



## **ADMINISTRATIVE DETERMINATION 2020-02**

### **Pre-existing Developments Constructed in Violation of the Shoreline Code**

#### **PURPOSE:**

The purpose of this Administrative Determination is to provide a response to the code interpretation request filed under PLN-2020-0487 requesting clarification as to the application of BLMC 16.56.150 to residential developments constructed in violation of the Shoreline Code.

#### **CONTEXT**

The applicant has submitted an Application for Code Interpretation requesting clarification as to whether or not the provision of BLMC 16.56.150 applies to residential developments constructed in violation of the shoreline code. The applicant also requested clarification as to whether or not the required shoreline setback can be measured from a bulkhead constructed without a permit, but in existence prior to October 16, 2014.

#### **AUTHORITY:**

The authority to interpret the Development Code is provided for in Bonney Lake Municipal Code (BLMC) 14.10.140. For consistent interpretations of the Development Code, the Director as defined in BLMC 14.10.130.M shall render code interpretations in writing. Such interpretations shall include at a minimum the BLMC citation, the context, the interpretation, and the reasoning for the interpretation.

#### **CITATIONS:**

##### **WAC 173-27-030 Definitions – Adopted by Reference in BLMC 16.36.030(C)(9).**

15. "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

##### **16.34.010 Title.**

Chapters 16.34 through 16.58 BLMC shall be known as the "shoreline code."

**BLMC 16.36.050**

“Bulkhead” means a solid wall erected generally parallel to and near the OHWM for the purpose of protecting adjacent uplands from waves, floods, or current action.

**BLMC 16.40.030 Development standards.****D. Shoreline Setbacks.**

1. The shoreline setback for all detached dwelling units, duplexes, and accessory dwelling units shall be a minimum of 60 feet from the OHWM and 20 feet from the rear property line; provided, that the minimum 60-foot shoreline setback may be reduced as provided in BLMC 16.56.040.
2. Structures that do not contain a habitable living unit shall be set back a minimum of 80 feet from the OHWM, unless subject to one of the incentives in BLMC 16.56.040.
3. Garages and pavements for motorized vehicles (driveways and parking areas) shall be set back at least 70 feet from the OHWM.
4. No development is allowed within the setback areas established in this section, except as provided in BLMC 16.56.040 or 16.56.100.

**BLMC 16.56.150 Nonconforming and preexisting uses, structures, and developments**

The city’s baseline ecological condition, by which the standard of “no net loss” of ecological functions is determined, is the effective date of the SMP update on October 16, 2014. Any use, development, and/or structure that can be demonstrated to have been in existence at that time is considered legally conforming for the purposes of the SMP and this section, subject to the standards below:

**A. Structures.**

1. Residential structures and appurtenant structures that were a part of the city’s baseline ecological condition and used for a conforming use, but which do not meet current standards for shoreline setbacks, height, or density shall be considered legally conforming structures. Such structures may be altered, maintained, and/or repaired so long as the degree of nonconformity is in no way increased. These same standards shall be applied to non-structural residential developments as well.
2. Detached dwelling units, site improvements, and residential appurtenances that are legally conforming and are located landward of the OHWM that do not meet the shoreline setback requirement may be enlarged or expanded; provided, that the new construction

complies with all applicable bulk and dimensional standards of BLMC Title 18 and the applicable provisions of the SMP, and does not result in an expansion of the encroachment into the shoreline setback, except as provided for in BLMC 16.56.040 and 16.56.100.

3. A nonconforming structure which is moved any distance must be brought into conformance with the SMP and the SMA.
4. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

B. Uses.

1. Nonresidential uses that were lawfully established and are nonconforming with regard to the use regulations of the SMP may continue as legal nonconforming uses, but shall not be enlarged or expanded.
2. A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use.
3. All nonconforming uses discontinued for 12 consecutive months or for 12 months during any two-year period shall forfeit all nonconforming use rights and any subsequent uses or structures shall be conforming.

C. Nonconforming uses and structures not addressed in this section shall comply with the requirements of WAC 173-27-080

**INTERPRETATION:**

The initial provision of BLMC 16.56.150 provides that any structure that can be demonstrated to have been in existence on October 16, 2014 is considered legally conforming. This initial provision contains no other standards in determining if a structure is legally conforming. Bulkheads are structures as provided in BLMC 16.36.050 and WAC 173-27-030. Therefore, any bulkhead that was in existence prior to October 16, 2014, is considered legally conforming under the plain reading of the introduction section of BLMC 16.56.150. As the bulkhead located on the subject property is considered legally conforming, the required shoreline setback established in BLMC 16.40.030(D) is measured from the face of the existing bulkhead for construction that occurred or will occur after October 16, 2014. Other structures and improvements located on the property that were in existence on October 16, 2014 would not be required to comply with the shoreline setback established in BLMC 16.40.030(D). The determination that a structure is legally conforming under BLMC 16.56.150 only pertains to the Shoreline Code. Unpermitted structures that would have required a building permit are

still require to obtain a building permit from the City and comply with all other development regulations in effect at the time a complete building permit application is submitted to the City.

**REASONING:**

During the City’s 2019 Periodic Update of the City’s Shoreline Master Program (SMP), the City amended the regulations related to nonconforming uses and developments codified in BLMC 16.56.150 to better reflect the presence of development that has been constructed, altered, improved, repaired, etc. prior to the establishment of the SMP’s ecological baseline conditions in 2014. The City’s ability or inability to establish what specific development was “legally established” and what development was not is often compromised based on regulatory changes that have happened over the years, records retention and destruction schedules, transfers of property ownership, annexations, etc. There are many residential properties where there is just no information available to determine what was done when and by whom. Based on applicable language in the State’s regulations, staff reworded the section to tie the existence of development at the time of SMP adoption on October 16, 2014 to status as “legally conforming,” based on the fact that by existing at that time, that development was part of our ecological baseline, which is what no net loss standards is measured against.

The provisions codified in BLMC 16.56.150, provides that any use, development, and/or structure that was in existence when the ecological baseline was established, which is October 16, 2014 is considered legally conforming. This provision of BLMC 16.56.150 does not require that the City determine if the use was consistent with the previous shoreline regulations or if the improvement obtained required permits prior to its construction. The only standard for a structure is that it physically existed on or before October 16, 2014.

Based on a review of available public aerial photography, the bulkhead in question was constructed prior to October 16, 2014 and is therefore included in the baseline ecological condition for the City’s Shoreline Management Plan. Therefore, the bulkhead meets the requirements of BLMC 16.56.150 and is considered legally conforming regardless of whether or not permits were issued for the construction of the bulkhead.



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Ryan Johnstone, P.E., Director

**December 14, 2020**

Date

**FINAL ACTION:**

All final actions of the Director, including code interpretations shall be final and conclusive unless the applicant, a department of the city or county, or other party of record or agency with jurisdiction files a written appeal with the Public Services Department within 15 days following the decision. BLMC 14.120.020(A). Appeals shall contain all grounds on which error is assigned to the decision and shall

be accompanied by the appropriate fee. BLMC 14.120.020(C); 3.68.010(D)(1) (stating that the cost of an appeal of an administrative decision is \$750.00).

Following the timely filing of an appeal, notice of the date, time and place for the Hearing Examiner's consideration shall be mailed to the applicant and to all other parties of record. BLMC 14.120.020(E).