's authorization, even if they own adjacent property or "upland." However, a General Permission is in place for use of aquatic Crown land in lakes and rivers, if the structure meets the following conditions:

- **Do not exceed 24 m<sup>2</sup> in total surface area.**
- **Do not extend a distance greater than 30 metres from the present natural boundary of the upland parcel.**
- **Do not exceed 1.5 metres in width for access ramps or walkways and 3 metres width for any other portion of the dock.**

- **Do not use pressure treated wood.** To avoid water contamination, use unpainted and unstained preferred dock woods such as red cedar, redwood, cypress, eastern white cedar, or plastic decking and floats. Please refer to the Ministry of Environment *Guide for Works In and Around Water*, and Fisheries and Oceans Canada's *The Dock Primer* for more information (links provided below).
- **Ensure your proposed improvement is not located in an Application-Only Area.** Some local areas may prohibit General Permissions and require application for Specific Permission or lease, for reasons of environmental sensitivity or other local concerns. For more information contact FrontCounter BC toll free at 1-877-855-3222 or visit [www.frontcounterbc.gov.bc.ca](http://www.frontcounterbc.gov.bc.ca) to find your local office.
- **The owner of the Dock is the owner of the upland property or is the holder of a Crown land residential lease for the upland property.**
- **It is the only dock or moorage facility fronting the upland property.**

Please note: variance from any of the above requirements triggers the need to apply for a Specific Permission. There is no application required for General Permissions. Leases may also be applied for in limited circumstances; consult the policy for more information on leases.

#### **Specific Permission - Requirements**

A Specific Permission must be applied for, if the dock or moorage facility:

- is located on marine waters;
- is located on a lake or river and the dock is over 24m<sup>2</sup>;
- is located on a lake or river and the dock does not adhere to any of the requirements of the General Permission;
- is located in an Application-Only Area;
- includes boat lift structures unattached to a dock or in the absence of an associated dock, or a permanent way or boat ramp; and,
- is for group moorage three berths or less.

An application is required for all Specific Permissions. If the applicant of the proposed dock is not the upland owner, written consent of the upland owner and Specific Permission will be required. Satisfying the requirements for all private moorage facilities will reduce the risk of impacts associated their construction and use, and will improve the chance of getting agency approval.

#### **For Further Reading:**

- The Dock and Shore Primer: [http://www.dfo-mpo.gc.ca/regions/central/pub/index\\_e.htm](http://www.dfo-mpo.gc.ca/regions/central/pub/index_e.htm)
- Working In and Around Water: [http://www.env.gov.bc.ca/wsd/water\\_rights/cabinet/working\\_around\\_water.pdf](http://www.env.gov.bc.ca/wsd/water_rights/cabinet/working_around_water.pdf)
- Ministry of Environment Best management Practices for Small Boat Moorage: [http://www.for.gov.bc.ca/Land\\_Tenures/tenure\\_programs/programs/privatemoorage/regs\\_best\\_mgmt\\_practices.pdf](http://www.for.gov.bc.ca/Land_Tenures/tenure_programs/programs/privatemoorage/regs_best_mgmt_practices.pdf)

#### **Provincial and Federal Regulatory Jurisdictions:**

- FrontCounter BC: 1-877-3222 (toll-free) or <http://www.frontcounterbc.gov.bc.ca/>
- Private Moorage Policy, Ministry of Forests, Lands and Natural Resource Operations: [http://www.for.gov.bc.ca/Land\\_Tenures/documents/policies/private\\_moorage.pdf](http://www.for.gov.bc.ca/Land_Tenures/documents/policies/private_moorage.pdf)

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- Fisheries and Oceans Canada, Pacific Region Operational Statements:  
[http://www-heb.pac.dfo-mpo.gc.ca/decisionsupport/os/operational\\_statements\\_e.htm](http://www-heb.pac.dfo-mpo.gc.ca/decisionsupport/os/operational_statements_e.htm)
- Water Stewardship Division, Ministry of Environment:  
[http://www.env.gov.bc.ca/wsd/water\\_rights/licence\\_application/section9/index.html](http://www.env.gov.bc.ca/wsd/water_rights/licence_application/section9/index.html)
- Transport Canada, Docks and Boathouses and the Navigable Waters Protection Act: <http://www.tc.gc.ca/marinesafety/TP/tp14595/menu.htm>

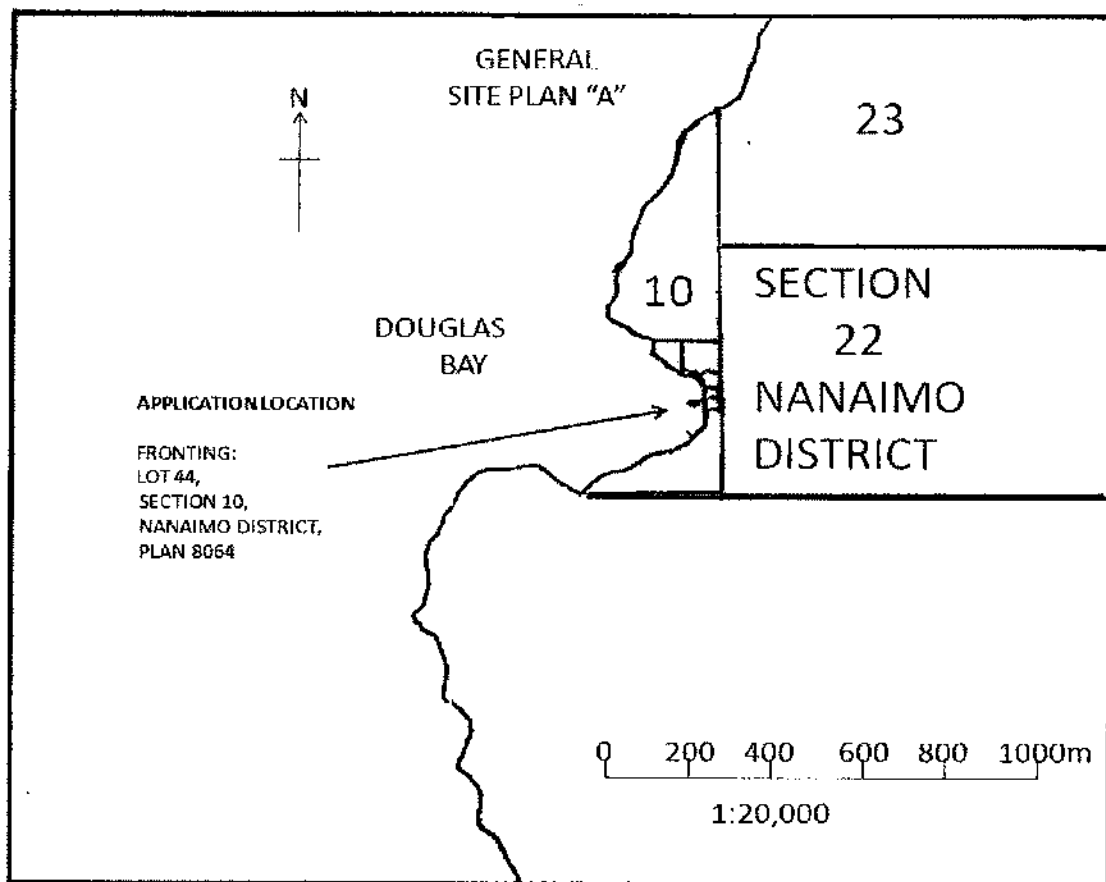
## APPENDIX 4 MARINE APPLICATION REQUIREMENTS - EXAMPLE PLANS

### 1) SMALL SCALE GENERAL SITE PLAN 'A':

The purpose of this map is to indicate the location of the application in relation to surveyed parcels and geographic features.

The following information must be included:

- a) Scale bar (1:20,000 scale preferred; 1cm = 200 meters)
- b) Indicated true North
- c) Geographic references (named water body, river)
- d) Legal description of upland property
- e) Major survey lines
- f) Location of foreshore application.



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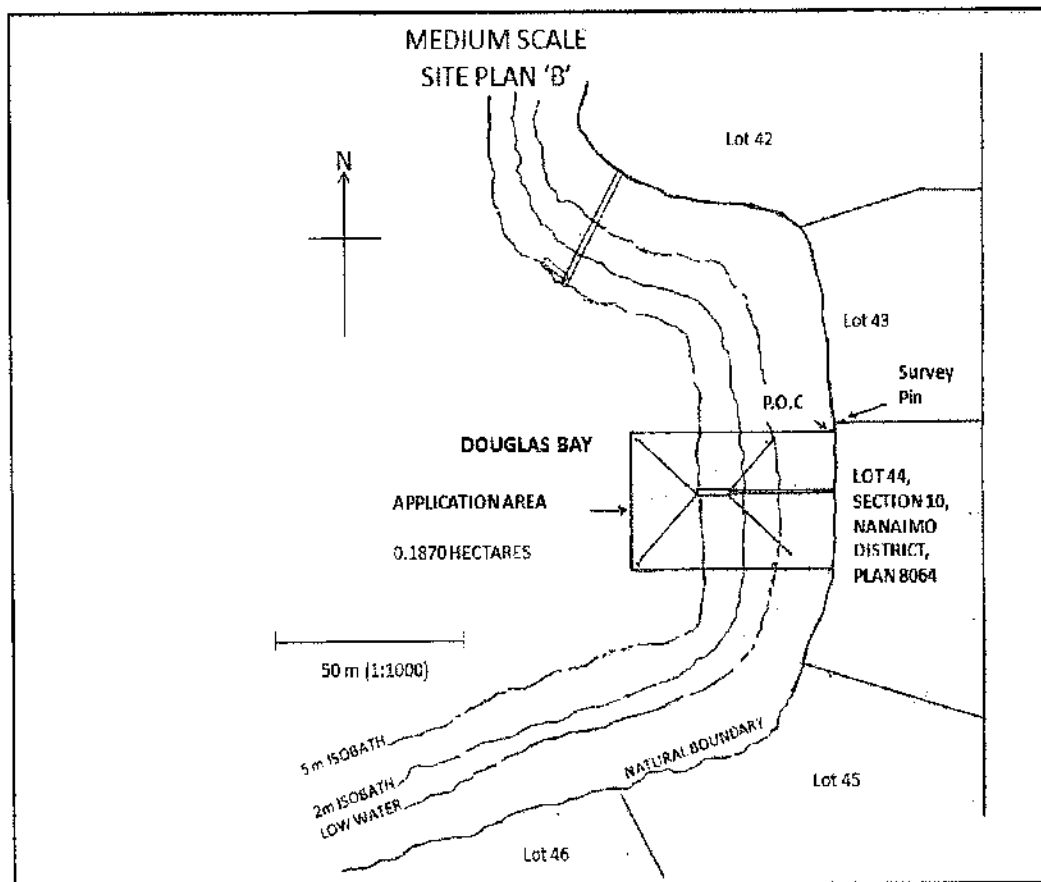


## 2) MEDIUM SCALE SITE PLAN 'B' USING OFFICIAL SURVEY PLAN OF APPLICANT'S PROPERTY

The purpose of this plan is to show whether or not the proposed private moorage structures would restrict the rights of other shoreland property owners to have deep water marine navigation access to their properties.

The following information must be included:

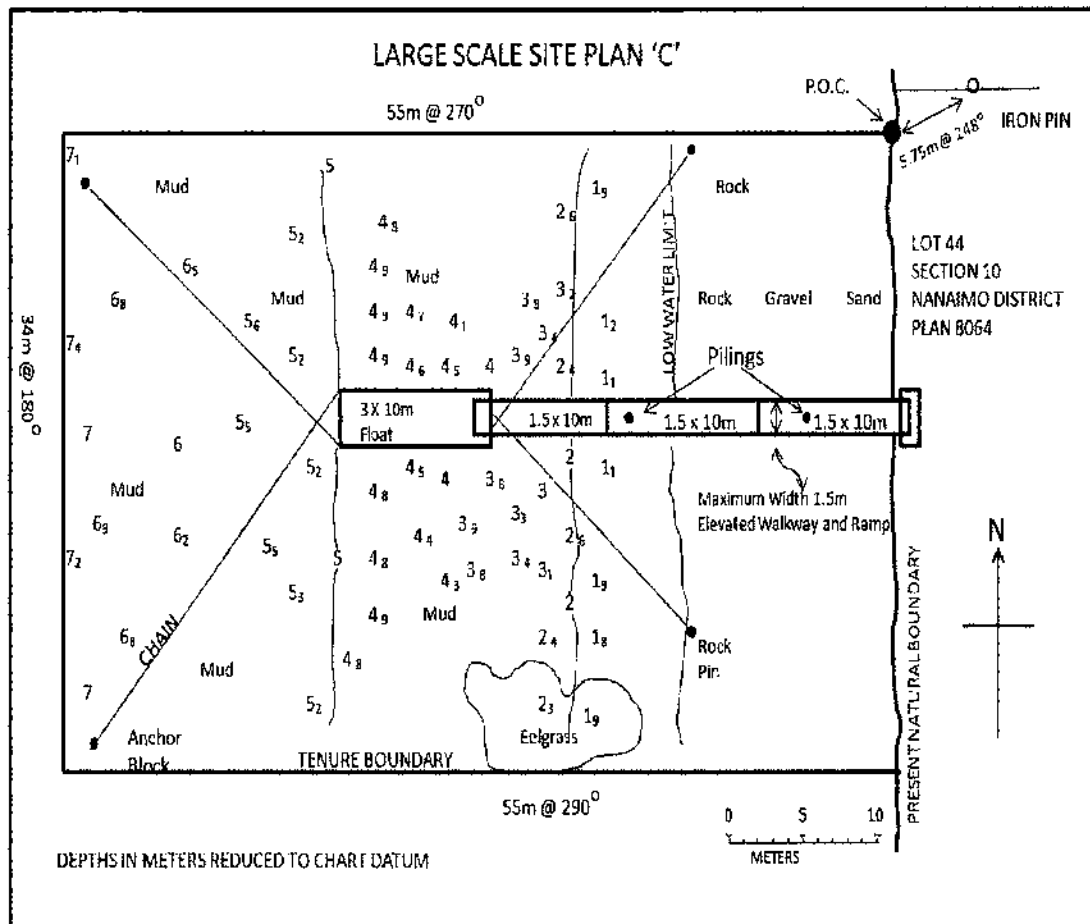
- Scale bar (1: 1000 – 1: 2000 scale preferred; 1cm = 10-20 meters)
- Indicated true North
- Legal description of upland property
- Adjacent property boundaries
- Point of Commencement (P.O.C.) referenced from an indicated survey pin
- Application area boundaries and dock structure/cables etc.
- 2 and 5 meter isobaths
- Low water mark
- Location of nearby existing moorage structures



### 3) LARGE SCALE SITE PLAN 'C'

The following information must be included:

- Scale bar (1:150-1:200 scale preferred; 1cm = 1.5 - 2.0 meters)
- Indicated true North
- Legal description of upland property
- Application area boundaries with distances and true bearings
- Natural boundary, low water, 2 meter and 5 meter isobaths
- Depth soundings (meters) reduced to chart datum
- Plan must show all proposed structures including pilings, float, ramp, cables, chains, anchor lines, etc.
- Survey pin and Point of Commencement (P.O.C.)
- Nature of seabed (sand, mud, rock, gravel)
- Observed marine vegetation within application area (kelp, eelgrass)
- Total area of application in hectares.



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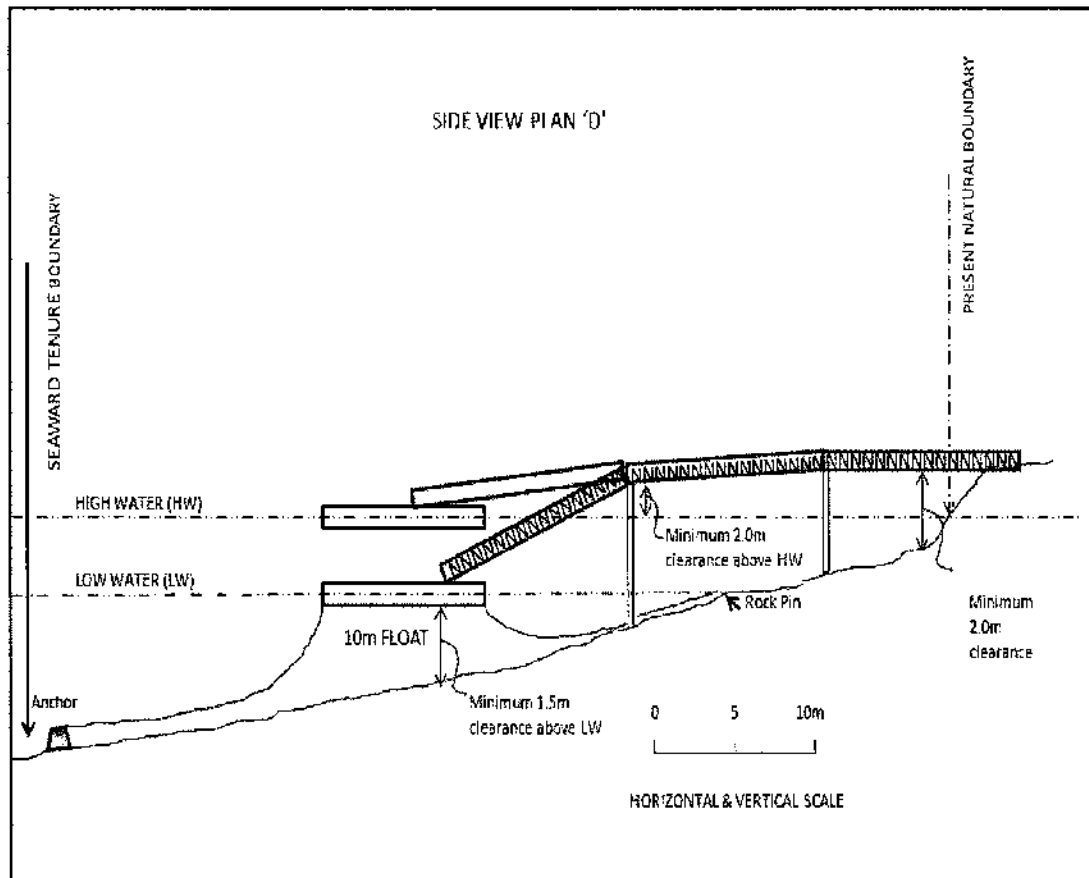
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#### 4) SIDE VIEW PLAN 'D'

The HORIZONTAL scale bar must be IDENTICAL to Plan 'C'. A VERTICAL scale bar must be shown if the vertical scale is different from the horizontal scale.

The following information must be included:

- a) Scale bar (1:150-1:200 scale preferred; 1cm = 1.5-2.0 meters)
- b) High and low water must be depicted on the plan as shown on example below
- c) Seaward boundary of the application site
- d) Profile of the shoreland property bank
- e) Present natural boundary
- f) All improvements seen in side view plan D including anchors, cables, float, ramp, walkway, rock pin, pilings, etc.



**NOTES:**

Works are to be limited to a single elevated pier/walkway leading to a ramp and one moorage float having a plain rectangular shape.

Walkways and access ramps should be a minimum of 2.0 meters above the highest high water and have a minimum clearance of 2.0 meters above the seabed to allow unimpeded pedestrian passage along the foreshore at low tide.

The bottom of floats should be a minimum of 1.5 meters above the seabed during the lowest tide; this minimum will need to be increased if deep draft vessels are to be moored.

## **APPENDIX 5 PROCESS AND CRITERIA FOR DESIGNATING APPLICATION-ONLY AREAS**

### **Purpose**

As part of the revised Private Moorage program, General Permissions for small docks (less than 24m<sup>2</sup>) on lakes and rivers can be granted without an application. However, regions have the discretion to designate lakes, rivers or portions of either as application-only areas within which General Permissions will not be granted. Due to known concerns or issues within these areas, proposals for small docks will be required to undergo site specific evaluation through the application process. Specific Permissions will be the normal form of authorization granted for docks within application-only areas.

The intent is to provide an added tool for mitigating risks known to be associated with specific locations and areas of interest.

### **Roles and Responsibilities**

#### Agency staff

- The Regional Executive Director or designate, for the Ministry Responsible for the *Land Act* will be responsible for designating application only areas.
- the Ministry Responsible for the *Land Act* will work with local governments, provincial and federal resource agencies and First Nations as needed to identify potential application-only areas.
- the Ministry Responsible for the *Land Act* will provide information on the location of these designated areas to FrontCounter BC (regional operations)
- FrontCounter BC will maintain a list and/or map of these areas (e.g. a map may be included in the ILRR; designated areas may be added as a transparent polygon with a visible border)
- FrontCounter BC will provide information on the location of designated areas to clients in response to enquiries
- Land Tenures Branch will monitor for implementation and address any policy issues that may arise.

#### Clients

Clients are encouraged to contact FrontCounter BC with information on their small dock proposal (location, site plan, design, etc.), so that staff can inform clients whether or not an application is required (i.e. is the proposal in an Application-Only area) and if appropriate, provide them with a hard copy or web link to the General Permission.

## **Process**

Initially for the launch of the new private moorage program, the Ministry responsible for the *Land Act* may designate broad areas as application-only areas. Over time these areas will be refined with input from resource agencies, local government and First Nations.

For instance, if a particular lake is known to have numerous user conflicts, the entire lake area may be designated initially. Refining these areas further, e.g. designating specific coves rather than the entire lake area, will be done in a second, post-implementation phase.

Note that the designations are not done through a legal instrument; they are simply providing a description of the location for administrative purposes.

## **Criteria**

Application-only areas can include, but are not limited to:

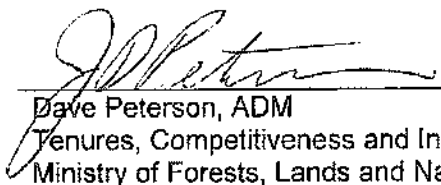
- narrow water bodies where riparian rights are at risk of being infringed, or navigation and safety compromised (e.g. small coves, channels and sections of rivers);
- areas important for public access and use (e.g. beaches, areas adjacent to waterfront parks);
- areas subject to local government requirements associated with foreshore development (e.g. zoning, bylaws, local no-build covenants);
- environmentally sensitive areas (e.g. fish spawning, critical habitat areas mapped by Ministry of Environment);
- areas where First Nations have generally expressed a strong interest, or have specifically requested consultation on all private moorage proposals;
- areas which contain *Land Act* dispositions or other government authorizations that are at risk of being in conflict with dock placement and use; and,
- areas that are experiencing significant growth and concerns associated with waterfront development.



## Land Use Operational Policy Residential

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<b>NAME OF POLICY:</b>	Residential
<b>APPLICATION:</b>	Applies to the disposition of urban, rural and remote Crown land and Crown shoreland for residential use.
<b>ISSUANCE:</b>	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
<b>IMPLEMENTATION:</b>	Ministry of Forests, Lands and Natural Resource Operations
<b>REFERENCES:</b>	<i>Ministry of Lands, Parks and Housing Act</i> (Ch. 307, R.S.B.C., 1996) <i>Land Act</i> (Ch. 245, R.S.B.C., 1996)
<b>RELATIONSHIP TO PREVIOUS POLICY:</b>	This policy replaces the previous Residential policy dated August 16, 2004
<b>POLICY AMENDMENT:</b>	Any formal request for an amendment to this policy is to be directed in writing to the Director, Land Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations

  
\_\_\_\_\_  
Dave Peterson, ADM  
Tenures, Competitiveness and Innovation  
Ministry of Forests, Lands and Natural  
Resource Operations

MAY 26 2011

Date:

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**EFFECTIVE DATE:** June 1, 2011  
**AMENDMENT:**

**FILE:** 12520-00

**APPROVED AMENDMENTS:**

Effective Date	Briefing Note /Approval	Summary of Changes:
March 22, 2011	BN175798	Amendment to pricing to allow for appraisals to be used to determine land value (not just BCA assessed values), and to allow for the use of discount factors to BCA values for tenured land ineligible for fee simple grants.
March 31, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries on March 14, 2011.
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011
August 27, 2012	BN 190995	Amendment to provide direction on using BCA land value or appraised land value.
June 10, 2013	BN 196549	Update, clarify and reorganize content, including integration with the Crown Shoreland Policy.



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## 1. POLICY APPLICATION

This policy applies to:

- the disposition of Crown land, including Crown shoreland and submerged Crown land, for residential purposes.

This policy is consistent with:

- local government authority to regulate subdivision and development; and,
- general policy regarding public health standards and the conversion of *Land Act* tenures to private ownership.

*The italicized text in this document represents information summarized from standard Crown land management policies and procedures. This material has been inserted where it provides necessary direction or context. As well, website links offer access to the full text of the relevant land management policies and procedures. Text in standard script is applicable to this policy only.*

### Policy Overview

The Residential Policy provides Crown land for permanent residential development by individuals and private developers. Crown land may be made available in urban and rural areas either by competitive process or application.

In remote areas, where the need for residential land cannot be met by the private sector, Crown land may be available by application when residential use is required to provide accommodation in support of employment in an industrial or commercial activity.

Individual applications for new recreational or residential shoreland tenures are not accepted. However, in very limited situations existing shoreland residential lots may be available for tenuring through a competitive process, or may be in the Crown land sales inventory and available for purchase.

Individual applications will be considered for ancillary residential uses, as well as thermal loops and in limited situations, float homes and septic fields.

See Appendix 1 for a further summary by sub-purpose and type of allocation.

## 2. PRINCIPLES AND GOALS

*Provincial employees act in accordance with applicable legal requirements when making decisions. The Guiding Principles are a summary of key administrative and contract law principles which guide provincial employees.*

*This policy is part of a series of policies that have been developed to help provincial staff use business and legal principles to achieve the government's goals with respect to the management of Crown land in a manner that is provincially consistent, fair and transparent. To that end, this policy also serves as a communication tool to help the public understand how the Province of BC makes decisions respecting Crown land.*

### **Operational considerations**

Consistent with the Crown Land Allocation Principles and the Strategic Crown Land Sales Policy, the following are some key operational objectives to be considered by staff when applying the Residential Policy:

- Residential use is considered the 'highest and best use' of the Crown land.
- The area of Crown land is the minimum area that is reasonably necessary for residential use; this includes satisfying local government zoning and Provincial sewage disposal requirements related to parcel size.
- There is very limited private property available in the real estate market for the general area.
- The use will not be in conflict with regional growth strategies or approved local area land use plans.
- The use will not put unreasonable pressure on local infrastructure or services.
- There is certainty of access to the subject parcel (note: resource roads cannot be relied upon to provide future access as they may be decommissioned or deactivated when no longer required for their primary use).
- For ancillary residential uses, other objectives to consider include :
  - the use is necessary to make the primary residential parcel functional,
  - the use could not be reasonably accommodated on the proponents private property,
  - the subject area is the minimum size reasonably necessary to accommodate the use,
  - the use will not negatively impact adjacent upland parcels or Crown land, and
  - the use will not interfere with public access or riparian rights of adjacent land owners.

### **Crown shoreland requirements**

Additional requirements specific to Crown shoreland dispositions (as per previous Crown Shoreland Policy) include:

- A minimum of 25% of the shoreland around each water body is to be retained in public use to ensure protection of beaches and other public recreational opportunities. This is over and above the public road access to the waterfront provided for in subdivision plans.
- Shoreland dispositions will meet or exceed *Land Title Act* subdivision requirements for public access to the water.

## **3. DEFINITIONS**

**Ancillary residential uses** means uses associated with an upland residential property that requires occupation of adjacent Crown land (normally foreshore), that can include placement of improvements such as decks, gazebos, pools, boathouses, fills and retaining walls / seawalls, but does not include roads, utilities, private moorage facilities, thermal loops or septic fields.

**Authorizing Agency** means the Provincial ministry with legislative responsibility for the specific land use authorization.

**Family Unit** means adult persons who reside together as a family, but does not include adult children.

**Float home** means a structure built on a flotation system, which is used for permanent or seasonal residential habitation and is not intended for navigation or as a navigational craft.

**Floating Home Community** (issued under the Floating Home Community Policy) means two or more floating homes which are physically connected to the shoreland and each other by a common walkway or ramp, and which are served by a potable water system, electrical system and sewage disposal system approved by the responsible authority.

**Merchant Builder** means an individual, proprietorship, partnership or corporation who acquires urban or rural residential lots from the Province to construct or market homes on the lots for a profit.

**Permanent Occupancy** means habitation or use of a property such that it is considered as the tenure holder's principal place of residence (the place is normally inhabited throughout the year). Generally, if the provincial Home Owners Grant is claimed, a property is considered as being occupied on a permanent basis.

**Recreational Residential** means Crown land that was tenured under the old recreational lot lease program. Properties are mostly shoreland; they may include permanent or temporary use.

**Remote Residential Land** means Crown land (shoreland and upland), located outside of an urban area or municipal boundary, that is required for permanent or temporary (seasonal) residential occupancy in connection with employment in the remote area. Remote residential land is normally greater than 40 kilometres from an existing community; is not normally accessible by serviced roads; and is not subject to marketing methods.

**Residual lots** mean Crown land lots remaining unsold after initial offering by public competition of residential parcels.

**Rural Residential Land** means Crown upland zoned or intended for residential purposes, located outside of municipal boundaries or urban area, with minimal servicing, whether occupied on a permanent or temporary (seasonal) basis.

**Shoreland** means Crown land within 100 metres of the average high water mark of a water body or water course (lake, sea or some rivers), or between that mark and some natural or man-made boundary (such as a major roadway or highway) which provides a recognizable break in character or value of the land.

**Shoreland Residential Lot** means a parcel of Crown shoreland used as a place of residence by an individual or family unit, whether occupied on a permanent or temporary (seasonal) basis. It may include recreational lot leases, or remote, urban or rural residential parcels.

**Temporary (Seasonal) occupancy** means habitation or use of a property such that it is

not considered 'permanent occupancy' as defined above. Specific restrictions on period of occupancy may be included as a condition of the tenure.

**Thermal Loops** means systems that draw heat from the water or earth, amplify the heat through a heat pump and deliver the heat to a residence. Closed Loop System: a heat pump system that transfers heat to, or from, circulating refrigerant fluids (a mixture of antifreeze and water) in a pipe buried in the earth, horizontally or vertically in a borehole, or immersed in a water body (pond/lake and ocean loops). Open Loop System: a heat pump system that withdraws water from a well or surface water supply, passes it through a heat exchanger and discharges the water to a surface body of water, storm or sanitary sewer system, or a well.

**Urban Residential Land** means Crown upland zoned or intended for residential use, located within a municipality or urban area, whether occupied on a permanent or temporary (seasonal) basis.

## 4. ABBREVIATIONS

BCA - BC Assessment

ha. - Hectare

RED – Regional Executive Director

MOU - Memorandum of Understanding

## 5. APPLICANT ELIGIBILITY

### 5.1 General

An individual aged 19 or over who is a Canadian Citizen or permanent resident of Canada is eligible for residential land.

However, where land is being disposed in fee simple as a result of marketing the parcel under the *Ministry of Lands, Parks and Housing Act* by public offering, citizenship / residency requirements do not apply.

An individual or family unit may not apply for more than one residential tenure or purchase more than one residential Crown lot, at a given time, but may maintain a maximum of two residential tenures provided that one of these is utilized on a permanent basis.

No sales or other dispositions are allowed on small islands less than 64.75 ha in size with the Provincial order in council reserve).

### 5.2 Merchant Builders

Urban and rural residential Crown land may also be disposed to private developers who are registered or incorporated in British Columbia (refer to section 8.2.1 for details on competitive process) . Where land is disposed by lease, individuals and proprietorships must meet citizenship and /or residency requirements noted above.

The Authorizing Agency may establish the number of lots that may be acquired by a merchant builder.

### **5.3 Shoreland Dispositions**

Existing residential shoreland lessees are eligible to apply to purchase their parcels.

Individual tenure applications for new recreational or residential shoreland sites are not accepted.

### **5.4 Remote Residential Tenures**

Applications for remote residential tenure are accepted only where:

- there is proven need for the applicant to reside on the site for reasons of proximity to employment in a commercial / industrial activity;
- no private residential sites are available in the area;
- a Crown land rural residential development is not anticipated in the vicinity;
- the commercial / industrial activity that the applicant is employed in is authorized under the *Land Act* and the program area does not provide for employee accommodation (e.g. a caretaker residence, industrial camp, lodging for workers, etc);
- the commercial / industrial activity that the applicant is employed in is authorized under legislation other than the *Land Act* and such legislation provides for employee accommodation (e.g. short term logging camps, trailers or temporary cabins on mining claims); or
- the commercial activity that the employment is associated with is NOT authorized under the *Wildlife Act* (e.g. guide-outfitting, trapping, angler guiding).

### **5.5 Float Homes**

The Authorizing Agency responsible for the *Land Act* will only accept applications for float homes in areas that have been identified as suitable in an approved land use plan.

The land use plans will discourage individual disbursed float home sites.

Float home sites are not eligible for purchase.

Note that this policy only applies to individual float homes; proposals for float home communities are addressed in the Floating Home Community Policy.

### **5.6 Thermal Loops**

Applications for thermal loops on aquatic Crown lands can only be submitted in the name of the upland owner or with upland owner consent.

## 5.7 Ancillary Residential Uses

New proposals for ancillary residential uses, other than retaining walls, will only be considered in exceptional circumstances, where such uses can be clearly rationalized. The Regional Executive Director may establish direction to accept applications for specific types of ancillary uses for specified locations within their region. Applications can only be submitted in the name of the private property owner or the Crown land tenure holder immediately adjacent to the Crown land being applied for.

Tenure holders may apply for the replacement of their existing tenures.

### Seawalls and Retaining Walls

Applications for retaining walls / seawalls will be considered if the applicant can prove that the structure cannot be reasonably placed on the proponent's upland property.

### Septic Fields

Applications for septic fields will not be considered, unless the property owner can prove that they do not have adequate space on their own private property for a septic field and that there is no other feasible way of dealing with the sewage.

In those exceptional circumstances when an application is being considered, the Crown land parcel must meet the conditions of an 'extension of holdings' (refer to the Land Procedure - Extension to Private Holdings).

## 6. FORM OF LAND ALLOCATION

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for residential uses.

*For more detailed standard policy information see Form of Crown Land Allocation.*

### 6.1 Licence of Occupation

*A licence of occupation may be issued where minimal improvements are proposed, where there are potentially multiple users of a site (e.g. communication sites), where survey is not required or when the land is located in remote areas and legal survey costs required for a lease or right of way are prohibitive, and where Government wishes to retain future options and management control over the use of the lands. It may also be used to allow development to proceed while awaiting completion of survey requirements for a lease. A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, is not a registerable interest that can be mortgaged, and does not require a survey.*

*A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licencees' right to use the land as per the licence document. Government may authorize overlapping and layering of tenures*

*The maximum term for a licence of occupation varies according to land use program. The maximum term provided within each land use policy is guidance to the decision maker, who exercises the discretion to make the term shorter or longer giving*



*consideration to the facts of a particular application. When considering the appropriate term, the decision maker will normally consider factors such as the nature of the land use, the proponent's basis for seeking long term security and the Province's interest in retaining the flexibility to review or change the tenure term.*

The maximum term for a licence of occupation is 30 years. However, depending on the specific use being applied for, shorter terms may be more appropriate.

#### **6.1.1 Remote Residential**

Remote residential use is only authorized by licence of occupation. Remote residential tenure is conditional upon maintenance of employment by the tenure holder in the commercial or industrial endeavor on which issuance of tenure was originally based. The term of the license should reflect the potential period of employment, and may be established well below the maximum term for a license of occupation. If the period of potential employment is unclear, the term should not exceed 10 years.

#### **6.1.2 Float Home**

Float homes are only authorized by Licence of Occupation.

The standard term will often be determined through land use planning or public - agency processes. Terms will generally be 10 or 20 years.

#### **6.1.3 Thermal Loops**

Thermal loops placed on aquatic Crown land are authorized by License of Occupation only.

The term may be limited by the expected 'life' of the thermal loop system (i.e. if less than the maximum term).

#### **6.1.4 Ancillary Residential Uses**

A license of occupation is the preferred disposition for most ancillary uses (with the possible exception of fills and retaining walls). Tenure term will vary depending on the specific type of use and remaining life of the improvements.

For some engineered retaining walls / seawalls and fills leases or fee simple disposition may be more appropriate.

### **6.2 Lease**

*A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid conflicts.*

*The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure contract. The tenure holder is granted quiet enjoyment of the area (exclusive use).*

*A legal survey will generally be required at the applicant's expense to define the tenured area.*

*A lease can be issued in a form that is registerable in the Land Title Registry (whereas, a Licence of Occupation is not.) Registered leases for a term of 30 years or more may be considered a fully taxable transfer of interest in property and may be subject to Property Transfer Tax in accordance the Property Transfer Tax Act.*

*Where a lease is not registered in the Land Title Registry, Property Transfer Tax does not apply.*

*In most cases, a tenure holder may apply for a replacement tenure at any time following the mid-term of the lease. Replacement of tenures is at the Authorizing Agency's discretion.*

*Where a replacement lease is for the same land, will result in a total duration of more than 30 years, and the replacement lease is registered in the Land Title Registry, the leases may be viewed as a single transaction and may be subject to Property Transfer Tax.*

*Where the term of a registered lease is less than 30 years or the total duration of all leases does not exceed 30 years, Property Transfer Tax exemption is available.*

*A lease can be a registerable interest in the land that is mortgageable.*

*The standard term for a lease is 30 years.*

#### **6.2.1 Urban and Rural Residential**

Lease tenure is available only for existing urban and rural residential lots which do not meet *Land Title Act* standards of subdivision and/or lots in an existing subdivision where adjacent lots have been authorized by lease and infilling is occurring.

#### **6.2.2 Shoreland Residential**

Existing leases for shoreland residential (including recreational residential leases) may be replaced on the following basis:

- Permanent occupancy is authorized by lease with a maximum term of 30 years.
- Temporary (seasonal) occupancy is authorized by lease with a maximum term of 15 years.

Lessees may apply for tenure replacement after the mid-point of the term.

Leases for new recreational or residential sites are not available. However, if an existing lease has been terminated the Authorizing Agency may dispose of the site through a competitive process. In such cases, acquisition of the site may be conditional on the new lessee repairing improvements and / or cleaning up the site, if needed.

### **6.3 Sale**

*Crown land sales may occur through an application process if the proposed site meets specific criteria and the use is considered suitable by government agencies and other affected interests.*

Crown land for residential use is normally provided on a fee simple basis where it meets *Land Title Act* standards of subdivision. For more information on sales refer to sections '8.2 Competitive Process' and '8.4 Direct Sale', and for additional sales considerations refer to Appendix 2.

### **6.3.1 Shoreland Residential**

Existing shoreland recreational or residential lessees may apply to convert their lease to fee simple at any time.

There may be situations where the Authorizing Agency determines if a lot or subdivision qualifies for purchase, in advance of a lessee applying for conversion, in which case a direct offer can be made to the interested tenure holder.

Shoreland residential properties which do not meet *Land Title Act* subdivision standards for access can be sold as water access only if a covenant to that effect is registered on the title.

Proponents may be required to carry out a Level One and/or Level Two Site Investigation (as per the *Environmental Management Act*) prior to sale to establish a baseline in situations where contamination may have occurred from past use.

### **6.3.2 Foreshore Fills**

Direct sale of historic fills may be considered on a case by case basis. Considerations may include whether the fill was authorized or not, the historic use of the fill, and what the impacts may be to adjacent shoreland, riparian rights and public access along the foreshore.

### **6.3.3 Septic Fields**

In those exceptional circumstances when an application is being considered for a septic field, Crown land allocation is only done on a fee simple basis in accordance with the Land Procedure - Extension to Private Holdings.

## **7. PRICING POLICY**

### **7.1 Administrative Fees**

*Application fees for tenures, and other administrative fees, are payable to the Province of BC. These fees are set out in the fee schedules contained in the Crown Land Fees Regulation.*

### **7.2 Method of Valuation**

Lease and licence tenures for which rentals are paid annually are valued on the basis of:

- actual land value as established by BCA for taxation purposes, or
- the market value of the land, as appraised by the Authorizing Agency or a fee appraiser (as per the Appraisal Procedure).

BCA actual land values are the standard method of valuation; however, appraisals may be used to determine the land value where there is evidence to suggest that BCA values do not represent market values for the land. The Authorizing Agency may, at its

discretion, use a market value appraisal of all or portions of the subject area. All appraisals (internal and external fee appraisals) should be conducted with reference to the Appraisals Procedure, particularly with respect to the minimum requirements for reports as described in that procedure. Where there is a dispute regarding the land value, the Disposition Price Resolution Procedure should be used.

If using the BCA actual land value for the purpose of calculating the rent, the actual land value of a parcel may be discounted by up to 50% if the area under tenure is ineligible for sale due to:

- deficiencies in parcel size, access, soil percolation or stability, or
- the presence of a flooding reserve; and
- these factors were not considered in the BCA valuation.

The use of a discount on the BCA actual land value must be approved by the Regional Executive Director, and the rationale for the amount of the discount to the land value must be documented on the file. The use of a discount factor should be reviewed every five years to ensure it is still appropriate.

In the case of new dispositions (i.e. where BCA actual value is not yet established for the land), the Authorizing Agency recommends to BC Assessment that the actual land value for the first tenure year be set at the market value of the land, as appraised by the Authorizing Agency in advance of the disposition.

## **7.3 Annual Rent**

### **7.3.1 Licence of Occupation**

The rental charged for a licence of occupation is 4.5% of the BCA actual land value or appraised land value, with a minimum of \$500 per annum.

Thermal loops are an exception, as rental is determined the same as for licenses of occupation under the Utilities Policy, which can be prepaid for the term, with a minimum rental of \$500 per term.

#### **Ancillary Residential Uses**

For situations where annual rent is calculated well below minimums the Authorizing Agency may consider charging pre-paid rent for the term.

### **7.3.2 Lease**

#### **Shoreland Recreational / Residential – Temporary (Seasonal) use**

The annual rental for temporary or seasonal residential leases is 3% of BCA actual land value or appraised land value, with a minimum annual rental of \$500. Some existing tenure agreements for seasonal tenures may have fixed rents (as per earlier policy) which would mean that they would not be subject to new rates until the tenure is replaced.

### **Urban/Rural and Shoreland Recreational / Residential - Permanent**

The annual rental for urban and rural residential, and other permanent residential leases is 5% of BCA actual land value or appraised land value, with a minimum annual rental of \$500. The annual "determined by owner" (i.e. with the Crown as owner) rental schedule is to be used, and an annual rent review is to be applied wherever possible.

## **7.4 Sales**

Where Crown land is disposed in fee simple, the price is full appraised market value, plus the value of any residual timber. However, at no time will the Province sell for less than the costs incurred in developing and marketing the parcel.

## **8. ALLOCATION PROCESSES**

### **8.1 Applications**

*New and replacement tenures are normally offered in response to individual applications.*

Remote residential lots, thermal loops, ancillary uses and, in limited situations, float homes, are disposed by direct application.

Residual lots, and in some cases, parcels for septic fields and foreshore fills are available for direct sale by application.

#### **8.1.1 Application Package**

*Applications must be complete before they can be accepted for processing. A complete application package will include all the material defined in the Application Checklist.*

Residential applications are to include a sketch map showing the location and type of improvements and a schedule for their completion.

#### **8.1.2 Application Acceptance**

*New applications will be reviewed for acceptance based on application package completeness, compliance with policy and program criteria, preliminary statusing, and other information which may be available to provincial staff. The acceptance review is to be completed within 7 calendar days. Applications that are not accepted will be returned to the applicant.*

#### **8.1.3 Clearance/Statusing**

*After acceptance, provincial staff undertake a detailed land status of the specific area under application to ensure all areas are available for disposition under the Land Act and to identify potential issues.*

#### **8.1.4 Referrals**

*Referrals are a formal mechanism to solicit written comments on an application from recognized agencies and groups. Referrals are initiated as per legislated responsibilities and formal agreements developed with other provincial and federal government agencies. Referrals may also be used to address the interests of local governments and*

*First Nations. Referral agencies, organizations and identified special interest groups provide their responses to the Authorizing Agency within 30 days (45 days for First Nations).*

Through the referral process specific direction may be provided on:

- Ministry of Health requirements regarding assessment of parcels for sewage disposal;
- flood hazards and terrain stability hazards, and the need for mitigative measures and restrictive covenants; and
- local government zoning and building requirements.

### **8.1.5 Advertising/Notification**

*At the time of application acceptance, provincial staff will notify applicants if advertising is required and provide the necessary instructions.*

Advertising of residential applications is done at the discretion of the Authorizing Agency.

#### **Upland Owner Consent**

*Owners of waterfront property have certain "riparian rights" which include the right of access to and from the upland Provincial staff will advise applicants if there is a need to obtain a letter indicating the upland owner's consent to their application.*

Upland riparian rights can be negated in whole or in part by a statutory right of way document which is registered upon the certificate of title to the upland property. It should be noted that a letter of consent from an upland owner does not transfer from owner to owner if the upland property is sold. As a statutory right of way charge is registered upon title, such a charge remains in effect even once the upland property is sold. Foreshore lessees should carefully consider the value of their proposed improvements and the inherent risks when deliberating upon the manner in which upland consent is obtained.

#### **Adjacent Owner Notification**

*New applications to tenure foreshore adjacent to privately owned property, including Indian Reserves, are brought to the adjacent property owner's attention through referrals or direct contact. In certain circumstances, provincial staff may advise applicants that there is a need to obtain a letter indicating adjacent owner's consent to their application.*

### **8.1.6 Aboriginal Interests Consideration**

*The Authorizing Agency is responsible for ensuring the Province's obligations to First Nations are met in the disposition of Crown land. Provincial staff carry out consultations in accordance with the consultation guidelines of the Province to identify the potential for aboriginal rights or title over the subject property and to determine whether infringement of either might occur.*

### **8.1.7 Field Inspections**

*Field inspection means the on-site evaluation of a parcel of Crown land by provincial staff. The need to conduct a field inspection will vary and the decision to make an inspection ultimately lies with the Authorizing Agency.*

### **8.1.8 Decision/Report**

*The applicant will be notified in writing of the government's decision. Reasons for Decision are posted on the relevant website.*

### **8.1.9 Issuing Documents**

*If the application is approved, tenure documents are offered to the applicant. All preconditions must be satisfied prior to the Authorizing Agency signing the documents. It is the applicant's responsibility to obtain all necessary approvals before placing improvements or commencing operations on the tenure.*

## **8.2 Competitive Process**

*The Authorizing Agency may initiate one of a number of different competitive processes (e.g. public auction, request for proposals) where permitted by program policy and when deemed appropriate by provincial staff.*

For further details and descriptions refer to the Allocation Procedure - Competitiveness process.

### **8.2.1 Urban and Rural Residential**

Disposition of Crown land to private developers to create urban or rural residential lots is normally by public offering. Conditions of development, if any, are prescribed in a development plan, secured by a development contract. Disposition may be by lease-purchase where there is a need to ensure bona fide land development, or in fee simple with development secured through a bond or collateral agreement for development.

### **8.2.2 Marketing Residual Recreational/Residential Parcels**

Residual (refer to definition) recreational or residential parcels, including shoreland parcels, can be marketed on a sale basis under the *Ministry of Lands Parks and Housing Act* by public offering at the discretion of the Authorizing Agency. In such cases, participants need not be Canadian citizens or permanent residents of Canada.

### **8.2.3 Land Development, Servicing and Marketing**

The Authorizing Agency may identify suitable blocks of land for residential development and offers them to the private sector by public offering (see above).

Crown land for residential purposes is subdivided under the *Land Title Act*. Sites must meet standards prescribed by the local approving officer of the Ministry responsible for the *Transportation Act*.

For procedures on marketing of urban, rural, and shoreland residential lots, refer to the Allocation - Competitive Process Procedure.

Where residual lots are offered, a review of market value should be undertaken every six months, or more frequently if the Authorizing Agency believes such review is warranted by changing market conditions.

### **8.3 Planned Tenure Dispositions**

*Planned tenure dispositions involve the Province actively investigating and developing opportunities for Crown land tenures, followed by announced openings within specific geographic areas. Under a planned disposition project or study, Crown lands will be allocated by the Authorizing Agency in accordance with standard application procedures or by competitive process.*

Where private developers are unable or unwilling to meet a market demand to create urban or rural residential lots, the Province may develop and provide lots through a public offering.

### **8.4 Direct Sale**

*Direct sales provide fee simple dispositions of Crown land through individual applications under the relevant land use program.*

Residual lots (urban, rural and recreational) may be available by direct sale for a period established by the Authorizing Agency subject to the Allocation Procedure - Direct Sales.

As already noted existing lessees may also apply to purchase their site (refer to 6.3.1).

## **9. TENURE ADMINISTRATION**

### **9.1 Insurance**

Liability insurance is not required as a condition of obtaining a residential tenure. However, the Province continues to recommend that tenants carry general liability insurance.

### **9.2 Security/Performance Guarantee**

*A security deposit or bond may be required to be posted by the tenure holder where any improvements on, or changes to, the land are proposed. The security deposit is collected to insure compliance and completion by the tenure holder of all the obligations and requirements specified in the tenure. Some examples where such security may be used are for any type of clean-up or reclamation of an area, and/or to ensure compliance with development requirements.*

### **9.3 Assignment and Sub-Tenuring**

*Assignment is the transfer of the tenure holder's interest in the land to a third party by sale, conveyance or otherwise. Sub-tenuring means an interest in the Crown land granted by a tenant of that Crown land rather than the owner (the Province).*

*Assignment or sub-tenuring requires the prior written consent of the Authorizing Agency. The assignee or sub-tenure holder must meet eligibility requirements. The Authorizing Agency may refuse the assignment of existing tenures if the details of the assignment or sub-tenure are not acceptable to the Province.*



Assignment of float home, shoreland and remote residential tenures requires the prior consent of the Authorizing Agency and compliance with eligibility requirements. Regional offices will inform assignees of shoreland tenures of the opportunity (in principle) to purchase.

Remote residential tenure assignments are made only where the assignee has also been assigned or otherwise obtained the commercial or industrial tenures and permits for which the residential tenure was issued.

## **9.4 Tenure Replacement**

*Replacement tenure means a subsequent tenure document issued to the tenure holder for the same purpose and area.*

*In most cases, tenure holders may apply for a tenure replacement at any time following the mid-term of the tenure. Replacement of tenures is at the Authorizing Agency's discretion. The Province may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure. For tenure terms and conditions see Section 6.*

### **9.4.1 Tenure Conversion**

A lessee may be eligible to convert an existing recreational lot lease to a residential lease prior to expiry, or replace it with a residential lease on expiry where the existing lease land is to be used for full-time residential purpose. Where these conditions apply, a 30-year residential lease may be issued.

At the discretion of the Authorizing Agency, during replacement, or where a complaint has been received, a review of the temporary / seasonal nature of a residential tenure may be undertaken. If the lessee has received a Home Owner Grant, the Authorizing Agency may require conversion to a permanent residential tenure.

## **9.5 Monitoring and Enforcement**

*Tenure terms and conditions, including requirements contained in approved management/development plans, act as the basis for monitoring and enforcing specific performance requirements over the life of the tenure.*

## **10. VARIANCE**

*Variances to this policy must be completed in accordance with the Policy Variance Procedure.*

**Appendix 1. Residential Policy Summary**

TENURE	TERM	VALUATION\PRICING	METHOD OF DISPOSITION
<b>LICENCE</b>			
<b>Remote</b>	or For term of employment; max. 30-years	4.5% of BCA actual land value or appraised land value (\$500 minimum)	Application  Only if required for access to employment, and if satisfies 'remote' criteria
<b>Float Homes</b>	Normal 10- 20 years (to be based on planning parameters)	4.5% of BCA actual land value or appraised land value (\$500 minimum)	Application  Only accepted in planned / designated areas
<b>Thermal Loops</b>	Max. 30 years	Price as per Utility Policy	Application  Only for submerged / aquatic lands
<b>Ancillary Residential Uses</b>	Max. 30 years	4.5% of BCA actual land value or appraised land value (\$500 minimum)	Application
<b>LEASE</b>			
<b>Urban, Rural<sup>1</sup></b>	30 years	5% BCA actual land value or appraised land value (\$500 min.)	Competitive process (may include lease to purchase).  Direct application for <u>residual residential</u> lots only.
<b>Shoreland only (Recreational, residential)</b>	30 years for permanent  15 years for temporary (seasonal) occupancy	5% BCA actual land value or appraised land value  3% BCA actual land value or appraised land value  \$500 min.	No applications for new sites
<b>FEE SIMPLE</b>			
<b>Urban, Rural and Shoreland</b>	Perpetuity	Full appraised market value (or development and marketing costs if greater)	Competitive process or real estate listing; <u>residual</u> lots by direct sale.
<b>Shoreland only</b>	Perpetuity	Full appraised market value (or costs if greater)	Direct sale to existing lessees of qualified properties.
<b>Ancillary Residential Uses</b>	Perpetuity	Full appraised market value (or costs if greater)	Application  Exceptional circumstances for "extension of holdings", and historic fills

<sup>1</sup> Lease tenure available for existing lots which do not meet *Land Title Act* subdivision standards and/or in-filling of existing subdivisions where adjacent lots are authorized by lease.

## **Appendix 2. Additional Requirements Related to Crown Land Sales For Residential Use**

### **2.1 Access Requirements**

Parcels should have access by a public highway or be accessible by water. Where access is by water, the body of water fronting the parcel must have access by a public highway. The Crown Grant will contain a clause referring to "water access only".

Although Forest Service roads and other natural resource roads may be open to the public, their mid-long term availability cannot be guaranteed and should not be relied upon to satisfy access requirements. Once natural resource roads are no longer required for the intended use they are subject to deactivation or decommissioning which may restrict or prohibit vehicle access.

### **2.2 Health Requirements**

For parcels created under the *Land Act*, the requirements of the Medical Health Officer must be satisfied. Sale of lots which do not meet current standards for on-site sewage disposal may occur subject to registration in the Land Title Office of a restrictive covenant which ensures that future building of habitable improvements occurs in compliance with Health regulations. In some circumstances other options may need to be considered to address concerns of the Medical Health Officer.

### **2.3 Utilities**

Utilities that are untenured at the time of sale are not protected by the Province.

Where parcels are encumbered with utility licences, the utility company is notified of potential lot sale(s) and is advised to convert the licence to a statutory right of way before a prescribed date. Note: If the province is conducting survey work in these areas, it may be possible to coordinate survey instructions to serve the needs of the utility and the Province.

### **2.4 Private Driveways**

Private driveways crossing a parcel are not normally protected by the Province prior to sale. However it may be possible to legalize these accesses.

Where legal access is not dedicated in the subdivision plan, the lots may qualify for sale as water access, provided that the water body on which they are located has access.

### **2.5 Flood Hazard**

Where a parcel is located in a floodplain, or where the Ministry of Environment (MoE) expresses concern about flooding, a restrictive covenant prohibiting development in the floodplain, and a corresponding indemnity covenant are registered on the title. Standard floodplain setbacks and building elevations for specified lakes are provided by Water Stewardship, MoE.

## **2.6 Terrain Stability Hazard**

Terrain stability hazards may need to be assessed. Where risks have been identified as a concern, mitigation measures may need to be put in place, or it may be determined that the site is not appropriate for sale.

## **2.7 Waterfront Walkways**

Public walkway strips along the natural boundary are not deleted when selling Crown shoreland, unless it is necessary to protect public access to lands beyond, and such access cannot reasonably be provided by alternative means.

Where a public walkway strip is deleted, it is done by survey.

## **Appendix 3. Residential Strata Title and Group Moorage policy**

### **3.1 Purpose and Definitions**

The purpose of this appendix is to provide direction on the disposition of residential strata title and condominium moorage facilities and residential group moorage facilities, with more than three berths.

Small strata title and group moorage facilities with three or less berths are covered under the Private Moorage policy.

Strata title and group moorage facilities that include commercial activities may be administered under the Commercial Marina policy or the General Commercial policy.

**Group moorage facility** means a multi-berth moorage similar to a private moorage facility<sup>\*</sup> but for the personal use of a group or association of residents from the surrounding community.

**Strata title or condominium moorage facility** means a multi-berth moorage similar to a private moorage facility<sup>\*</sup> but used by the residents of a waterfront strata or condominium development.

### **3.2 Applicant Eligibility**

*Applicants for new tenures, tenure assignments or tenure replacement must be 19 years of age or older.*

Crown land may also be disposed to strata title corporations or private developers who are registered or incorporated in British Columbia.

### **3.3 Form of Land Allocation**

The term of tenure is not to be greater than the remaining term of the Crown land residential tenure on the adjacent upland property. In situations where upland owner consent is required the term of the moorage tenure should not run longer than the period of consent provided.

#### **3.3.1 Licenses of Occupation**

A license of occupation may be used for tenure strata title moorage facilities and group moorage facilities with more than three berths.

The standard maximum term for a licence of occupation is 30 years.

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<sup>\*</sup> **Private moorage facility** as defined in the Private Moorage policy means a dock and/or a permanent way (i.e. boat ramp) that is permanently affixed to aquatic Crown land and any ancillary structures such as a boat lift and anchor lines. It is for the personal and private use by one or a number of individuals or a family unit for boat moorage.

### **3.4.1 Lease**

*A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid conflicts.*

A lease may be issued for a term of 20 years.

## **3.2 Pricing Policy**

### **3.2.1 Administrative Fees**

An application fee of \$250 applies to all new licenses of occupation and leases.

Other administrative fees are set out in the fee schedules contained in the Crown Land Fees Regulation.

### **3.2.2 Rentals**

The amount of rent for a single berth of a multi-berth moorage facility is 25% to 50% of the private moorage rates shown below, in accordance with established regional practice:

- For leases a charge of \$200 per annum is levied for a single private moorage facility. Where the area of aquatic Crown land required for a lease exceeds 2000 square metres, an additional annual charge of \$1.00/square metre is levied to a maximum total annual charge of \$400.
- For a licence of occupation for a single private moorage facility rent is \$400 for the full term of tenure. Where the area of aquatic Crown land required for a private moorage licence exceeds 600 square metres, an additional rent of \$1.00/square metre (to a maximum total fee of \$600) is charged. (Note: Although licenses of occupation are no longer issued for private moorage facilities, the above rates reflect what was in place previously, and continue to apply to group / strata moorage) .

The total rent for a strata title or group moorage facility under a license of occupation is normally pre-paid for the term of the tenure.

Group moorage tenures issued to non-profit community organizations may qualify for a nominal rent tenure under the Community and Institutional Policy.

Rents for strata moorage facilities that include commercial activities are based on pricing for similar uses under the General Commercial or Commercial Marina policies.

## **3.3 Other requirements and considerations**

### **3.3.1 Group Moorage**

Group moorage will be available to local resident groups/associations or community organizations where:

- local government has given their support and approval; and,
- the area has boat access only, no public transportation and there is very limited availability of public and commercial moorage; or
- group moorage may reduce cumulative impacts that could result from waterfront property owners developing multiple single docks.

Important considerations when locating a group moorage facility include availability of adjacent parking, as well as impact on neighbouring property owners and public access.

Commercial activity is prohibited at group moorage sites including the renting or selling of berths, but not including any necessary membership fees to cover maintenance and administrative costs.

A riparian agreement is required between the members of any association or group and the owner of an upland property that the group moorage facility is fronting. If the facility is located adjacent to a road allowance, consent by the Ministry responsible for the *Transportation Act* will be required.

#### **Identification of Users**

Where application for a group moorage facility is not in the name of an organization, the names of all individuals should be included on the application form and will be included in the tenure document. However, if possible group moorage tenures should be in the name of a registered society or association to avoid having to undertake assignments every time a member of the group changes.

For group moorage facilities that do not front private property held by all the owners of the facility, upland or adjacent owner consent will be required. In limited situations this may include consent from local government or Ministry responsible for the *Transportation Act* (e.g. in the case of docks located at the end of road allowances or adjacent to waterfront walkways owned by local government).

#### **3.3.2 Strata Moorage**

Tenures for strata title moorage are available to the strata corporation which owns the upland property with riparian rights to the foreshore.

For new strata developments the initial tenure may have to be in the name of the development company; which can then be transferred to the strata corporation once the corporation is established.

For developments that will have commercial use (e.g. vacation / resort accommodation and berth rentals) the developer may want the moorage facility managed by a property management company, rather than the strata corporation. In such cases, the developer may consider transferring riparian rights to the Crown by registering a riparian right of way against the title, prior to establishment of the strata corporation.

### **3.3.3 Management Plan, Tenure Boundaries and Development Requirements**

A management plan is required for all applications for strata title and group moorage facilities.

Strata title and condominium moorage facilities are normally limited to one berth per residential unit. At the Authorizing Agency's discretion, strata title and condominium moorage facilities may include an increase of up to ten percent of the total number of residential units to accommodate guest berths. These facilities shall not be used by the strata corporation for commercial use.

In issuing new or replacement tenures, staff are to ensure that tenure boundaries encompass the minimum area required to cover the placement of improvements (including anchor lines) and mooring of boats. The tenure area should not include unoccupied open water or tidal areas between structural improvements.

The tenure holder will not be able to obstruct public access over the tenure area, or interrupt passage by the public over the intertidal area.

Refer to the Private Moorage Policy "Private Moorage Requirements and Best Management Practices - Appendix 3" for additional factors that may affect the placement and design of a moorage facility.

### **3.3.4 Foreshore fills, breakwaters and non-moorage structures**

Proposals for foreshore fills, breakwaters or permanent foreshore improvements (e.g. sun decks, boat houses) that are not part of a moorage facility (as defined) are normally discouraged, but in exceptional circumstances may be authorized in accordance with the Residential Policy.