MARCH 3, 2010
The Code Official under Section 19.15.010(C)(5)(a) of the Unified Land Development Code makes this administrative policy determination and interpretation of the Unified Land Development Code of Mercer Island.

The purpose of this administrative interpretation is to clarify when a dock loses its legally non-conforming status, requiring it to be brought into conformance, and when replacement of portions of a dock is considered to be ordinary repairs and maintenance.

MICC 19.01.050 governs nonconforming structures, sites, lots and uses and 19.01.050 (D)(1)(ii) specifically governs accessory buildings and structures. This section of the code sets out when accessory structures, including, but not limited to carports, garages, sheds, gazebos, decks, and fences lose their nonconforming status. However, MICC is silent regarding how to measure when a dock loses its legally non-conforming status. A question has been raised by a permit applicant as to whether a complete replacement of a non-conforming dock, including all of the pilings, is considered ordinary repairs and maintenance, which would allow the dock to be rebuilt in the same configuration as it was previously, or if the complete replacement of a dock and pilings causes the loss of legally non-conforming status.

Code section MICC 19.01.050 D. 1. ii. states:

Accessory Buildings or Structures. A legally nonconforming attached or detached accessory building or structure, including but not limited to a carport, garage, shed, gazebo, deck or fence, may be altered or enlarged without losing its legal nonconforming status as long as no more than 40 percent of its exterior perimeter (or length in the case of a fence) is structurally altered. A wall that is shared with the main dwelling shall not be included in the calculation for the attached accessory building. In no event shall any alteration or enlargement increase any existing nonconforming
Nonconforming structures, sites, lots and uses. The Shoreline Master Program regulations contained in Chapter 19.07 do not specifically deal with nonconforming structures. Therefore, the standard of *Ordinary Repairs and Maintenance* as applied in MICC 19.01.050(B)(1) and defined in MICC 19.16.010 is the more specific and controlling language here.

It is also recognized that applying the 40 percent rule to the structural alteration of exterior perimeter of the dock would be contrary to the intent of this section because the word "perimeter" would include non structural, minor elements such as railings and decking, and would not normally include major structural elements, e.g. piles. Use of a "perimeter" standard would also require unnecessary replacement and reconfiguration of piles that would otherwise not be included in the scope of the project, and would create additional disturbance to the shoreline environment.

In the past, staff has consistently applied MICC 19.01.050(D)(1)(ii) to docks by requiring a dock to come into conformance when more than 40 percent of the pilings are replaced. However, we now find the need to more fully document this requirement.

This interpretation has been applied because it is reasonable to expect that when more than 40 percent of the pilings of a dock are removed and new piles are driven in their place, essentially a new dock is being constructed and it is beyond the scope of ordinary repair and maintenance of a dock. Furthermore, if the City determines that reconstruction of a non-conforming pier in its nonconforming location and/or configuration would result in the same number or a greater number of replacement piles than would be required if the dock was brought into conformance (or more into conformance), that this would also be beyond the scope of ordinary repair and maintenance. For example, on the Gedvila dock at 8435 SE 87th St., if all of the four southern most pilings need to be replaced, then the four replacement piles must be placed in a location that would make the width of that section of the dock conforming.

In Summary, it is concluded that:

1) If more than 40 percent of the pilings that make up a dock are replaced, the dock loses its nonconforming status and must be brought into conformance with the existing regulations.

2) Piles which are repaired through splicing techniques would not count against the allowed 40 percent replacement quota.

3) In no case may a new pile, i.e. a pile that does not replace an existing pile, be placed in a non-conforming location.

4) *Replacement* piles may be placed in a non-conforming location only if the total number of such piles is determined to be less than the number of replacement piles than would be required if the dock was brought into conformance (or more into conformance). Said another way, if the City clearly demonstrates that the applicant can reduce the number of required replacement piles by bringing the dock more into conformance, this will be required. In no case shall this provision
**EXHIBIT H**

**MICC 19.16.010 - Definition**

**Ordinary Repairs and Maintenance**: An activity in response to the effects of aging or ordinary use, wear and tear that restores the character, scope, size, footprint or design of a serviceable area, structure, or land use to its previously existing, authorized or undamaged condition; however, this is not intended to allow total replacement, substitution or reconstruction of a nonconforming structure. Activities that change the character, size, footprint or scope of a project beyond the original shall not be considered ordinary repairs and maintenance and shall result in loss of nonconforming status.

For piers and docks, if more than 40% of the pilings that make up a dock are replaced, the activity is not considered ordinary repair and maintenance and the dock shall be brought into compliance with regulations in place at the time of the action; piles that are repaired through splicing techniques are not counted in the 40% threshold. Individual mooring piles that are non-conforming and are not physically connected to a dock are considered individual structures and such piles may only be repaired. Replacement piles may be placed in a non-conforming location only if the total number of such piles is determined to be less than the number of replacement piles than would be required if the dock was brought more into conformance.

For pier and dock decking, if more than 50% of the decking is replaced, the replacement is not considered ordinary repair and maintenance and it shall be brought into compliance with regulations in place at the time of the replacement.