PLANNING COMMISSION
REGULAR MEETING AGENDA

CALL TO ORDER & ROLL CALL  7:30 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
(Note: The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes)

APPROVAL OF MINUTES  Minutes from October 7, 2009

REGULAR BUSINESS  7:50 PM
Agenda Item #1 (Carried over from October 7, 2009)
Shoreline Master Program update workshop – Review of Shoreline Environment Designations

Agenda Item #2 (If time allows)
Shoreline Master Program update workshop – Review of Shoreline Use Regulations

OTHER BUSINESS  Council Liaison Report
                 Staff Comments
                 Planned Absences for Future Meetings
                 Announcements & Communications
                 Next Regular Meeting: November 4, 2009

ADJOURN

AGENDA TIMES ARE APPROXIMATE
CALL TO ORDER:
Chair Cooper called the meeting to order at 7:35 PM in the Council Chambers, at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:
Chair Adam Cooper, Vice Chair Eric Laschever, Commissioners Kristen White and Jon Friedman were present. Commissioners Steve Marshall, Bryan Cairns and Council Liaison El Jahncke were excused. City staff was represented by Don Cole, Building Official; Ed Holmes, Police Chief; Katie Knight, City Attorney; James Mason, Deputy City Manager; Shane Moloney, Assistant City Attorney; Manny Ocampo, Interim Parks and Recreation Director; Travis Saunders, Planner; George Steirer, Principal Planner; Joyce Trantina, Development Services Analyst; and Chris Tubbs, Fire Chief.

APPEARANCES:
Tara Johnson of 2438 62nd Avenue SE provided comment regarding temporary encampments.

Sue Stewart of 3205 84th Avenue SE provided comment regarding the Shoreline Master Program update.

Steve Oaks of 2423 71st Avenue SE provided comment regarding temporary encampments.

Rita Moore of 4509 Ferncroft Road provided comment regarding the Shoreline Master Program update.

MINUTES:
Commissioner Friedman motioned to amend the minutes, having staff revisit the audio tape from September 16, 2009 to confirm the Commissioner's request of staff, detailed under item 1 of the minutes. Commissioner White seconded the motion. The Planning Commission approved the motion unanimously. Commissioner Friedman motioned to approve the minutes as amended. Commissioner White seconded the motion. The Planning Commission unanimously approved the minutes from the September 16, 2009 meeting, as amended.

REGULAR BUSINESS:
Agenda Item #1: Overview for Discussion of Tent city experience and Temporary Encampment regulations

Staff, represented by Katie Knight, George Steirer, Shane Moloney, Ed Holmes, Chris Tubbs, Joyce Trantina, and Don Cole provided information to the Commission.

The Commission asked questions of staff and provided them with the following work items to address for the November 18, 2009 meeting:

- Review peer jurisdiction provisions regarding return timeframes for temporary encampments
- Review of church sidewalk monitor requirements
- Review of definitions
- Provide Woodinville case law
• Provide any case law regarding appeals to temporary encampment ordinances
• Provide information if SHARE/WHEEL has challenged any adopted temporary encampment ordinances
• Invite a representative from SHARE/WHEEL to the November 18, 2009 meeting

**Agenda Item #2: Shoreline Master Program update workshop – Review of Shoreline Environment Designations**

Due to the lateness of the evening, this agenda item was not heard.

**COUNCIL LIAISON REPORT:**
None

**STAFF COMMENTS:**
A change in the Planning Commission schedule was provided to the Commissioners.

**PLANNED ABSENCES FOR FUTURE MEETINGS:**
None

**ANNOUNCEMENTS AND COMMUNICATIONS:**
None

**NEXT REGULAR MEETING:**
The next regular meeting is scheduled for October 21, 2009.

**ADJOURNMENT:**
The Planning Commission meeting was adjourned at 10:14 PM.

Respectfully submitted by Travis Saunders, Planner
To: City of Mercer Island Planning Commission  
From: Travis Saunders, Planner  
Re: October 21, 2009 Shoreline Master Program (SMP) Update Workshop  
Date: October 15, 2009

Commissioners and Councilmember Jahncke:

This evening’s Shoreline Master Program update workshop contains the following agenda items:

**Agenda item 1:**

As carried over from the October 7, 2009 meeting, the Commission will be reviewing shoreline environment designations (WAC 173-26-211) A staff presentation will provide information on the topic, including existing designations and conditions, state guidelines, and the City’s scientific consultant’s recommendations. Following the presentation, discussion, and deliberation, the Commission’s preliminary recommendation is requested for shoreline environment designations. Please bring your packet materials from the October 7th meeting related to the SMP.

**Agenda item 2 (If time allows):**

The Commission will be reviewing shoreline uses (WAC 173-26-241). A staff presentation will provide information on the WAC guidelines and existing use regulations. Following the presentation, discussion, and deliberation, the Commission’s preliminary recommendation is requested for shoreline use regulations.

Itemized below are the Shoreline Master Program update Exhibits for the October 21, 2009 Planning Commission meeting. (Exhibits 1-7 are carried over from October 7, 2009.) Exhibits A-C are included in this packet:

**Exhibit 1:** Draft Shoreline Vegetation Language  
**Exhibit 2:** WAC 173-26-211 – Designation Guidelines  
**Exhibit 3:** Current Mercer Island Code, MICC 19.07.110(B) – Shoreline Designated Environments  
**Exhibit 4:** Current Shoreline Environment Map – MICC 19.07.110(B)(2) Appendix F  
**Exhibit 5:** Shoreline Designation Recommendations by The Watershed Company  
**Exhibit 6:** Proposed Designation Map  
**Exhibit 7:** Analysis of Existing Zoning Code Related to Shoreline Clubs.
Exhibit A: WAC Guidelines 173-26-241 for Shoreline Uses

Exhibit B: Existing Mercer Island Code - Use Table

Exhibit C: September 24, 2009 Letter from Sound Transit

Should you have questions regarding the materials or the update process, feel free to contact me.
19.07.100 Shoreline areas.
   B. Site Development.
      1. A 25-foot setback from OHW is required.
      2. If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland’s boundary.
      3. Within the 25-foot shoreline setback, a 20-foot vegetation buffer shall be established, measured landward from the OHW. 25% of the buffer area shall contain vegetation coverage. The five feet nearest the OHW shall contain at least 25% native coverage. A shoreline vegetation plan shall be submitted to the City for approval. A variety of ground cover, shrubs, and trees that provides lake shading is encouraged.
   C. Site Coverage. The amount of impervious surfaces which will be permitted is as follows:

<table>
<thead>
<tr>
<th>Distance from OHW</th>
<th>Impervious Surface Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 25 feet</td>
<td>10% – No building(s) allowed</td>
</tr>
<tr>
<td>26 – 50 feet</td>
<td>30% – Structure(s) allowed</td>
</tr>
</tbody>
</table>
WAC 173-26-211 Environment designation system.

(1) Applicability.

This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) Basic requirements for environment designation classification and provisions.

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

---

Diagram summarizing the components of the environment designation provisions. (This is for illustration purposes only and does not supplement or add to the language in the chapter text.)
(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan Future Land Use Map as described in WAC 365-195-300 (2)(d).

(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030(2)(c) within the local government’s jurisdiction in a manner consistent with WAC 173-26-211(4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be re-designated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

(3) **Consistency between shoreline environment designations and the local comprehensive plan.**

As noted in WAC 173-26-191(1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.**

The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.**

Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses,
especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) Sufficient infrastructure.

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.


(a) Requirements

For each environment designation, the shoreline master program shall describe:

(i) Purpose statement.

The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) Classification criteria.

Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) Management policies.

These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) Regulations.

Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) The recommended classification system.

The recommended classification system consists of six basic environments:
"High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) Alternative systems

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) The Designations

(a) "Natural" environment.

(i) Purpose.

The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation local should include planning for restoration of degraded shorelines within this environment.

(ii) Management policies.

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:
   • Commercial uses.
   • Industrial uses.
   • Nonwater-oriented recreation.
   • Roads, utility corridors, and parking areas that can be located outside
of "natural"-designated shorelines.

(C) Single family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the Natural Environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(iii) Designation Criteria.

A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the
shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the “natural” designation, except where the existing agricultural operations involve low very intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the “natural” designation.

(b) "Rural conservancy" environment.

(i) Purpose.

The purpose of the "rural conservancy" environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development and other natural resource based low-intensity uses.

(ii) Management policies.

(A) Uses in the "rural conservancy" environment should be limited to those which sustain the shoreline area’s physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent with provisions of this chapter may be allowed. Low intensity, water-oriented commercial and industrial uses may be permitted in the
limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the development.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of it’s inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. However an alternative standard developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(V) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be
inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) Designation Criteria

Assign a "rural conservancy" environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as "rural areas of more intense development," as provided for in chapter 36.70A RCW, may be designated an alternate shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter. "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "rural conservancy" environment that allows mining and associated uses in addition to other uses consistent with the rural conservancy environment.

(c) "Aquatic" environment.

(i) Purpose.

The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) Management policies.

(A) Allow new over-water structures only for water-dependent uses, public
access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(iii) Designation Criteria

Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) "High-intensity" environment.

(i) Purpose.

The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) Management policies.

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non-water oriented
uses should not be allowed except as part of mixed use developments. Non-water oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200 (3)(d).

If an analysis of water-dependent use needs as described in WAC 173-26-201(3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and non-water dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of non-water oriented uses with water oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) Designation Criteria

Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070 if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) "Urban conservancy" environment.

(i) Purpose.

The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.
(ii) Management policies.

(A) Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) Designation Criteria

Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "rural areas of more intense development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, floodplain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW
36.70A.170 and WAC 365-190-070 may be assigned a designation within the
"urban conservancy" environment that allows mining and associated uses in
addition to other uses consistent with the urban conservancy environment.

(f) "Shoreline residential" environment.

(i) Purpose.

The purpose of the "shoreline residential" environment is to accommodate
residential development and appurtenant structures that are consistent with
this chapter. An additional purpose is to provide appropriate public access
and recreational uses.

(ii) Management policies

(A) Standards for density or minimum frontage width, setbacks, lot coverage
limitations, buffers, shoreline stabilization, vegetation conservation,
critical area protection, and water quality shall be set to assure no net
loss of shoreline ecological functions, taking into account the
environmental limitations and sensitivity of the shoreline area, the level
of infrastructure and services available, and other comprehensive
planning considerations.

Local governments may establish two or more different "shoreline
residential" environments to accommodate different shoreline densities
or conditions, provided both environments adhere to the provisions in
this chapter.

(B) Multifamily and multi-lot residential and recreational developments
should provide public access and joint use for community recreational
facilities.

(C) Access, utilities, and public services should be available and adequate to
serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) Designation Criteria

Assign a "shoreline residential" environment designation to shoreline areas
inside urban growth areas, as defined in RCW 36.70A.110, incorporated
municipalities, "rural areas of more intense development," or "master planned
resorts," as described in RCW 36.70A.360, if they are predominantly single-
family or multifamily residential development or are planned and platted for
residential development.
19.07.110(B) - Shoreline Designated Environments.

1. Designated Environments. Different areas of the city’s shoreline have different natural characteristics and development patterns. As a result, three shoreline designated environments are established to regulate developments and uses consistent with the specific conditions of the designated environments and to protect resources of the Mercer Island shoreline jurisdiction. They are:

   a. Conservancy Environment. This environment constitutes large undeveloped areas with some natural constraints such as wetland conditions, containing a variety of flora and fauna. The purpose of this environment is to protect and manage the existing natural resources in order to achieve sustained resource utilization and provide recreational opportunities.

   b. Urban Park. This environment consists of shoreline areas designated for public access and active and passive public recreation. It includes, but is not limited to, street ends, public utilities and other publicly owned rights-of-way. The uses located in this environment should be water-dependent and designed to maintain the natural character of the shorelines.

   c. Urban Residential. The purpose of this environment is to provide for residential and recreational utilization of the shorelines, compatible with the existing residential character in terms of bulk, scale and type of development.

2. Shoreline Environment Map. The map in Appendix F of this development code is the official map of the city designating the various shoreline environments and the shoreline jurisdiction within the city.
Shoreline Analysis Report Recommendations

6.0 SHORELINE MANAGEMENT RECOMMENDATIONS

The following are recommended actions for translating inventory and characterization findings into proposed SMP policies, regulations, environment designation boundaries and restoration strategies for areas within the shoreline jurisdiction.

6.1 SHORELINE MASTER PROGRAM

6.1.1 Shoreline Environment Designation Provisions

- Areas currently developed as single family, where those uses are allowed by the Comprehensive Plan and Zoning Code, should be designated as Urban Residential.

- Continue the Conservancy environment designation for Luther Burbank Park to encourage the enhancement of ecological functions for the undeveloped portions of the shoreline and retaining future options for passive and active shoreline recreation and public access.

- Continue the Urban Park designation for all other city-owned parks, street ends, and public access points. Assign this designation for any future park or street end developments along the shoreline to provide and maintain additional public access to the City’s shoreline areas.

- Consider adding a new Aquatic environment designation for jurisdictional shoreline waterward of the ordinary high-water mark. This new designation would be consistent with the recommended designations in Department of Ecology’s Shoreline Master Program Guidelines (WAC 173-26-201(3)(f)).
Appendix F - Proposed Shoreline Environment Designations

Shoreline Master Program - City of Mercer Island

1 All areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned the “Urban Conservancy” designation until the shoreline can be redesignated through a master program amendment. In the event of a mapping error, the City of Mercer Island shall rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and Chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

2 All areas waterward of the Ordinary High Water Mark are designated “Aquatic.”

Produced by the City of Mercer Island, April 2009. All rights reserved. No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.
Analysis of Existing Zoning Code Related to Shoreline Clubs

The current Mercer Island City Code (MICC) provides for allowed uses within Single-family zones. (MICC 19.02.010) The City contains two private clubs and one retirement community with a marina that are within the shoreline jurisdiction, also subject to shoreline use regulations under MICC 19.07.110(B)(3). Staff review of the MICC finds there is potential for confusion related to shoreline clubs as an allowed use within single-family zones. The following analysis is prepared for the Commission:

MICC 19.02.010(C)(4) states that noncommercial recreation areas are allowed in single family zones when authorized by a conditional use permit. MICC 19.02.010(C)(6) allows for retirement homes in single family zones via a conditional use permit:

19.02.010 Single-family.

C. Conditional Uses. The following uses are permitted when authorized by the issuance of a conditional use permit when the applicable conditions set forth in this section and in MICC 19.15.020(G)(3) have been met:

4. Noncommercial recreational areas, subject to the conditions contained in subsection (A)(6) of this section:

(A.6. – Conditions:
  a. Access to local and/or arterial thoroughfares shall be reasonably provided.
  b. Outdoor lighting shall be located to minimize glare upon abutting property and streets.
  c. Major structures, ballfields and sport courts shall be located at least 20 feet from any abutting property.
  d. If a permit is required for a proposed improvement, a plot, landscape and building plan showing compliance with these conditions shall be filed with the city development services group (DSG) for its approval.)

6. Retirement homes located on property used primarily for a place of worship subject to the following conditions:

  a. Retirement home structures shall not occupy more than 20 percent of the lot; provided, the total lot coverage for the retirement home, the place of worship, and all other structures shall not exceed the lot coverage specified in MICC 19.02.020(D).
  b. A plot, landscape and building plan shall be filed with the design commission for its approval, and the construction and maintenance of buildings and structures and the establishment and continuation of uses shall comply with the approved plot, landscape and building plan. Alterations to the project are permitted only upon approval by the design commission of a new or amended plan.
  c. The number of dwelling units shall be determined by the planning commission upon examination of the following factors:
     i. Demonstrated need;
     ii. Location, size, shape and extent of existing development on the subject property;
     iii. Nature of the surrounding neighborhood; and
     iv. Legal assurances that the entire property remains contiguous, and that the retirement home is owned and controlled by the applicant religious organization.
  d. The retirement home shall be located at least 35 feet from all abutting property.
  e. Off-street parking shall be established and maintained at a ratio of one-half parking space for each dwelling unit.
Mercer Island code defines noncommercial recreational areas as:

**19.16.010 Definitions**

Noncommercial Recreational Area: A recreational area maintained and operated by a nonprofit club or organization with specified limitations upon the number of members or limited to residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests.

**Issue:** A read of the definition of noncommercial recreational area might lead one to believe that noncommercial recreational areas are allowed in a single-family zone only when they are operated by a nonprofit entity. The existing shore clubs are not listed as non-profit organizations in the Internal Revenue Service’s Publication 78.

**Staff Analysis:** A complete read of the definition of noncommercial recreational area also includes “or limited to residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests”. Due to the placement of the word “or” without separation between nonprofit club “or” organization, it would appear that an organization must be also be nonprofit; however the word “or” appears before residents of a block, subdivision...” Staff believes that the placement of “or” was intended to establish a list of entities that are considered to qualify. The list is:

1. Nonprofit clubs
2. Organization with specified limitations upon the number of members
3. Residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests.

Additionally, MICC 19.07.110(B)(3) Use Table further supports the allowance of public and private recreational facilities:

<table>
<thead>
<tr>
<th>Designated Environments</th>
<th>Conservancy Environment</th>
<th>Urban Park Environment</th>
<th>Urban Residential Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family residential and associated appurtenances</td>
<td>NP</td>
<td>NP</td>
<td>CE or SDP if the construction is not by an owner, lessee or contract purchaser for his/her own use or if alteration applies.</td>
</tr>
<tr>
<td>Activity</td>
<td>NP</td>
<td>NP</td>
<td>SDP, SEPA</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Multifamily residential</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public and private recreational facilities and parks</strong></td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
</tr>
<tr>
<td>Moorage facilities (including piers, docks, piles, lift stations, or buoys)</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
</tr>
<tr>
<td>Commercial marinas, moorage and storage of commercial boats and ships</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Bulkheads and shoreline protective structures</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SEP, SEPA</td>
</tr>
<tr>
<td>Breakwaters and jetties</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Utilities</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>CE, SEP or SDP, SEPA</td>
</tr>
<tr>
<td>Dredging</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
</tr>
<tr>
<td>Alterations over 250 cubic yards – outside the building footprint</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
</tr>
</tbody>
</table>

If a use is not listed in this matrix, it is not permitted.
WAC 173-26-241  Shoreline Uses.

(1) Applicability.

The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) General use provisions.

(a) Principles.

Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) Conditional uses.

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.
- To address cumulative impacts.
To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development in critical saltwater habitats.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government’s ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) Standards.

Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(a) Agriculture

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020 (3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master
programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet this requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220(5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to non-agricultural uses, shall be consistent the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

(b) Aquaculture.

Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

Aquaculture should not be permitted in areas where it would result in a net loss ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC
(c) Boating facilities.

For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) Commercial development.

Master programs shall first give preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over non-water-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water related or water enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water related or water enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water related or water enjoyment uses.

Master programs should require that public access and ecological restoration be
considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is propose for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit non-water-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master Programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access.

(e) Forest practices.

Local master programs should rely on the Forest Practices Act and rules implementing the act and the Forest and Fish Report as adequate management of commercial forest uses within shoreline jurisdiction. However, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to non-forest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to non-forest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed’s hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding
selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) Industry.

Master programs shall first give preference to water-dependent industrial uses over non-water-dependent industrial uses; and second, give preference to water-related industrial uses over non-water-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master Programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4). Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

New non-water-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.
(g) In-stream structural uses.

"In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) Mining.

Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources, and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

(A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and

(B) Be consistent with local government designation of mineral resource lands with long term significance as provided for RCW 36.70A.170(1)(c), RCW 36.70A.130, and RCW 36.70A.131; and

(C) Be based on a showing that mining is dependent on a shoreline location in the
city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (RCW 43.21C), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapter 78.44 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by paragraphs I and II above shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (RCW 43.21C) and the SEPA rules (WAC 197-11).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted local government shall require compliance with this subsection (D) to the extent that no such review has previously been conducted. Where there has been prior review, local
government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-27-231(3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) Recreational development.

Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State. Commercial recreational development should be consistent with the provisions for commercial development in (d) above. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) Residential development.

Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable
to divisions of land in shoreline jurisdiction.

Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

(i) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

(ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

(iii) Implement the provisions of WAC 173-26-211 and 173-26-221.

(k) Transportation and parking.

Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as
necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(I) Utilities.

These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are non-water-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.
The following table specifies the shoreline uses and developments which may take place or be conducted within the designated environments. It also specifies the type of shoreline permit required and further states the necessary reviews under the State Environmental Policy Act (SEPA). The uses and developments listed in the matrix are allowed only if they are not in conflict with more restrictive regulations of the Mercer Island development code and are in compliance with the regulations specified in subsection D of this section.

<table>
<thead>
<tr>
<th>Key:</th>
<th>CE: Categorically Exempt</th>
<th>SEP: Shoreline Exemption Permit</th>
<th>SDP: Substantial Development Permit</th>
<th>SEPA: Required Review under the State Environmental Policy Act</th>
<th>NP: Not Permitted Use</th>
</tr>
</thead>
</table>

The regulations of the shoreline master program apply to all shoreline uses and development, whether or not that development is exempt from the permit requirements (CE, SEP, or SDP).

<table>
<thead>
<tr>
<th>Designated Environments</th>
<th>Conservancy Environment</th>
<th>Urban Park Environment</th>
<th>Urban Residential Environment</th>
<th>Aquatic Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family residential and associated appurtenances</td>
<td>NP</td>
<td>NP</td>
<td>CE or SDP if the construction is not by an owner, lessee or contract purchaser for his/her own use or if alteration applies.</td>
<td></td>
</tr>
<tr>
<td>Multifamily residential</td>
<td>NP</td>
<td>NP</td>
<td>SDP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Public and private recreational facilities and parks</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Moorage facilities (including piers, docks, piles, lift stations, or buoys)</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Use</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td></td>
</tr>
<tr>
<td>Commercial marinas, moorage and storage of commercial boats and ships</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SEP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Bulkheads and shoreline protective structures</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SEP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Breakwaters and jetties</td>
<td>NP</td>
<td>NP</td>
<td>NP</td>
<td></td>
</tr>
<tr>
<td>Utilities</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>CE, SEP or SDP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Dredging</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td></td>
</tr>
<tr>
<td>Alterations over 250 cubic yards – outside the building footprint</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
<td></td>
</tr>
</tbody>
</table>

**Agriculture**

**Aquaculture**

**Boating Facilities**

**Commercial Development**

**Forest Practices**

**Industry**

**In-Stream Structural Uses**

**Mining**

**Transportation and Parking**

If a use is not listed in this matrix, it is not permitted.
September 24, 2009

City of Mercer Island Planning Commission
c/o Travis Saunders, Project Manager
Development Services
9611 SE 36th Street
Mercer Island, WA 98040

Re: Sound Transit’s comments on proposed Shoreline Master Program Update

Dear Mr. Saunders and Planning Commissioners:

I write on behalf of Sound Transit, to submit our comments and concerns on the current draft of Mercer Island’s proposed update to the Shoreline Master Program (“SMP”).

BACKGROUND TO OUR CONCERNS

Sound Transit’s concerns arise from its status as a regional essential public facility. Now that the voters have approved Proposition 1, Sound Transit will be constructing and operating its East Link light rail system from downtown Seattle across the I-90 bridge to Mercer Island and Bellevue, and then north and east to Redmond. This route will be located within the Mercer Island’s shoreline jurisdiction on the western and eastern shores, operating within the center roadway of the I-90 floating bridge. A transit stop is proposed to be located within the City near the existing METRO park-and-ride facility located outside of shoreline jurisdiction.

Sound Transit is its own lead agency for purposes of environmental review under the State Environmental Policy Act (“SEPA”), and the Federal Transit Administration (“FTA”) is lead agency for purposes of NEPA. Sound Transit issued a joint NEPA/SEPA Draft Environmental Impact Statement (“DEIS”) in November 2008. Utilizing the existing developed I-90 corridor is the only reasonable and practicable alternative for the proposed light rail segment from downtown Seattle through Mercer Island, and is the only alternative considered in the DEIS. The environmental impacts of this proposed segment of the route were addressed in the joint DEIS. The specific alignment for all segments of East Link will be selected by the Sound Transit Board of Directors after the environmental process is complete and with careful consideration of the information developed through that process. The Board comprises 18 members, 17 elected officials and the Secretary of the Washington State Department of Transportation. We hope that the City’s proposed SMP will
recognize Sound Transit’s role as the regional decision-maker for the regional light rail transit system and include requirements and standards that will facilitate the siting, permitting and development of this important regional transit system.

SMP’S OF OTHER JURISDICTIONS

To date, both the City of Seattle and the City of Redmond have recently revised their SMP’s to recognize the regional nature of Sound Transit’s light rail system. Sound Transit has begun working with the City of Bellevue as they develop their new SMP. For example, Seattle’s SMP states in 23.60.090(J) that “Light rail transit facilities approved pursuant to subsection 23.80.004(C) are permitted uses in all shoreline environments, and light rail bridges and tunnels are water-dependent uses when they must cross of a body of water regulated by Chapter 23.60.” The code section referred to, 23.80.004(C), is part of the Essential Public Facilities chapter of Seattle’s Land Use Code, which recognizes in subsection C.1 that “Light rail transit facilities necessary to support the operation and maintenance of a light rail transit system are permitted in all zones and shoreline environments within the City of Seattle.” This code section then goes on to authorize the imposition of “reasonable conditions in order to lessen identified impacts on surrounding properties”.

The City of Redmond’s new SMP, adopted by Ordinance 2410 on August 19, 2008 and conditionally approved by the Department of Ecology in July 2009, makes many changes requested by Sound Transit to accommodate the regional light rail system, including an amendment to Table 1 in Redmond Municipal Code (RMC) 20D.150.50-030, which sets forth the “Permitted Uses & Activities Chart” for the City’s shoreline environments. This table adds “Regional light rail transit structures & facilities” to the list of permitted uses in the shoreline environments in which Sound Transit will potentially need to locate its regional light rail system. The City also added a new definition of Regional Light Rail Transit System to RMC 20A.20: “A public rail transit line that operates at grade level, above grade level, or in a tunnel and that provides high-capacity, regional transit service owned or operated by a regional transit authority authorized under Chapter 81.112 RCW. A Light Rail Transit System may be designed to share a street right-of-way although it may also use a separate right-of-way.”

We request that Mercer Island adopt language similar to that which Redmond and Seattle have incorporated in their SMP updates.

SPECIFIC CONCERNS OF SOUND TRANSIT

There is no definition for “water-dependent transportation” or “non-water oriented transportation” and light rail transit is not defined or listed as a permitted use.

The draft SMP proposes the “Shoreline Residential” shoreline environment for the upland portions of the I-90 corridor, and the Aquatic shoreline environment for the portion of the I-90 corridor that is waterward of the Ordinary High Water Mark. The Shoreline Use table in Chapter 5.B lists “water-dependent transportation” as a conditional use in the Shoreline Residential environment and “non-water oriented transportation” as a
conditional use in the Aquatic environment. Management Policy c.1 for the Aquatic Environment also prohibits new over-water structures “except for water-dependent uses, public access, or ecological restoration.” There is no definition proposed for either “water-dependent transportation” or “non-water oriented transportation,” and light rail transit facilities are not referred to in the use tables or the definitions.

The combined effect of these proposed regulations is to create uncertainty about the status of Sound Transit’s light rail facilities. If the facilities are deemed to be “non-water-oriented transportation,” they will be prohibited in the Aquatic Environment because they will be over-water, and if they are deemed to be “water-dependent transportation,” they will require a shoreline conditional use permit in order to be located within the Shoreline Residential environment. We believe it is inconsistent with Sound Transit’s status as a regional essential public facility for its light rail transit facilities to be either prohibited or subject to a shoreline conditional use permit. The use of the City’s shoreline environments for light rail transit should not be subject to challenge. The City, of course, will retain its full authority under both the Shoreline Management Act and SEPA to appropriately mitigate adverse impacts of the proposed light rail system.

Sound Transit requests that the City adopt code language similar to that adopted by the City of Seattle, which defines light rail transit facilities as water-dependent uses when those facilities must use a bridge to cross a body of water. This would make the proposed facilities consistent with Management Policy c.1 for the Aquatic Environment. Sound Transit also request that the use charts in Chapter 5 specifically identify light rail transit facilities as permitted uses in both the Shoreline Residential and Aquatic environments.

CONCLUSION

We would very much appreciate your consideration of our concerns, and working with us to consider new language for the SMP that responds to those concerns. I can be reached at (206) 398-5135 or ellie.ziegler@soundtransit.org.

Sincerely,

Ellie Ziegler
Senior Environmental Planner

cc: Patrick J. Schneider, Foster Pepper
    James Irish, Sound Transit
    Steve Sheehy, Sound Transit