CALL TO ORDER & ROLL CALL   7:00 PM

APPEARANCES

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

• Speak audibly into the podium microphone
• State your name and address for the record
• Limit your comments to three minutes

*The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes*

APPROVAL OF MINUTES

Minutes from September 3, 2014

REGULAR BUSINESS   7:10 PM

Agenda Item #1:
2015 Comprehensive Plan Update

Review policy changes to the Draft Transportation Element of the 2015 Comprehensive Plan Update. Discuss changing the level of service (LOS) standard from LOS C to LOS D.

Agenda Item #2:
DCI14-001 Code Interpretation

Sound Transit requests a code interpretation under Chapter 19.15.020.L of the Mercer Island City Code. Sound Transit requests clarification on the process for shoreline conditional use permits.

OTHER BUSINESS

Staff Comments
Planned Absences for Future Meetings
Announcements & Communications
Next Regularly Scheduled Meeting: October 1, 2014

ADJOURN
CALL TO ORDER:
Chair Friedman called the meeting to order at 7:05 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:
Chair Jon Friedman and Commissioners Craig Olson, David McCann, Suzanne Skone, and Vice Chair Richard Weinman were present. City staff was represented by Christina Schuck, Assistant City Attorney, and George Steirer, Principal Planner.

APPEARANCES:
No one from the public requested to address the commission.

MINUTES:
Commissioner Skone moved to approve the minutes from the August 20, 2014 meeting. Commissioner Olson seconded the motion. The Commission unanimously approved the minutes.

REGULAR BUSINESS:
Agenda Item #1 – 2015 Comprehensive Plan Update (Land Use Element)

George Steirer, Principal Planner, provided a brief staff presentation on proposed Land Use Element, which incorporates previous comments from the August 20, 2014 meeting, and updates the statistics for the city. A majority of the commission requested the following:
1. Replace Action Plan Goal 1.6, regarding population growth targets, with language provided by Vice-Chair Weinman.
2. Remove 2040 forecast numbers from Table 4.
3. Staff to provide a draft memorandum, from the Planning Commission, to the City Council, which would accompany the Planning Commission's recommendation. The memorandum would provide "whereas" statements regarding the update to the land use element, as discussed at the meeting.
4. Minor formatting and spacing editing.
5. Provide a copy of the letter addressed to the Planning Commission, from Alfred L. Skinner, to the Town Center Visioning Subcommittee.

STAFF COMMENTS:
Christina Schuck, Assistant City Attorney, provided a brief update on a possible code change.

PLANNED ABSENCES FOR FUTURE MEETINGS:
Chair Friedman stated that he will not be at the October 15th or November 5th meeting.
ANNOUNCEMENTS AND COMMUNICATIONS:
None

NEXT MEETING:
The next Planning Commission meeting will be September 17, 2014.

ADJOURNMENT:
The Planning Commission meeting was adjourned at 9:29 PM.

Respectfully submitted by George Steirer, Principal Planner
To: Planning Commission
From: Lindsay Brown, Planner
Subject: Agenda Item 1 – 2015 Comprehensive Plan Update: Transportation Element
Date: September 9, 2014 for the September 17, 2014 Meeting

Exhibits:
1. Overview of Transportation Level of Service
2. Level of Service Map: 2014 Existing
3. Level of Service Map: 2035 Projected
4. Transportation Element Draft Policy Matrix
5. Working Draft Planning Commission Memorandum to City Council

Action Requested:
1. Receive a majority approval by the Planning Commission to include Exhibits 2, 3 and 4 in the Draft 2015 Comprehensive Plan for the public hearing, with clear direction on any additional changes needed. Review staff’s recommended changes, including the change to the level of service (LOS) transportation standard for arterials from C to D. Direct staff to return on October 1st with the Draft Transportation Element text and figures, in addition to any changes requested by the Commission.

2. Provide any necessary changes to the working draft memorandum to City Council (Exhibit 5).

Summary of Recommendations
This Planning Commission meeting focuses on two major aspects of the Transportation Element, the Level of Service standard and the policies. Below is a summary of staff recommendations regarding level of service and substantive changes to policies. Staff will return at the next Planning Commission meeting (October 1) and present the Transportation Element text and coordinated exhibits for discussion and direction by the Commission.

Level of Service (LOS) Standard
The Draft Transportation Element is a collaborative effort between Mercer Island Engineering and Planning staff and the City’s transportation consultant, KPG. In late Spring, KPG conducted a thorough inventory of existing traffic volume during peak AM/PM conditions at all arterial street intersections throughout the Island. This data was used to determine existing intersection LOS as reflected on Exhibit 2- Level of Service Map: Existing. Population forecast information was integrated with the intersection data to forecast future LOS for the same intersections, assuming
no intersection or roadway improvements. This forecast is represented on Exhibit 3- Level of Service Map: 2035 Projected.

Based on the analysis of projected LOS in 2035, staff recommends reconsidering the LOS standard as part of the Transportation Element review. Existing Transportation Element Policy 10.1 states:

*The City of Mercer Island establishes Level of Service (LOS) “C” defined as stable traffic flow with acceptable delays at intersections as its transportation level of service standard required under GMA.*

Staff recommends changing the level of service standard for arterial streets to LOS D. LOS D is defined as operating conditions with lower travel speeds and higher delays at intersections, when compared to LOS C. Most cities have an adopted LOS standard of D, E, or F (see chart below).

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Level of Service Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Bremerton</td>
<td>LOS D</td>
</tr>
<tr>
<td>City of Bainbridge Island</td>
<td>LOS D urban zone, LOS C in sub-urban zone</td>
</tr>
<tr>
<td>City of Burien</td>
<td>LOS D priority roads, LOS E in downtown</td>
</tr>
<tr>
<td>City of Federal Way</td>
<td>LOS E</td>
</tr>
<tr>
<td>City of Des Moines</td>
<td>LOS D, LOS E or F for selected intersections</td>
</tr>
<tr>
<td>City of Tukwila</td>
<td>LOS D to LOS F, depending on specific street</td>
</tr>
<tr>
<td>City of Issaquah</td>
<td>LOS D</td>
</tr>
<tr>
<td>City of Newcastle</td>
<td>LOS E in CBD, LOS D outside of CBD</td>
</tr>
</tbody>
</table>

Today, some of Mercer Island’s intersections are either worse than C, or soon will be with additional growth. The blanket standard of C is no longer realistic without creating unintended consequences and the need for significant investment in congestion relief. Staff recommends the change in LOS to provide a practical balance between reasonable short-term levels of traffic congestion and costly transportation improvements (eg. traffic signals, turn lanes, turn restrictions, roadway widening, concrete curbs, etc.) that may be out of scale with certain parts of Mercer Island. No change to the current LOS standard would require transportation improvements along several roadways and intersections. Staff raised the notion of lowering LOS with the City Council twice this year, both during a study session discussing transportation issues and during the annual adoption of the Six-Year Transportation Improvement Program last spring. They were supportive of considering a change during the update of the Comprehensive Plan. Refer to Exhibit 1: Overview of Transportation Level of Service for more information on LOS standards and their impact.
**Recommended Policy Changes**

Minor edits were made throughout the existing policies in the Transportation Element. The majority of the policies included in Exhibit 4: Transportation Element Draft Policy Matrix have been edited to reflect the main policy intent, clarify the policy language, or were changed due to an updated planning or policy context. The exception to this is Policy 10.1, where staff proposes a change to the LOS standard.

Four policies were added to ensure compliance with King County Countywide Planning Policies, and GMA requirements. These policies apply Complete Streets principles where feasible, comply with state directives related to climate change, ensure emergency management coordination, and require a strategy for decision making when funding is insufficient to comply with an adopted LOS standard. A few policies were deleted because they were redundant, no longer required by the Growth Management Act, or were vaguely written.

**Planning Commission Memorandum to City Council**

At the September 3rd meeting, the Planning Commission requested staff provide a working draft memorandum, addressed to City Council. The direction from the Planning Commission was to provide certain language that would convey other possible changes discussed for future comprehensive plan updates, given the current limited scope of work. Attached, for Planning Commission’s review, is Exhibit 5. Staff is prepared to make changes requested by the majority of the Planning Commission. The memorandum would then be conveyed to the City Council with the final recommended 2015 Comprehensive Plan update. The final recommendation is anticipated to be completed by the Planning Commission in November, 2014.
Overview of Transportation Level of Service

What is Level of Service (LOS)?
- LOS is a description of how well the transportation system works.
- LOS provides a standardized methodology for evaluating the performance of roads and intersections.

How is LOS defined?
- LOS is an A - F scale that describes the traffic conditions – similar to the grading scale used in schools.
- LOS A (best operation) – light traffic with low delays at intersections.
- LOS F (worst operation) – over capacity with extreme traffic congestion.

How is LOS used?
- As a measurement – The LOS measures the performance of intersections and roadways.
- As a standard – Cities adopt LOS standards to set minimum desired levels of traffic operations. Most cities have a LOS standard of D, E, or F.
- To identify transportation improvements – LOS measurements are used to identify the type and effectiveness of improvements needed to keep roadways and intersections in compliance with the LOS standard.

Why not set a high LOS as a standard?
- More improvements may be required to meet the standard (more signals, wider roads, more traffic lanes, right of way acquisition).
- More improvements would require higher transportation funding/budgets resulting in less funding for repaving of existing streets.
- May relocate, burden or reduce growth in the Town Center.
- May encourage cut-through traffic from I-90.

What if roadways don’t meet the minimum standard?
- Operations could be improved by widening roads, adding turn lanes, adding signals or other traffic controls.
- Development could be constrained/restricted.
- A lower minimum LOS standard could be accepted.
Transportation Level of Service 2014

AM PM Peak Hour

No Data

A-D

E

F

Disclaimer: This data was developed for internal use by the City of Mercer Island and are intended to be a general purpose digital reference tool. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially in regard to labeling of surveyed dimensions, agreement with official sources such as records of survey, or mapped locations of features.
Projected Transportation Level of Service 2035

AM PM Peak Hour

No Data

A-D

E

F

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<table>
<thead>
<tr>
<th>Transportation Element Policies</th>
<th>If action proposed, why?</th>
<th>Proposed Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Town Center</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 The City of Mercer Island encourages measures to reduce vehicular trips consistent with the City’s adopted Commute Trip Reduction (CTR) Plan.</td>
<td>Changed emphasis to broader Transportation Demand Management. CTR discussion redundant with 5.4.</td>
<td><strong>The City of Mercer Island encourages</strong> measures to reduce vehicular trips using <strong>Transportation Demand Management strategies such as preferential parking for carpools/vanpools, alternative work hours, bicycle parking, and distribution of transit and ridesharing information, consistent with the City’s adopted Commute Trip Reduction (CTR) Plan.</strong></td>
</tr>
<tr>
<td>2.5 Transportation investments are expected to be financed primarily from local sources. However, the City of Mercer Island will explore all available sources for transportation funding, including the local options authorized by the state legislature, if implementation of the adopted land use vision results in the need for more capital facilities than can be financed through current financial resources.</td>
<td>Edited to reflect main policy intent.</td>
<td><strong>Transportation investments are expected to be financed primarily from local sources. However, the City of Mercer Island will explore all available sources for transportation funding, including grants and local options as the local options authorized by the state legislature, if implementation of the adopted land use vision results in the need for more capital facilities than can be financed through current financial resources.</strong></td>
</tr>
<tr>
<td>3.1 <strong>Delete policy</strong></td>
<td>Redundant with 1.1.</td>
<td><strong>The City of Mercer Island will work to reduce total vehicle miles traveled through implementation of transportation demand management techniques.</strong></td>
</tr>
</tbody>
</table>
| 4.1 | The City of Mercer Island will continue to work with King County metro during the update of its Six-Year Plan; the City will also work with Sound Transit and other transit providers during the creation and amendment of their long range system plans to develop adequate transit services to meet the needs of the island, including:  
- Maintain and encourage public transit service on the Island;  
- Provide convenient transit connections to regional activity centers, including the Seattle CBD, Bellevue, the University of Washington and other centers;  
- Convenient transit service for travel on Mercer Island; and  
- Potential new services including demand responsive transit for the general public, subscription bus, custom bus services or school buses on a space available basis. | Updated planning context. | The City of Mercer Island will continue to work with King County metro during the update of its Six-Year Plan; the City will also work with Sound Transit and other transit providers during the creation and amendment of their long range system plans to develop adequate transit services to meet the needs of the island, including:  
- Maintain existing and encourage new public transit service on the Island;  
- Provide convenient transit connections to regional activity centers, including the Seattle CBD, Bellevue, the University of Washington and other centers;  
- Convenient transit service for travel on Mercer Island and enhance connections to regional transit stations including the proposed Link light rail station; and  
- Investigate potential new services including demand responsive transit for the general public, subscription bus, or custom bus services, or school buses on a space available basis. |
| 4.7 | **New policy** | Added for consistency with Countywide Planning Policies, including T-9: Promote the mobility of people and goods through a multi-modal transportation system based on regional priorities consistent with VISION 2040 and local comprehensive plans. | When applicable, employ Complete Streets principles to roadway design, encouraging non-motorized travel and facilitating the movement of people. |
| 5.1 | **Delete policy** | Redundant. | The City of Mercer Island will meet the requirements of the Growth Management Act. |
| 5.5 | The City of Mercer Island will assist regional agencies in the revisions and implementation of the Destination 2030 plan (PSRC), the Regional Transit Plan, and the WSDOT System Plan. | Updated the Planning context. | The City of Mercer Island will assist regional agencies in the revisions and implementation of the Destination 2030 plan (PSRC), the Regional Transit Plan, and the WSDOT System Plan. Transportation 2040 (PSRC), WSDOT Highway System Plan, and the 2007-2026 Washington Transportation Plan and subsequent versions of these documents. |
| 5.7 | **New policy** | Added for consistency with Countywide Planning Policies, including EN-19: Promote energy efficiency, conservation methods and sustainable energy sources to support climate change reduction goals, and EN-21: Formulate and implement climate change adaptation strategies that address the impacts of climate change to public health and safety, the economy, public and private infrastructure, water resources, and habitat. | Comply with state initiatives and directives related to climate change and greenhouse gas reduction. Identify actions that improve air quality, reduce air pollutants and promote clean transportation technologies. |
| 6.3 | In the project development review process, the City of Mercer Island will evaluate transportation implications including:  
• Congestion and level of service;  
• Connectivity of transportation facilities and services from a system perspective;  
• Transit requirements for travelers and for transit operators;  
• Facilities and needs for travel by non-motorized travel modes; and  
• Potential density bonuses in return for inclusion of transit-supportive actions. | Focused the policy on transportation-related items; minor edits. | In the project development review process, the City of Mercer Island will evaluate transportation implications including:  
• Congestion and level of service;  
• Connectivity of transportation facilities and services from a system perspective;  
• Transit requirements for travelers and for transit operators; and  
• Non-motorized facilities and needs for travel by non-motorized travel modes; and  
• Potential density bonuses in return for inclusion of transit-supportive actions. |
<p>| 6.9 | The City recognizes that travel by single occupant vehicle is, and for the foreseeable future may continue to be, the dominant mode of transportation. The City will require adequate parking and other automobile facilities to meet anticipated demand generated by new development. | Simplified policy to its main intent. | The City recognizes that travel by single occupant vehicle is, and for the foreseeable future may continue to be, the dominant mode of transportation. The City will require adequate parking and other automobile facilities to meet anticipated demand generated by new development. |
| 7.5 | Where a need is demonstrated, consider the use of devices to improve safety of pedestrians crossing streets. | Clarified policy. | Where a need is demonstrated, consider the use of devices to improve safety of pedestrians crossing streets: signage, traffic controls, or other strategies to enhance pedestrian crossings. |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>New policy</th>
<th>Added for consistency with Countywide Planning Policies, including T-16: Protect the transportation system (e.g. roadway, rail, transit, air and marine) against major disruptions by developing prevention and recovery strategies and by coordinating disaster response plans.</th>
<th>Coordinate with local and regional emergency services to develop priority transportation corridors and develop coordinated strategies to protect and recover from disaster.</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.7</td>
<td></td>
<td>Delete policy</td>
<td>Removed vague policy.</td>
<td>The City of Mercer Island shall use a consistent approach to resolve neighborhood street issues.</td>
</tr>
<tr>
<td>9.1</td>
<td>The City of Mercer Island will maintain comprehensive street classification guidelines that determine the appropriate function, capacity, and improvement needs for each street/roadway.</td>
<td>Minor edits.</td>
<td>The City of Mercer Island will maintain comprehensive street classification guidelines and standards that determine the appropriate function, capacity, and improvement needs for each street/roadway, while minimizing construction and neighborhood impacts.</td>
<td></td>
</tr>
<tr>
<td>9.5</td>
<td>The City of Mercer Island establishes Level of Service (LOS) “C” defined as stable traffic flow with acceptable delays at intersections as its transportation level of service standard.</td>
<td>Recommend change from LOS C to LOS D as the City’s standard.</td>
<td>The City of Mercer Island establishes Level of Service (LOS) “C” defined as stable traffic flow with acceptable delays at intersections as its transportation level of service standard for arterial streets.</td>
<td></td>
</tr>
<tr>
<td>10.1</td>
<td>Use the level of service standard to evaluate the performance of the transportation system to guide future system improvements and funding.</td>
<td>Added section for consistency with Countywide Planning Policies including T-19: Design roads and streets, including retrofit projects, to accommodate a range of motorized and non-motorized travel modes in order to reduce injuries and facilities and to encourage non-motorized travel. The design should include well-defined, safe and appealing spaces for</td>
<td>Use the level of service standard to evaluate the performance of the transportation system and to guide future system improvements and funding. Emphasize projects and programs that focus on the movement of people and provide alternatives to driving alone.</td>
<td></td>
</tr>
<tr>
<td>10.3</td>
<td><strong>Delete policy</strong></td>
<td>No longer a requirement.</td>
<td>Consistent with King County’s countywide policies requirements, the City of Mercer Island establishes mode split goals for work trip travel to the island as follows: transit 0.31%, carpool/vanpool trip 16.45% and single occupancy vehicles 83.24%.</td>
<td></td>
</tr>
<tr>
<td>10.3</td>
<td><strong>New policy</strong></td>
<td>Policy required by GMA; RCW 36.70A.070 Comprehensive Plans - Mandatory Elements: A transportation element shall include the following subelements: C. If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that the level of service standards will be met; and (b): local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development.</td>
<td>Implement the following strategy when vehicle capacity or funding is insufficient to maintain the LOS standard: (1) seek additional funding for capacity improvements, (2) explore alternative, lower-cost methods to meet level of service standards (e.g., transportation demand management program, bicycle corridor development or other strategies), (3) reduce the types or size of development, and (4) reevaluate the level of service standard to determine how it might be adjusted to meet land use objectives.</td>
<td></td>
</tr>
<tr>
<td>10.6</td>
<td><strong>Delete policy</strong></td>
<td>Redundant with Policy 7.3.</td>
<td>Monitor the transportation impact of growth in households and employment in relation to the land use assumptions used to forecast traffic growth in the Transportation Element.</td>
<td></td>
</tr>
</tbody>
</table>
Enclosed is the Planning Commission’s recommendation for the required 2015 Comprehensive Plan update. During the update process, the Planning Commission recognized the limited scope of work, due to schedule and time. We also understand that the Town Center Visioning Subcommittee is working on visioning, and later, changes to the development regulations and potential Comprehensive Plan amendments.

Based on these factors, the Planning Commission would request that the following to be considered as future work program items, as time and budget allows:

a) complete an update that provides for a more cohesive flow, which takes into consideration the various updates overtime;

b) ensure the Comprehensive Plan is consistent with any new goals developed by the Town Center Visioning Subcommittee;

c) ensure consistencies throughout the document, not just with the updated information reflecting the most recent Countywide Planning Policies;

d) ensure a thorough consistency with the development code.

After eight meetings working on the 2015 Comprehensive Plan Update, we hope that the City Council will find our recommendation of help.
To: Planning Commission  
From: Scott Greenberg, Development Services Group Director  
Subject: Agenda Item 2 - DCI14-001: Code Interpretation Request by Sound Transit  
Date: September 10, 2014 for the September 17, 2014 Meeting

Exhibits: 1. Application for Code Interpretation  
2. Draft Code Interpretation

Action Requested: Move to: Approve Administrative Interpretation 14-01 as provided in Exhibit 2.

Summary of the Request
Four policies were added to ensure compliance with King County Countywide Planning Policies, and GMA requirements. These policies apply Complete Streets principles where feasible, comply with state directives related to climate change, ensure emergency management coordination, and require a strategy for decision making when funding is insufficient to comply with an adopted LOS standard. A few policies were deleted because they were redundant, no longer required by the Growth Management Act, or were vaguely written.  

On August 19, 2014, the City received a code interpretation request from Sound Transit. See Exhibit 1. Sound Transit has requested that the City interpret its development code to provide that the City will review applications for Shoreline Conditional Use Permits using the same process that the City uses to review applications for Shoreline Variance, as set forth in Mercer Island City Code (MICC) 19.15.010.E.

Pursuant to MICC 19.15.010.E, the Code Official (Development Services Group Director or designee) is authorized to issue interpretations of the development code, MICC Title 19. According to MICC 19.15.020.L “Upon request or as determined necessary, the code official shall interpret the meaning or application of provisions of the development code. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also request a review of the code official’s interpretation by the planning commission.” (emphasis added)

Because the code interpretation request was requested by a regional public agency, I have decided to bring the proposed code interpretation to the Planning Commission for your determination/decision.
Sound Transit’s letter (Exhibit 1) accurately describes the existing development code language and need for the interpretation. In summary, the City’s existing Shoreline Master Program does not classify light rail facilities as either permitted or prohibited uses. State shoreline rules allow uses that are not classified in a local Shoreline Master Program as conditional uses. In addition, the State Growth Management Act provides that light rail facilities are “essential public facilities” that cannot be precluded by local comprehensive plans or development regulations.

Therefore, Sound Transit is allowed to apply for a Shoreline Conditional Use Permit under State law.

The City’s Shoreline Master Program provides procedures for review and decision on Shoreline Substantial Development Permits and Shoreline Variances--but not for Shoreline Conditional Use Permits. However, the State shoreline rules establish a process for review of Shoreline Conditional Use Permits that is identical to the process for review of Shoreline Variances. In both cases, the City makes a decision, which is then reviewed by the State Department of Ecology, and Ecology makes the final determination to approve or deny the request.

Local and state review of shoreline conditional use permits and variance applications both require the exercise of similar degrees of discretion. The City’s review of such applications using the same process and the same decision-maker is appropriate, just as Ecology uses the same process for its review of such applications. MICC 19.15.010.E states that the Planning Commission makes the City’s decision on an application for shoreline variances, with the Planning Commission’s decision appealable to the Shorelines Hearings Board (after the final decision by Ecology). Sound Transit has asked the City to interpret its code to apply this same Planning Commission process to applications for shoreline conditional use permits, and asks that the Planning Commission review the applications for compliance with the criteria in WAC 173-27-160.

The interpretation is consistent with the City’s prior application of the code in 2006 when the Planning Commission approved a Shoreline Conditional Use Permit for the “Sewer Lake Line”.
August 18, 2014

Mr. Scott Greenberg  
Director, Design Services Group  
City of Mercer Island  
9611 S.E. 36th Street  
Mercer Island, WA 98040

Dear Mr. Greenberg,

Please accept this letter as Sound Transit’s request for an interpretation of the meaning and application of Chapter 19.15 of the Mercer Island City Code.

For the reasons discussed below and pursuant to MICC 19.15.020.L, Sound Transit respectfully requests that the City interpret its development code to provide that the City will review applications for shoreline conditional use permits by using the same process that the City uses to review applications for shoreline variances, as set forth in MICC 19.15.010.E.

BACKGROUND TO THIS REQUEST

Sound Transit is a regional transit authority created pursuant to RCW 81.104 and 81.112 and authorized to implement regional transportation facilities within Pierce, King, and Snohomish counties. An element of the voter-approved system plan is the East Link Project light rail system across Lake Washington that will link together Seattle, Mercer Island, Bellevue, and Redmond. The light rail system will cross Mercer Island within the existing I-90 right-of-way and will pass through the City’s shoreline district on both the east and west shores of the City.

The City’s existing shoreline master program, codified in MICC Chapter 19.07.110, does not classify light rail transit facilities as either permitted or prohibited uses. Light rail transit facilities are not addressed in the use matrix in 19.07.110.B.3, or elsewhere in the master program. The state shoreline rules, however, do allow uses which are not classified in a local master program to be permitted as conditional uses and sets forth the standards for issuance of such shoreline conditional use permits. These rules provide as follows at WAC 173-27-160:

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

Central Puget Sound Regional Transit Authority • Union Station  
401 S. Jackson St. Seattle, WA 98104-2826 • Reception: (206) 398-5000 • FAX: (206) 398-5499  
www.soundtransit.org
(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
(b) That the proposed use will not interfere with the normal public use of public shorelines;
(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Thus, Sound Transit is allowed by state law to apply for a shoreline conditional use permit for light rail transit facilities, and the state rules provide that the City is to use the standards in subsections 1 and 2 when reviewing such an application. Additional legal authority for this approach exists under the Growth Management Act (RCW 36.70A.200) which provides that light rail facilities are essential public facilities which may not be precluded by local comprehensive plans or development regulations.

Sound Transit’s only alternative would be to ask the City to adopt a stand-alone amendment to its existing shoreline master program, and then ask Ecology to approve this stand-alone amendment even though the City already has adopted a comprehensive update to its shoreline master program which is pending review by the Department of Ecology. We discussed this alternative with Tom Clingman, the Department of Ecology’s Policy and Legislative Lead for Shorelands, and he stated that Sound Transit’s “...need for timely action is not well supported by the Limited SMP Amendment path.” In other words, Ecology’s position is that the time it would take the City to adopt a stand-alone amendment, and then for Ecology to approve such an amendment, would not support Sound Transit’s schedule need to commence work within the City’s shoreline district.

The City’s development code (MICC 19.15.010.E) sets forth the process for reviewing applications for shoreline substantial development permits and shoreline variances, but does not set forth the process for reviewing shoreline conditional use permits. The state shoreline rules, however, set forth a process for review of decisions by local governments on applications for shoreline conditional use permits that is identical to the process for review of applications for shoreline variances. Local decisions on both kinds of applications are reviewed by Ecology, and it is Ecology that makes the final “determination to approve, approve with conditions, or deny” pursuant to the criteria in WAC 173-27-160 for shoreline conditional use permits, and the criteria in WAC 173-27-170 for shoreline variances.

Local and state review of shoreline conditional use permits and variance applications both require the exercise of similar degrees of discretion, and it would be appropriate for the City to review such applications using the same process and the same decision-maker, just as Ecology uses the same process for its review of such applications. MICC 19.15.010.E states that the Planning Commission makes the City’s decision on an application for a shoreline variance, with the Planning Commission’s decision appealable to the Shorelines Hearings Board (after the final decision by Ecology). Sound Transit asks the City to interpret its code to apply
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this same Planning Commission process to applications for shoreline conditional use permits, and asks that the Planning Commission review the applications for compliance with the criteria in WAC 173-27-160. The decision of the Planning Commission then would be appealable to the Shorelines Hearings Board, just as the Planning Commission decision on a shoreline variance is appealable.

This requested interpretation is generally consistent with City's prior application of its code in 2006 when the Mercer Island Planning Commission issued a shoreline conditional use permit for a "Sanitary Sewer Lakeline Replacement," File # CUP05-005.

Thank you for your thoughtful consideration of this request for interpretation.

Sincerely,

Stephen G. Sheedy  
Senior Legal Counsel

cc: Ellie Ziegler
TO: DSG Staff  
FROM: Mercer Island Planning Commission  
DATE: September 17, 2014  
RE: Review of Shoreline Conditional Use Permits

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MICC SECTION(S) INTERPRETED  
MICC 19.15.010.E

AUTHORITY  
Pursuant to Mercer Island City Code (MICC) 19.15.010.E, the Code Official (Development Services Group Director or designee) is authorized to issue interpretations of the development code, MICC Title 19. According to MICC 19.15.020.L “Upon request or as determined necessary, the code official shall interpret the meaning or application of provisions of the development code. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also request a review of the code official’s interpretation by the planning commission.” (emphasis added)

ISSUE(S)  
The City’s existing Shoreline Master Program (MICC 19.07.100 and 19.07.110) does not classify light rail facilities as either permitted or prohibited uses. State shoreline rules allow uses that are not classified in a local Shoreline Master Program as conditional uses. This interpretation establishes the process and criteria for review and approval of shoreline conditional uses.

FINDINGS  
1. RCW 36.70A.200(1) defines regional transit authority facilities (such as light rail) as “essential public facilities.”

2. RCW 36.70A.200(5) states “No local comprehensive plan or development regulation may preclude the siting of essential public facilities.”

3. MICC 19.07.110.B.3 establishes permit requirements for shoreline uses and development. Listed uses can be categorically exempt, require a Shoreline Exemption Permit, require a
Shoreline Substantial Development Permit, or are not permitted. Uses not listed are not permitted. Light rail facilities are not listed as a permitted or prohibited use.

4. MICC 19.07.100(E), 19.07.110(Table B), and 19.07.110(D)(5) references the requirement for a conditional use permit in the shoreline, but does not define the process.

5. WAC 173-27-160(3) states: “Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.”

6. Procedures for review and decision on shoreline permits and exemptions are in MICC 19.15.010.E. This section provides procedures for review and decision on Shoreline Substantial Development Permits and Shoreline Variances--but not for Shoreline Conditional Use Permits.

7. WAC 173-27-180 through 210 establishes identical review procedures for both shoreline variances and shoreline conditional use permits. In both cases, the City makes a decision, which is the reviewed by the State Department of Ecology, and Ecology makes the final determination to approve or deny the request.

8. MICC 19.15.010.E states that the Planning Commission makes the City's decision on an application for a CUP and shoreline variances, with the Planning Commission's decision appealable to the Shorelines Hearings Board (after the final decision by Ecology).

9. A Shoreline Conditional Use Permit was required for the “Sewer Lake Line” in 2006. In that case, the Planning Commission reviewed and approved the permit application using the criteria in WAC 173-27-160.

CONCLUSIONS AND INTERPRETATION

Light rail facilities are an “essential public facility” that cannot be precluded by a local comprehensive plan or development regulation. The MICC precludes light rail facilities in the shoreline area because light rail facilities are not listed as a permitted or prohibited use. Therefore, light rail facilities may be authorized as shoreline conditional uses if in compliance with the criteria in WAC 173-27-160.

The MICC contains procedures for review and decision on shoreline permits, exemptions and variances, but not shoreline conditional use permits. Shoreline variances and conditional use permits have identical review procedures under state law. Local and state review of shoreline conditional use permits and variance applications both require the exercise of similar degrees of discretion, and it would be appropriate for the City to review such applications using the same process and the same decision-maker, just as Ecology uses the same process for its review of such applications.

The MICC requires Planning Commission review for conditional use permits and shoreline variances. A 2006 application for a shoreline conditional use permit was also reviewed by the Planning Commission. Therefore, it is appropriate for the Planning Commission to review and make the local decision on shoreline conditional use applications.