Wednesday, March 3, 2010

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 February 17, 2010

REGULAR BUSINESS 7:45 PM
Agenda Item #1
Shoreline Master Program update – Review of Preliminary Draft Shoreline Master Program

OTHER BUSINESS Council Liaison Report
- Staff Comments
- Planned Absences for Future Meetings
- Announcements & Communications
- Next Regular Meeting: March 17, 2010

ADJOURN

AGENDA TIMES ARE APPROXIMATE
CALL TO ORDER:
Chair Cooper called the meeting to order at 7:44 PM in the Council Chambers, at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:
Chair Adam Cooper, Vice-Chair Eric Laschever, Commissioners Bryan Cairns, Jon Friedman, Craig Olson and Kristen White were present. Commissioner Steve Marshall was excused. City staff was represented by Manny Ocampo, Development Services Group Interim Director; George Steirer, Principal Planner; and Travis Saunders, Planner

APPEARANCES:
None

MINUTES:
Commissioner Laschever motioned to approve the minutes from February 3, 2010. Commissioner Cairns seconded the motion. The Commission unanimously approved the minutes as written.

REGULAR BUSINESS:
Agenda Item #1: Shoreline Master Program update workshop – Review of Draft Shoreline Master Program

Travis Saunders, Planner, provided a staff presentation.

The Commission worked through exhibit edits provided in the Commission packet, approving certain staff edits, asking questions of staff, and requesting edits for staff to make in a future draft.

Commissioner Laschever volunteered to assist staff with drafting a new introduction and prologue for the Comprehensive Plan’s Shoreline Element.

The Commission directed staff to return with a draft that reflects the changes discussed during the meeting.

COUNCIL LIAISON REPORT:
Deputy Mayor El Jahncke gave the Council Liaison’s report. The 2010 Planning Commission Work Plan was adopted by the City Council, with the addition of a code amendment of Title 19 as staff resources allow; A briefing on the Pedestrian and Bicycle Facilities Plan was provided by Commissioner Cairns at the February 16, 2009 City Council meeting.
STAFF COMMENTS:
Manny Ocampo, Development Services Group Interim Director, commended Commissioner Cairns for his presentation to the City Council on February 16, 2010.

PLANNED ABSENCES FOR FUTURE MEETINGS:
None

ANNOUNCEMENTS AND COMMUNICATIONS:
None

NEXT REGULAR MEETING:
The next Planning Commission meeting is scheduled for March 3, 2010.

ADJOURNMENT:
The Planning Commission meeting was adjourned at 9:52 PM.

Respectfully submitted by Travis Saunders, Planner
To: City of Mercer Island Planning Commission and Deputy Mayor Jahncke
From: Travis Saunders, Planner
Re: March 3, 2010 Shoreline Master Program (SMP) Update Workshop
Date: February 25, 2010

Commissioners and Deputy Mayor Jahncke:

The enclosed Shoreline Master Program update packet contains the following agenda item:

Agenda item 1 – Review of Draft Shoreline Master Program:
During the February 17, 2010 Planning Commission meeting, the Commission reviewed their recommended modifications to the existing Mercer Island shoreline regulations, along with draft language for the Comprehensive Plan Shoreline Element. Following a page by page review of the exhibits, the Commission directed staff to return with a revised draft that reflects additional changes discussed during the meeting.

Exhibit 1 in the enclosed packet is a copy of the existing Mercer Island Code, Chapter 19.07 – Environment, with edits shown in a strike and delete format. In this exhibit, black text represents existing code. Non-bold red text is language approved by the Commission. Bold red text indicates a new staff edit. Several comments are provided for clarity.

Exhibit 2 in the packet is a copy of the existing Mercer Island Code, Chapter 19.16 – Definitions, with edits shown in a strike and delete format. All staff edits are shown in bold red, with notes provided for clarity.

Exhibit 3 in the packet is a copy of Mercer Island’s existing Shoreline Element of the Comprehensive Plan, which serves as the policies and goals of the Shoreline Master Program. In this exhibit, black text represents the existing document. Non-bold red text is language approved by the Commission at the February 17, 2010 meeting. Non-bold red text with the comment, “Edit per 2-17-10 PC Comments” is specific language changes prescribed by the Commission at the February 17, 2010 meeting. Bold red text with the comment, “Staff edit per 2-17-10 PC direction” is language drafted by staff in response to the Commission’s request of staff to develop language for its review.

Should you have questions regarding the materials or the update process, feel free to contact me.
Chapter 19.07
ENVIRONMENT

Sections:
19.07.010 Purpose.
19.07.020 General provisions.
19.07.030 Allowed alterations and reasonable use exception.
19.07.040 Review and construction requirements.
19.07.050 Critical area study.
19.07.060 Geologic hazard areas.
19.07.070 Watercourses.
19.07.080 Wetlands.
19.07.090 Wildlife habitat conservation areas.
19.07.100 Shoreline areas.
19.07.110 Shoreline management master program.
19.07.120 Environmental procedures.

19.07.010 Purpose.
These regulations are adopted for the following purposes:
A. To designate and protect critical areas as mandated by Chapter 36.70A RCW;
B. To include best available science in developing policies to protect the functions of critical areas as mandated by Chapter 36.70A RCW;
C. To prevent undue hazards to public health, safety, and welfare by minimizing impacts to critical areas;
D. To implement the city’s comprehensive plan; and
E. To respond to the goals and objectives of the Washington State Growth Management Act, while reflecting the local conditions and priorities of Mercer Island.
(Ord. 05C-12 § 5).

19.07.020 General provisions.
A. Applicability. Any alteration of a critical area or buffer shall meet the requirements of this chapter unless an allowed alteration or reasonable use exception applies pursuant to MICC 19.07.030.
B. Public Notice – Critical Area Determination. A critical area determination requires public notice pursuant to MICC 19.15.020(E) and this action may be appealed to the planning commission.
C. Critical Area Designation and Mapping. The approximate location and extent of critical areas are shown on the city’s critical area maps (Appendix E), as now existing or hereafter amended. These maps are to be used as a reference only. The applicant is responsible for determining the scope, extent and boundaries of any critical areas to the satisfaction of the code official.
D. Administrative Guidelines. The code official may adopt administrative guidelines describing specific improvements to critical areas that are based on best available science and satisfy the no net loss standard described in this chapter.
E. Compliance with Other Federal, State or Local Laws. All approvals under this chapter, including critical area determinations and reasonable use exceptions, do not modify an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation. (Ord. 05C-12 § 5).

19.07.030 Allowed alterations and reasonable use exception.

A. Allowed Alterations. The following alterations to critical areas and buffers are allowed and the applicant is not required to comply with the other regulations of this chapter, subject to an applicant satisfying the specific conditions set forth below to the satisfaction of the code official; and subject further, that the code official may require a geotechnical report for any alteration within a geologic hazard area:

1. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to private property. After the emergency, the code official shall be notified of these actions within seven days. The person or agency undertaking the action shall fully restore and/or mitigate any impacts to critical areas and buffers and submit complete applications to obtain all required permits and approvals following such work. The mitigation and restoration work will be completed within 180 days from issuance of required permits.

2. Operation, maintenance, renovation or repair of existing structures, facilities and landscaping, provided there is no further intrusion or expansion into a critical area.

3. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new access roads or significant amounts of excavation. In every case, impacts shall be mitigated and disturbed areas shall be restored.

4. Boundary Markers. Construction or modification of navigational aids and boundary markers.

5. Existing Streets and Utilities. Replacement, modification or reconstruction of existing streets and utilities in developed utility easements and in developed streets, subject to the following:
   a. The activity must utilize best management practices; and
   b. The activity is performed to mitigate impacts to critical areas to the greatest extent reasonably feasible consistent with best available science.

6. New Streets, Driveways, Bridges and Rights-of-Way. Construction of new streets and driveways, including pedestrian and bicycle paths, subject to the following:
   a. Construction is consistent with best management practices;
   b. The facility is designed and located to mitigate impacts to critical areas consistent with best available science;
   c. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so there is no net loss in critical area functions; and
   d. The code official may require a critical area study or restoration plan for this allowed alteration.

7. New Utility Facilities. New utilities, not including substations, subject to the following:
   a. Construction is consistent with best management practices;
   b. The facility is designed and located to mitigate impacts to critical areas consistent with best available science;
c. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so there is no net loss in critical area functions;
d. Utilities shall be contained within the footprint of an existing street, driveway, paved area, or utility crossing where possible; and
e. The code official may require a critical area study or restoration plan for this allowed alteration.
8. The removal of noxious weeds with hand labor and/or light equipment; provided, that the appropriate erosion-control measures are used and the area is revegetated with native vegetation.
9. Public and private nonmotorized trails subject to the following:
a. The trail surface should be made of pervious materials, unless the code official determines impervious materials are necessary to ensure user safety;
b. Trails shall be located to mitigate the encroachment; and
c. Trails proposed to be located in a geologic hazard area shall be constructed in a manner that does not significantly increase the risk of landslide or erosion hazard. The city may require a geotechnical review pursuant to MICC 19.07.060.
10. Existing single-family residences may be expanded or reconstructed in buffers, provided all of the following are met:
a. The applicant must demonstrate why buffer averaging or reduction pursuant to MICC 19.07.070(B) will not provide the necessary relief;
b. Expansion within a buffer is limited to 500 square feet beyond the existing footprint that existed on January 1, 2005;
c. The expansion is not located closer to the critical area than the closest point of the existing residence;
d. The functions of critical areas are preserved to the greatest extent reasonably feasible consistent with best available science;
e. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so that there is no net loss in critical area functions;
f. Drainage capabilities are not adversely impacted; and
g. The city may require a critical area study or restoration plan for this exemption.
11. Conservation, preservation, restoration and/or enhancement of critical areas that does not negatively impact the functions of any critical area. If the proposed work requires hydraulic project approval from the State of Washington Department of Fisheries, the code official may require a critical area study.
12. Tree pruning, cutting and removal in accordance with the permit requirements of Chapter 19.10 MICC, Trees.
13. Alterations to Category III and IV wetlands of low value under 2,500 square feet. If a project does not qualify as an allowed alteration under this section, it may be allowed through a reasonable use exception or if it is consistent with the other regulations in this chapter.
B. Reasonable Use Exception.
1. Application Process. If the application of these regulations deny reasonable use of a subject property, a property owner may apply to the hearing examiner for a reasonable use exception pursuant to permit review, public notice and appeal procedures set forth in Chapter 19.15 MICC.
2. Studies Required. An application for a reasonable use exception shall include a critical area study and any other related project documents, such as permit applications to other agencies, and environmental documents prepared pursuant to the State Environmental Policy Act.

3. Criteria. The hearing examiner will approve the application if it satisfies all of the following criteria:
   a. The application of these regulations deny any reasonable use of the property. The hearing examiner will consider the amount and percentage of lost economic value to the property owner;
   b. No other reasonable use of the property has less impact on critical areas. The hearing examiner may consider alternative reasonable uses in considering the application;
   c. Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property;
   d. Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science;
   e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare; and
   f. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter.

The hearing examiner may approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the above criteria. The applicant has the burden of proof in demonstrating that the above criteria are met. Appeals of the hearing examiner's decision may be made to Washington State Superior Court. (Ord. 05C-12 § 5).

19.07.040 Review and construction requirements.

A. Development Standards. The applicant will comply with the general development standards set forth in Chapter 19.09 MICC.

B. Native Growth Protection Areas.
   1. Native growth protection areas may be used in development proposals for subdivisions and lot line revisions to delineate and protect contiguous critical areas.
   2. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include an assurance that native vegetation will be preserved and grant the city the right to enforce the terms of the restriction.

C. Setback Deviation. An applicant may seek a deviation from required front and back yard setbacks pursuant to MICC 19.02.020(C)(4).

D. Variances. Variances pursuant to MICC 19.01.070 are not available to reduce any numeric requirement of this chapter. However, the allowed alterations and the reasonable use exception allowed pursuant to MICC 19.07.030 may result in city approvals with reduced numeric requirements.

E. Appeals. Appeals of decisions made under the provisions of this chapter shall follow the procedures outlined in MICC 19.15.010(E) and 19.15.020(J).

F. Fees. Fees shall be set forth in a schedule adopted by city council resolution. The fee should be based on a submittal fee and the time required to review development applications for alterations within critical areas and buffers.
G. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees, Performance Bonds, Insurance. An applicant for a permit within a critical area will comply with the requirements of MICC 19.01.060, if required by the code official.

H. Erosion Control Measures.
1. A temporary erosion and sediment control plan shall be required for alterations on sites that contain critical areas.
2. Erosion control measures shall be in place, including along the outer edge of critical areas prior to clearing and grading. Monitoring surface water discharge from the site during construction may be required at the discretion of the code official.

I. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and occupancy of a project. Upon a showing of good cause, the code official may extend the completion period.

J. Maintenance and Monitoring.
1. Landscape maintenance and monitoring may be required for up to five years from the date of project completion if the code official determines such condition is necessary to ensure mitigation success and critical area protection.
2. Where monitoring reveals a significant variance from predicted impacts or a failure of protection measures, the applicant shall be responsible for appropriate corrective action, which may be subject to further monitoring.

K. Suspension of Work. If the alteration does not meet city standards established by permit condition or applicable codes, including controls for water quality, erosion and sedimentation, the city may suspend further work on the site until such standards are met. (Ord. 05C-12 § 5).

19.07.050 Critical area study.
When a critical area study is required under MICC 19.07.030, 19.07.060, 19.07.070, 19.07.080 or 19.07.090, the following documents are required:
A. Site survey.
B. Cover sheet and site construction plan.
C. Mitigation and restoration plan to include the following information:
   1. Location of existing trees and vegetation and proposed removal of same;
   2. Mitigation proposed including location, type, and number of replacement trees and vegetation;
   3. Delineation of critical areas;
   4. In the case of a wildlife habitat conservation area, identification of any known endangered or threatened species on the site;
   5. Proposed grading;
   6. Description of impacts to the functions of critical areas; and
   7. Proposed monitoring plan.

A mitigation and restoration plan may be combined with a storm water control management plan or other required plan. Additional requirements that apply to specific critical areas are located in MICC 19.07.060, Geologic hazard areas; MICC 19.07.070, Watercourses; MICC 19.07.080, Wetlands; and MICC 19.07.090, Wildlife habitat conservation areas.
D. Storm water and erosion control management plan consistent with Chapter 15.09 MICC. Off-site measures may be required to correct impacts from the proposed alteration.

E. Other technical information consistent with the above requirements, as required by the code official.

The critical area study requirement may be waived or modified if the code official determines that such information is not necessary for the protection of the critical area. (Ord. 05C-12 § 5).

19.07.060 Geologic hazard areas.

A. Designation. All property meeting the definition of a geologic hazard area is designated as a geologic hazard area.

B. Buffers. There are no buffers for geologic hazard areas, but a geotechnical report is required prior to making alterations in geologic hazard areas. This provision shall not change development limitations imposed by the creation of building pads under MICC 19.09.090.

C. Geotechnical Review.

1. The applicant must submit a geotechnical report concluding that the proposal can effectively mitigate risks of the hazard. Consistent with MICC 19.07.050, the report shall suggest appropriate design and development measures to mitigate such hazards.

2. The city may require peer review of the geotechnical report by a second qualified professional to verify the adequacy of the information and analysis. The applicant shall bear the cost of the peer review.

3. The code official may waive the requirement for a geotechnical report when the proposed alteration does not pose a threat to the public health, safety and welfare in the sole opinion of the code official.

D. Site Development.

1. Development Conditions. Alterations of geologic hazard areas may occur if the code official concludes that such alterations:
   a. Will not adversely impact other critical areas;
   b. Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the subject property or adjacent properties;
   c. Will mitigate impacts to the geologic hazard area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
   d. Include the landscaping of all disturbed areas outside of building footprints and installation of all impervious surfaces prior to final inspection.

2. Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions listed above are satisfied and the geotechnical professional provides a statement of risk with supporting documentation indicating that one of the following conditions can be met:
   a. The geologic hazard area will be modified, or the development has been designed so that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;
   b. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologic hazard area;
c. The alteration is so minor as not to pose a threat to the public health, safety and welfare; or

d. An evaluation of site specific subsurface conditions demonstrates that the proposed development is not located in a geologic hazard area.

3. Development Limitations. Within a landslide hazard area, the code official may restrict alterations to the minimum extent necessary for the construction and maintenance of structures and related access where such action is deemed necessary to mitigate the hazard associated with development.

4. Seasonal Limitations. Land clearing, grading, filling, and foundation work within geologic hazard areas are not permitted between October 1 and April 1. The code official may grant a waiver to this seasonal development limitation if the applicant provides a geotechnical report of the site and the proposed construction activities that concludes erosion and sedimentation impacts can be effectively controlled on-site consistent with adopted storm water standards and the proposed construction work will not subject people or property, including areas off-site, to an increased risk of the hazard. As a condition of the waiver, the code official may require erosion control measures, restoration plans, and/or an indemnification/release agreement. Peer review of the geotechnical report may be required in accordance with subsection C of this section. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action. (Ord. 05C-12 § 5).

19.07.070 Watercourses.

A. Watercourses – Designation and Typing. Watercourses shall be designated as Type 1, Type 2, Type 3 and Restored according to the following criteria:

1. Type 1 Watercourse. Watercourses or reaches of watercourses used by fish, or are downstream of areas used by fish.

2. Type 2 Watercourse. Watercourses or reaches of watercourses with year-round flow, not used by fish.

3. Type 3 Watercourse. Watercourses or reaches of watercourses with intermittent or seasonal flow and not used by fish.

4. Restored Watercourse. Any Type 1, 2 or 3 watercourses created from the opening of previously piped, channelized or culverted watercourses.

B. Watercourse Buffers.

1. Watercourse Buffer Widths. Standard buffer widths shall be as follows, measured from the ordinary high water mark (OHW), or top of bank if the OHW cannot be determined through simple nontechnical observations.

<table>
<thead>
<tr>
<th>Watercourse Type</th>
<th>Standard (Base) Buffer Width (feet)</th>
<th>Minimum Buffer Width with Enhancement (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type 1</td>
<td>75</td>
<td>37</td>
</tr>
<tr>
<td>Type 2</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>Type 3</td>
<td>35</td>
<td>25</td>
</tr>
<tr>
<td>Restored or Piped</td>
<td>25</td>
<td>Determined by the code official</td>
</tr>
</tbody>
</table>
2. Reduction of Buffer Widths.
   a. The code official may allow the standard buffer width to be reduced to not less than
      the above listed minimum width in accordance with an approved critical area study
      when he/she determines that a smaller area is adequate to protect the watercourse, the
      impacts will be mitigated by using combinations of the below mitigation options, and the
      proposal will result in no net loss of watercourse and buffer functions. However, in no
      case shall a reduced buffer contain a steep slope.
      b. The code official may consider the following mitigation options:
         i. Permanent removal of impervious surfaces and replacement with native vegetation;
         ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or
            enhanced wetlands, or ponds supplemental to existing storm drainage and water quality
            requirements;
         iii. Removal of noxious weeds, replanting with native vegetation and five-year
             monitoring;
         iv. Habitat enhancement within the watercourse such as log structure placement,
             bioengineered bank stabilization, culvert removal, improved salmonid passage and/or
             creation of side channel or backwater areas;
         v. Use of best management practices (e.g., oil/water separators) for storm water
             quality control exceeding standard requirements;
         vi. Installation of pervious material for driveway or road construction;
         vii. Use of "green" roofs in accordance with the standards of the LEED Green Building
             Rating System;
         viii. Restoration of off-site area if no on-site area is possible;
         ix. Removal of sources of toxic material that predate the applicant’s ownership; and
         x. Opening of previously channelized and culverted watercourses on-site or off-site.
   3. Averaging of Buffer Widths. The code official may allow the standard buffer width to
      be averaged if:
      a. The proposal will result in a net improvement of critical area function;
      b. The proposal will include replanting of the averaged buffer using native vegetation;
      c. The total area contained in the averaged buffers on the development proposal site
         is not decreased below the total area that would be provided if the maximum width were
         not averaged;
      d. The standard buffer width is not reduced to a width that is less than the minimum
         buffer width at any location; and
      e. That portion of the buffer that has been reduced in width shall not contain a steep
         slope.
   4. Restoring Piped Watercourses.
      a. Removal of pipes conveying watercourses shall only occur when the code official
         determines that the proposal will result in a net improvement of ecological functions and
         will not significantly increase the threat of erosion, flooding, slope stability or other
         hazards.
      b. Where the buffer of the restored watercourse would extend beyond a required
         setback the applicant shall obtain written agreement from the affected neighboring
         property owner. The city may deny a request to restore a watercourse if it results in
         buffers being adjusted and increased onto adjacent properties.
C. Impervious Surfaces. Impervious surface shall not be permitted within a watercourse or watercourse buffer except as specifically provided in this chapter.

D. Development Standards.
   1. Type 3 watercourses may be relocated when such relocation results in equivalent or improved watercourse functions. Type 1 and 2 watercourses shall not be relocated except through the reasonable use exception.
   2. Existing watercourses shall not be placed into culverts except as provided by the allowed alterations or reasonable use exception. When culverts are allowed, they shall be designed to mitigate impacts to critical area functions. Oversize and open bottom culverts lined with rock that maintain a semi-natural stream bed are preferred to round culverts. (Ord. 08C-01 § 3; Ord. 05C-12 § 5).

19.07.080 Wetlands.
   A. Wetland Designation. All property meeting the definition of a wetland in the Wetland Manual is designated as a wetland.
   B. Wetland Ratings. Wetlands shall be rated as Category I, Category II, Category III or Category IV according to the wetland classification system.
   C. Wetland Buffers.
      1. Standard Wetland Buffer Widths. The following standard buffer widths shall be established from the outer edge of wetland boundaries:

<table>
<thead>
<tr>
<th>Wetland Type</th>
<th>Standard (Base) Buffer Width (feet)</th>
<th>Minimum Buffer Width with Enhancement (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I*</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>Category II</td>
<td>75</td>
<td>37</td>
</tr>
<tr>
<td>Category III</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>Category IV</td>
<td>35</td>
<td>25</td>
</tr>
</tbody>
</table>

* Note: There are no known Category I wetlands in the city.

   2. Reduction of Wetland Buffer Widths. The code official may allow the standard wetland buffer width to be reduced to not less than the minimum buffer width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.070(B)(2), and the proposal will result in no net loss of wetland and buffer functions.

   3. Averaging of Wetland Buffer Widths. The code official may allow averaging of the standard wetland buffer widths in accordance with the criteria of MICC 19.07.070(B)(3).

   D. Alterations. Category III and IV wetlands of less than one acre in size may be altered if the applicant can demonstrate that the wetland will be restored, enhanced, and/or replaced with a wetland area of equivalent or greater function. In cases where the applicant demonstrates that a suitable on-site solution does not exist to enhance, restore, replace or maintain a wetland in its existing condition, the city may permit the
applicant to provide off-site replacement by a wetland with equal or better functions. The off-site location must be in the same drainage sub-basin as the original wetland. (Ord. 05C-12 § 5).

19.07.090 Wildlife habitat conservation areas.

A. Designation. Bald eagles are the only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island and the city designates those areas used by these species for nesting, breeding, feeding and survival as wildlife habitat conservation areas. If other non-aquatic species are later added by the State Washington Fish and Wildlife Department as endangered or threatened as set forth in WAC 232-12-011 through 232-12-014, as amended, the city council will consider amending this section to add such species. The provisions of this section do not apply to any habitat areas which come under the jurisdiction of the city’s shoreline master program. The city’s watercourse, wetland and shoreline regulations in this chapter provide required protections for aquatic species.

B. Establishment of Buffers. For any wildlife habitat conservation area located within other critical areas regulated in this chapter, the buffers for those critical areas shall apply except where species exist that have been identified by the State Department of Fish and Wildlife as endangered or threatened. If such species are present, the applicant shall comply with all state or federal laws in connection with any alteration of the wildlife habitat conservation area and the code official may require a critical area study.

C. Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Activities may be further restricted and buffers may be increased during the specified season. (Ord. 05C-12 § 5).

19.07.100 Shoreline areas.

Shorelands directly impact water quality as surface and subsurface waters are filtered back into the lake. Additionally, shorelines are a valuable fish habitat area characterized by lake bottom conditions, erosion tendencies, and the proximity to watercourse outfalls. These may combine to provide a suitable environment for spawning fish.

A. Critical Areas Delineations.

1. A survey to determine the line of ordinary high water (OHW) shall be current to within one year of the application for single lots, short subdivisions, long subdivisions, or lot line revisions.

2. The survey may be included in the site construction plan (see MICC 19.07.060, Reports and Surveys) or waived by city staff if the OHW has been delineated by an existing bulkhead.

3. Mark the shoreline setback on the site prior to the preconstruction meeting.

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
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>

D. Storm Water and Erosion Control. Erosion control devices shall be installed along the boundaries of the shoreland setback following the preconstruction meeting and prior to clearing or grading.

E. Alteration. Any alteration in this area requires either: (1) a shoreline exemption or (2) a substantial development permit, a building/ grading permit, and storm water permit. Some development or alteration may also require a conditional use permit. (Ord. 08C-01 § 3; Ord. 05C-12 § 6; Ord. 02C-09 § 6; Ord. 99C-13 § 1. Formerly 19.07.050).

19.07.110 Shoreline management master program.

A. General Information.

1. Introduction and Purpose. The Washington State Legislature enacted the Shoreline Management Act (SMA) of 1971 (Chapter 90.58 RCW) to provide a uniform set of rules governing the development and management of shoreline areas. As a basis for the policies of the SMA, the Legislature incorporated findings that “the shorelines are among the most valuable and fragile” of the state’s resources, that they are under “ever increasing pressure of additional uses” and that “unrestricted construction on the privately or publicly owned shorelines of the state is not in the best public interest.” The Legislature further finds that “coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state, while, at the same time, recognizing and protecting private property rights consistent with the public interest.”

The SMA sets up a process for managing development of the state’s shorelines through state-monitored, locally administered permitting program. Local governments are required to prepare shoreline master programs to manage shoreline development within their jurisdiction. The SMA specifies that each local shoreline master program includes goals and policies that take into account the specific local conditions influencing the shoreline jurisdiction.
The purpose of the shoreline master program is to implement the Shoreline Management Act of 1971 and to establish regulations for development based on the local shoreline goals and policies.

a. The shoreline master program specifies boundaries of a shoreline jurisdiction and shoreline designated environments;

b. The shoreline master program establishes regulations for development within the shoreline jurisdiction;

c. The shoreline master program specifies requirements for public participation in decisions about shoreline development.

2. Shoreline Jurisdiction. The shoreline jurisdiction is geographically defined as:

a. All lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark and all associated shorelands (RCW 90.58.030).

b. All lands under Lake Washington extending waterward to the **middle of Lake Washington, pursuant to RCW 35.21.160**

The following illustration shows the applicability of the shoreline master program jurisdiction:

3. Applicability. The regulations and procedures of the shoreline master program apply to all development within the shoreline jurisdiction of the city including the waters and underlying land of Lake Washington and to the shoreline uses established within the shoreline designated environments.
4. Adoption Authority. The regulations contained within the Shoreline Master Program are hereby adopted under the authority of the Chapter 90.58 RCW and Chapter 173-26 WAC.

5. Relationship to Land Use Code and Other Ordinances.
   a. The shoreline master program regulations are supplemental to the city of Mercer Island comprehensive plan, the Mercer Island development code and various other provisions of city, state and federal laws. Applicants must comply with all applicable laws prior to commencing any use, activity, or development.
   b. The shoreline jurisdiction and the shoreline designated environments are superimposed upon the existing zoning classifications. The zoning regulations specified in the development code and this section are intended to operate together to produce coherent and thorough regulations. All uses, activities and developments must comply with both the Mercer Island development code and shoreline master program. If there is a conflict between the two, the more restrictive regulation applies.

6. Shoreline Master Program Goals and Policies. The goals and policies contained within the City's Comprehensive Plan Shoreline Chapter shall constitute Mercer Island's Shoreline Master Program goals and policies.

7. Shoreline Master Program Regulations. The following regulations shall constitute the City of Mercer Island shoreline development regulations:
   a. MICC 19.07 100, Shoreline Areas
   b. MICC 19.07 110, Shoreline Master Program
   c. MICC 19.07, Critical Areas (Ord. No. 05C-12)
   d. MICC 15.09, Storm Water Management Program
   e. Definitions – Those specific to shorelines shall have the meaning ascribed to them below. Terms not defined in this section shall be defined as set forth in MICC 19.16

   Boat Lift: A structure or device normally attached to a dock or pier used to raise a watercraft above the waterline for secure moorage purposes.
   Boat Ramp: An inclined structure upon which a watercraft is raised or pulled onto land or a dock.
   Breakwater: A protective structure usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action.
   Bulkhead: A solid or open pile of rock, concrete, steel, timber or other materials erected parallel to, and normally erected at, the ordinary high water line for the purpose of protecting adjacent property from waves or currents.
   Covered Moorage: A pier, dock, boatlift, series of piles, or other structure intended for moorage over which a roof or canopy is erected.

   Ecological functions or shoreline functions; means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

   Ecosystem-wide processes; means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.
Feasible: means an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions: (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) The action provides a reasonable likelihood of achieving its intended purpose; and (c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

Fill: means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Finger Pier: An extension from a dock used to create moorage slips.

Floating Platform: A flat structure or device moored or anchored, not permanently secured by piles, which floats upon the water.

Geotechnical report or geotechnical analysis: means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the Washington State Shoreline Master Program Guidelines, Chapter 173-26 WAC 96 of 100 Washington State Shoreline Master Program Guidelines, Chapter 173-26 WAC 97 of 100 impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and downcurrent properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Groin: A structure used to interrupt sediment movement along the shore.

Jetty: A barrier used to protect areas from accumulations of excess sediment.

Landward: Any point located inland from the ordinary high water mark.

Lateral Line: The extension waterward of a property line into Lake Washington beyond the ordinary high water mark. How property lines extend waterward from the ordinary high water mark is an area of misconception. If the title does not clearly state the location of the property lines waterward from the ordinary high water mark, waterfront owners are not allowed to unilaterally project the upland boundaries out into the shorelands (waterward). There are no statutes defining the direction of the lateral lines waterward from the ordinary high water mark. The Supreme Court has the final word to decide location of lateral line on case-by-case basis.

Marina: A commercial basin providing rental or sale of docks, watercraft, moorage, and/or supplies. Casual single-family renting of moorage is excluded from this definition.

May: means the action is acceptable, provided it conforms to the provisions of this chapter.
Mean Low Water: The level of Lake Washington during the fall and winter when the water level is lowered to minimize winter storm damage to lakeside properties. Mean low water is one and one-half feet lower than ordinary high water.

Moorage Facility: Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.

Must: means a mandate; the action is required.

Nonwater-oriented uses: means those uses that are not water-dependent, water-related, or water-enjoyment.

Ordinary High Water (OHW): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the department.

Public Access: A means of physical approach to and along the shoreline, or other area, available to the general public. Public access may also include visual approach.

Restoration or ecological restoration: means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

Shall: means a mandate; the action must be done.

Shoreline areas and shoreline jurisdiction: means all shorelines of the state and shorelands as defined in RCW 90.58.030.

Shoreline master program or master program: means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city’s comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city’s development regulations.

Shoreline modifications: means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

Should: means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

Water-Dependent: A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry
and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

Water-enjoyment use: means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-oriented use: means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

Water-related use: means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because: (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient. Washington State Shoreline Master Program Guidelines, Chapter 173-26 WAC 100 of 100.

Waterfront Structure: Docks, piers, wharves, floats, mooring piles, anchor buoys, bulkheads, submerged or overhead wires, pipes, cables, and any other object passing beneath, through or over the water beyond the line of ordinary high water.

Waterward: Any point located in Lake Washington, lakeward from the ordinary high water mark.

B. Shoreline Designated Environments.
1. Designated Environments. Different areas of the city's shoreline have different natural characteristics and development patterns. As a result, two 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. 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.
   b. 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.
3. Permit Requirements for Shoreline Uses and Development within the Designated Environments. All proposed development within the shoreline jurisdiction shall be consistent with the regulations of this Shoreline Master Program, the Shoreline Management Act of 1971 and the Mercer Island development code. In addition all development shall conform to permit requirements of all other agencies having jurisdiction within the designated environments.

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>Shoreline Use</th>
<th>Designated Environments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban Park Environment</td>
</tr>
<tr>
<td>Single-family residential and associated appurtenances</td>
<td>NP</td>
</tr>
<tr>
<td>Multifamily residential</td>
<td>NP</td>
</tr>
<tr>
<td>Public and private recreational facilities and parks</td>
<td>SDP, SEPA</td>
</tr>
</tbody>
</table>

Key:

- CE: Categorically Exempt
- SEP: Shoreline Exemption Permit
- SDP: Substantial Development Permit
- SEPA: Required Review under the State Environmental Policy Act
- NP: Not Permitted Use

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>Use</th>
<th>SDP, SEPA</th>
<th>SDP, SEPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moorage facilities (including piers, docks, piles, lift stations, or buoys)</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>
</tr>
<tr>
<td>Bulkheads and shoreline protective structures</td>
<td>SDP, SEPA</td>
<td>SEP, SEPA</td>
</tr>
<tr>
<td>Breakwaters and jetties</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Utilities</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>
</tr>
<tr>
<td>Alterations over 250 cubic yards – outside the building footprint</td>
<td>SDP, SEPA</td>
<td>SDP, SEPA</td>
</tr>
</tbody>
</table>

If a use is not listed in this matrix, it shall be considered as a conditional use, pursuant to WAC 173-26-160.

C. Administration and Procedures.

1. Administrative Responsibility. Except as otherwise stated in this section, the code official is responsible for:
   a. Administering the shoreline master program.
   b. Approving, approving with conditions or denying shoreline exemption permit, substantial development permits, variances and permit revisions in accordance with the provisions of this shoreline master program.
   c. Determining compliance with Chapter 43.21C RCW, State Environmental Policy Act.

2. Permits and Decisions. No development shall be undertaken within the shoreline jurisdiction without first obtaining a permit in accordance with the procedures established in the shoreline master program. In addition such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shoreline designated environment.
   a. Shoreline Exemption Permit. A shoreline exemption permit (SEP) may be granted to the following development as long as such development is in compliance with all applicable requirements of this shoreline master program, the city of Mercer Island development code and WAC 173-27-040:
      i. Any development of which the total cost or fair market value, whichever is higher, does not exceed $5,718 or as periodically revised by the Washington State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state;
      ii. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. “Normal maintenance” includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal repair” means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes
substantial adverse effects to the shoreline resource or environment. Normal
maintenance of single-family dwellings is categorically exempt as stated above;

iii. Construction of the normal protective bulkhead common to single-family dwellings. A “normal protective” bulkhead is constructed at or near the ordinary high water mark to protect a single-family dwelling and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;

iv. Emergency construction necessary to protect property from damage by the elements. An “emergency” is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this section;

v. Construction or modification of navigational aids such as channel markers and anchor buoys;

vi. Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family dwelling, for which the cost or fair market value, whichever is higher, does not exceed $10,000;

vii. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.

If a development is exempt from the requirements of the substantial development permit, but a deviation or variance from the provisions of the shoreline master program is required, the applicant must request said deviation or variance through the procedures established in this section.

b. Substantial Development Permit. A substantial development permit (SDP) is required for any development within a shoreline jurisdiction not covered under a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below. Compliance with all applicable federal and state regulations is also required.

c. Deviations and Deviation Criteria. The city planning commission shall have the authority to grant deviations from the regulations specified in Table B in subsection D of this section; provided, the proposed deviation:

i. Will not constitute a hazard to the public health, welfare, and safety, or be injurious to affected shoreline properties in the vicinity;

ii. Will not compromise a reasonable interest of the adjacent property owners;

iii. Is necessary to the reasonable enjoyment of property rights of the applicant; and

iv. Is not in conflict with the general intent and purpose of the SMA, the shoreline master program and the development code.

d. Variances and Variance Criteria. Variances to the shoreline master program requirements are only granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In addition, in all instances the applicant for a variance shall demonstrate strict compliance with all variance criteria set out in MICC 19.15.020(G)(4) and the following additional criteria:

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

ii. Variance permits for development that will be located landward of the ordinary high water mark may be authorized; provided, the applicant can demonstrate all of the following:
   (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with reasonable use of the property not otherwise prohibited by the master program;
   (b) That the hardship in subsection (C)(2)(d)(ii)(a) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
   (c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
   (d) That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and
   (e) That the public interest will suffer no substantial detrimental effect.

iii. Variance permits for development that will be located waterward of the ordinary high water mark may be authorized; provided, the applicant can demonstrate all of the following:
   (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes reasonable use of the property not otherwise prohibited by the master program;
   (b) That the proposal is consistent with the criteria established under subsections (C)(2)(d)(ii)(b) through (e) of this section; and
   (c) That the public rights of navigation and use of the shorelines will not be adversely affected.


   Step 1. Application.
   The applicant shall arrange a preapplication meeting for all substantial development permits, deviations and variances. Upon completion of the preapplication meeting, a complete application including the required processing fees shall be filed with the city on approved forms to ensure compliance with development codes and standards. A complete application for the shoreline exemption permit (SEP), substantial development permit (SDP), or variance and SEPA checklist, if applicable, shall be filed with the city on required forms.

   SEP Review Process: The city shall issue or deny the SEP within 10 calendar days of receiving the request, or after SEPA review. The city shall then send the SEP to the applicant and the Department of Ecology, pursuant to WAC 173-27-130, and to all other applicable local, state, or federal agencies.

   Step 2. Public Notice.
   Public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in MICC 19.15.020; provided, such notice shall be given at least 30 days before the date of final local action.
If an application is not exempt from SEPA and no prior SEPA notice has been given, the city shall publish the SEPA determination and a notice that comments on the SEPA documents may be made during the review of the SDP, deviation and variance application.

Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

Step 3. Review.

The Shoreline Management Act does not require that public hearing be held on SDP and/or variance application. The technical review of SDP and/or variance must ensure that the proposal complies with the criteria of the shoreline master program, Shoreline Management Act policies and all requirements of the city of Mercer Island development code.

An open record hearing before the planning commission, as set out in MICC 19.15.020(F), shall be conducted on all deviation applications and may be conducted on the SDP or variance application when the following factors exist:
(a) The proposed development has broad public significance; or
(b) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or
(c) The cost of the proposed development, exclusive of land, will exceed $100,000.

Step 4. Decision.

After the 30-day comment period has ended, the city shall decide whether to approve or deny any SDP, deviation and/or variance application, unless the applicant and any adverse parties agree in writing to an extension of time with a certain date.

The city’s action in approving, approving with conditions, or denying SDP, deviation and/or variance shall be given in writing in the form required by WAC 173-27-120 (or its successor) and mailed to the applicant, all persons who submitted written comments, the Department of Ecology, the Washington State Attorney General, and all other applicable local, state, or federal agencies.

The city’s action in approving, approving with conditions, or denying any SDP and/or deviation is final unless an appeal is filed in accordance with applicable law.

The final decision in approving, approving with conditions, or denying variance is rendered by the Department of Ecology in accordance with WAC 173-27-200, and to all other applicable local, state, or federal agencies.

Step 5. Filing.

The city’s final action in approving, approving with conditions, or denying SDP, deviation and/or variance shall be filed with the Department of Ecology and Washington State Attorney General.


If the SDP and/or variance is approved, the applicant shall not begin construction until after the 21-day review period by the Department of Ecology is over and/or any appeals concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

4. Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development, deviation and variance permits:
a. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

b. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted.

5. Suspension of Permits. The city may suspend any shoreline exemption, substantial development, deviation and variance permit when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a public nuisance. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.030, Enforcement.

6. Revisions. When an applicant seeks to revise a SDP, deviation and/or variance permit the requirement of WAC 173-27-100, as amended, shall be met.

D. Use Regulations. All development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this section.

1. Table A. Requirements for Development Located Landward from the OHWM

<table>
<thead>
<tr>
<th>Setbacks for All Structures (Including Fences over 48 Inches High) and Parking</th>
<th>A*</th>
<th>25 feet from the OHWM and all required setbacks of the development code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height Limits for All Structures</td>
<td>B</td>
<td>Shall be the same as height limits specified in the development code but shall not exceed a height of 35 feet above average grade level (WAC 173-27-040)</td>
</tr>
<tr>
<td>Maximum Impervious Surface Coverage</td>
<td>C</td>
<td>10%: between 0 – 25 feet from OHWM</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30%: between 25 – 50 feet from OHWM</td>
</tr>
<tr>
<td>Minimum Land Area Requirements</td>
<td>E</td>
<td>All semi-private, commercial and noncommercial recreational tracts and areas shall have minimum land area: 200 square feet per family, but not less than 600 square feet, exclusive of driveways or parking areas. Screening of the boundaries with abutting properties and a planning commission approval of a site plan is required</td>
</tr>
</tbody>
</table>

*The letters in this column refer to the Plan View(A) and Section(A) diagrams.
### 2. Table B. Requirements for Moorage Facilities and Development Located Waterward from the OHWM

| Setbacks for All Moorage Facilities, Covered Moorage, **Boatlifts** and Floating Platforms | A* | 10 feet from the lateral line  
35 feet from adjoining moorage structures (except where moorage facility is built pursuant to the agreement between adjoining owners as shown in Figure B below)  
50 feet or 50% of the water frontage of the property, whichever is less, from the common boundary of the subject property urban park or conservation environment |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Setbacks for Boat Ramps and Other Facilities for Launching Boats by Auto or Hand, Including Parking and Maneuvering Space</td>
<td>D</td>
<td>25 feet from any adjacent private property line</td>
</tr>
<tr>
<td>Length or Maximum Distance Waterward from the OHWM for Moorage Facilities, Covered Moorage, <strong>Boatlifts</strong> and Floating Platforms</td>
<td>E</td>
<td>Maximum 100 feet, but in cases where water depth is less than 10 feet from the mean low water, length may extend up to 150 feet or to the point where water depth is 10 feet at mean low water, whichever is less</td>
</tr>
<tr>
<td>Width</td>
<td>F</td>
<td>Maximum 8 feet; does not apply to boat ramps, lift stations, or floating platforms</td>
</tr>
<tr>
<td><strong>Square Footage of Piers/Docks</strong></td>
<td></td>
<td>Maximum 1,000 square feet, including floats</td>
</tr>
<tr>
<td><strong>Height Limits for Piers and Docks</strong></td>
<td>G</td>
<td>1.5 minimum and 5 feet maximum above the elevation of the OHWM</td>
</tr>
<tr>
<td>Height Limits for Walls, Handrails and Storage Containers Located on Piers</td>
<td>H</td>
<td>3 feet above the decking of the moorage facility</td>
</tr>
<tr>
<td>Height Limits for Mooring Piles, Diving Boards and Diving Platforms</td>
<td>I</td>
<td>10 feet above the elevation of the OHWM</td>
</tr>
</tbody>
</table>

*The letters in this column refer to the Plan View(B) and Section(B) diagrams.*
Table B (continued) Requirements for Moorage Facilities and Development
Located Waterward from the OHWM
### Minimum Water Frontage for Moorage Facility

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<th>J</th>
<th>K</th>
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<tbody>
<tr>
<td>Single-family lots:</td>
<td>40 feet</td>
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<tr>
<td>Shared – two adjoining lots:</td>
<td>40 feet combined</td>
<td></td>
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<tr>
<td>Semi-private recreational tracts:</td>
<td></td>
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<tr>
<td>2 families:</td>
<td>40 feet</td>
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<tr>
<td>3 – 5 families:</td>
<td>40 feet plus 10 feet for each family more than 2</td>
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<tr>
<td>6 – 10 families:</td>
<td>70 feet plus 5 feet for each family more than 5</td>
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<tr>
<td>11 – 100 families:</td>
<td>95 feet plus 2 feet for each family more than 10</td>
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<tr>
<td>101+ families:</td>
<td>275 feet plus 1 foot for each family more than 100</td>
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### Covered Moorage

Permitted on single-family residential lots subject to the following:

(a) Maximum height above the OHWM: 20 feet; 20 to 25 feet subject to deviation process ([MICC 19.07.110(C)(2)(c)](19.07.110(C)(2)(c))).

(b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage.

(c) Outside the triangle subject to deviation process ([MICC 19.07.080(C)(2)(d)](19.07.080(C)(2)(d))).

(c) Building area: 600 square feet. Building areas larger than 600 square feet are subject to conditional use permit within the triangle, or variance outside the triangle.

(d) Covered moorage shall have open sides.

(e) Prohibited in semi-private recreational tracts, commercial and noncommercial recreational areas.

(f) Translucent canopies are required.

### Boatlifts

Permitted subject to the following:

(a) Minimum distance waterward from the OHWM: 30 feet

*The letters in this column refer to the Plan View(C).*

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![Plan View(C)](image-url)
Table 1: Figure A: Area of Permitted Covered Moorage, Individual Lots

Comment [ts4]: Updated figure to remove "60 degree maximum" language and removal of "Diagram No. 56a" per 2-17-10 PC comment.
The covered portion of a moorage shall be restricted to the area lying within a triangle. The base of the triangle shall be a line drawn between the points of intersection of the property sidelines with the ordinary high water mark. The location of the covered moorage shall not extend more than 100 feet from the center of the base line of such triangle. In cases where water depth is less than 10 feet from the mean low water, the location of the covered moorage may extend up to 150 from the center of the base line or to the point where water depth is 10 feet at mean low water, whichever is less. The required 10 foot setbacks from the side property lines shall be deducted from the triangle area.

Table 2: Figure B: Area of Permitted Covered Moorage and Moorage Facilities, Two Adjoining Single-family Lots

Where a covered moorage is built pursuant to the agreement of adjoining owners of single-family lots, the covered moorage area shall be deemed to include, subject to limitations of such joint agreement, all of the combined areas lying within the triangles extended upon each adjoining property and the inverted triangle situated between the aforesaid triangles.

a. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots with water frontage meeting or exceeding the minimum lot width requirements specified in Table A.

b. Piles, floats or other structures in direct contact with water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations.

   a. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. The following conditions apply:
      i. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
      ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the primary structure was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
      iii. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
      iv. For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
      v. Construction and maintenance of normal protective bulkhead common to single-family dwellings requires only a shoreline exemption permit, unless a report is required by the code official to ensure compliance with the above conditions; however, if the construction of the bulkhead is undertaken wholly or in part on lands covered by water, such construction shall comply with the SEPA Rules, Chapter 197-11 WAC.

b. New Structures for Existing Primary Structures: New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of shoreline ecological functions.

c. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. New structural stabilization measures in
support of new nonwater-dependent development, including single-family residences, shall only be allowed when all of the conditions below apply:

i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with MICC 19.07.110(D)(4)(k). The damage must be caused by natural processes, such as currents, and waves.

iv. The erosion control structure will not result in a net loss of shoreline ecological functions.

d. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis, in compliance with MICC 19.07.110(D)(4)(g). New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.

e. New structural stabilization measures in support of water-dependent development shall only be allowed when all of the conditions below apply:

i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

ii. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with MICC 19.07.110(D)(4)(k).

iv. The erosion control structure will not result in a net loss of shoreline ecological functions.

f. New structural stabilization measures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D shall only be allowed when all of the conditions below apply:

i. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

ii. The erosion control structure will not result in a net loss of shoreline ecological functions.

g. Bulkheads shall be located generally parallel to the natural shoreline. No filling may be allowed waterward of the ordinary high water mark, unless there has been severe and unusual erosion within one year immediately preceding the application for the
bulkhead. In this event the city may allow the placement of the bulkhead to recover the
dry land area lost by erosion.

h. Geotechnical reports pursuant to this section that address the need to prevent
potential damage to a primary structure shall address the necessity for shoreline
stabilization by estimating time frames and rates of erosion and report on the urgency
associated with the specific situation. As a general matter, hard armoring solutions
should not be authorized except when a report confirms that there is a significant
possibility that such a structure will be damaged within three years as a result of
shoreline erosion in the absence of such hard armoring measures, or where waiting
until the need is that immediate, would foreclose the opportunity to use measures that
avoid impacts on ecological functions. Thus, where the geotechnical report confirms a
need to prevent potential damage to a primary structure, but the need is not as
immediate as the three years, that report may still be used to justify more immediate
authorization to protect against erosion using soft measures.

i. When any structural shoreline stabilization measures are demonstrated to be
necessary pursuant to above provisions, the following shall apply:

   i. Limit the size of stabilization measures to the minimum necessary. Use
      measures designed to assure no net loss of shoreline ecological functions.
      Soft approaches shall be used unless demonstrated not to be sufficient to
      protect primary structures, dwellings, and businesses.

   ii. Ensure that publicly financed or subsidized shoreline erosion control
       measures do not permanently restrict appropriate public access to the
       shoreline except where such access is determined to be infeasible because
       of incompatible uses, safety, security, or harm to ecological functions. See
       public access provisions; WAC 173-26-221(4). Where feasible, incorporate
       ecological restoration and public access improvements into the project.

   iii. Mitigate new erosion control measures, including replacement structures, on
       feeder bluffs or other actions that affect beach sediment-producing areas to
       avoid and, if that is not possible, to minimize adverse impacts to sediment
       conveyance systems. Where sediment conveyance systems cross
       jurisdictional boundaries, local governments should coordinate shoreline
       management efforts. If beach erosion is threatening existing development,
       local governments should adopt master program provisions for a beach
       management district or other institutional mechanism to provide
       comprehensive mitigation for the adverse impacts of erosion control
       measures.

   j. Breakwaters, jetties, groins, and weirs. Breakwaters, jetties, groins, and weirs
      located waterward of the ordinary high-water mark shall be allowed only where
      necessary to support water-dependent uses, public access, shoreline stabilization, or
      other specific public purpose. Breakwaters, jetties, groins, weirs, and similar structures
      should require a conditional use permit, except for those structures installed to protect
      or restore ecological functions, such as woody debris installed in streams. Breakwaters,
      jetties, groins, and weirs shall be designed to protect critical areas and shall provide for
      mitigation according to the sequence defined in WAC 173-26-201 (2)(e).
5. Utilities.
   a. Utilities shall be placed underground and in common rights-of-way wherever economically and technically practical.
   b. Shoreline public access shall be encouraged on publicly owned utility rights-of-way, when such access will not unduly interfere with utility operations or endanger public health and safety. Utility easements on private property will not be used for public access, unless otherwise provided for in such easement.
   c. Restoration of the site is required upon completion of utility installation.
   d. Construction of utility buildings and structures require a conditional use permit.
6. Dredging.
   a. Dredging waterward or landward of the ordinary high water mark shall be permitted only if navigational access has been unduly restricted or other extraordinary conditions in conjunction with water-dependent use; provided, that the use meets all state and federal regulations.
   b. Dredging shall be the minimum necessary to accommodate the proposed use.
   c. Dredging shall utilize techniques that cause the least possible environmental and aesthetic impact.
   d. Dredging is prohibited in the following locations:
      i. Fish spawning areas.
      ii. In unique environments such as lake logging of the underwater forest.
   e. Disposal of dredged material shall comply with Ecology Water Quality Certification process and U.S. Army Corps of Engineers permit requirements. The location and manner of the disposal shall be approved by the city. (Ord. 08C-01 § 3; Ord. 05C-12 § 6; Ord. 02C-09 §§ 7, 8; Ord. 99C-13 § 1. Formerly 19.07.080).

6. Transportation and Parking
   a. Shoreline circulation system planning shall include safe, reasonable, and adequate 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.
   b. Transportation and parking facilities shall be planned, located, and designed where routes will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
   c. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.
   d. Parking facilities in shorelines shall be allowed only as necessary to support an authorized use.
   e. Parking facilities in shorelines shall minimize the environmental and visual impacts.

E. General Provisions
1. Archaeological and Historic Resources

a. If archaeological resources are uncovered during excavation, the developer and property owner shall immediately stop work and notify the City, the Office of Archaeology and Historic Preservation, and affected Indian tribes.

b. In areas documented to contain archaeological resources by the Office of Archaeology and Historic Preservation, a site inspection or evaluation is required by a professional archaeologist in coordination with affected Indian tribes.

2. Public Access

a. Development by public entities shall include public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.

b. Public access shall be provided for developments for water-enjoyment, water-related, and non-water-dependent uses; and for new subdivisions of more than four parcels, except:

i. Where the City provides more effective public access

ii. Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment, or due to constitutional or other legal limitations that may be applicable

iii. For individual single-family residences.

c. In determining infeasibility of public access in a given situation, the City may consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

d. Public access improvements shall not result in a net loss of shoreline ecological functions.
Chapter 19.16
DEFINITIONS

Sections:
19.16.010 Definitions.

19.16.010 Definitions.
Words used in the singular include the plural and the plural the singular.
For definitions that apply in the Shoreline, see 19.07.110(A)(7)(e).

A
Accessory Buildings: A separate building or a portion of the main building, the use of which is related to and supports that of the main building on the same lot.

1. Attached Accessory Building: An accessory building that shares a portion of one of its walls with the main building, is separated from the main building by less than five feet, or is attached to the main building by a structure other than a fence.

2. Detached Accessory Building: An accessory building that does not share a portion of any of its walls with the main building and is separated from the main building by more than five feet and is not attached to the main building by a structure other than a fence or a pedestrian walkway.

Accessory Dwelling Unit (ADU): A habitable dwelling unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation.

Accessory Use: A use customarily incidental and accessory to the principal use of a site or a building or other structure located upon the same lot.

Adult Entertainment: An adult retail establishment or adult theater. "Adult entertainment" shall not be considered to be included under any other permitted use in this code as either a primary or accessory use, and is not permitted in any zone unless specifically stated. For purposes of adult entertainment, the following definitions apply:

1. Adult Retail: An establishment in which 10 percent or more of the stock in trade consists of merchandise distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to specified sexual activities or specified anatomical areas.

2. Adult Theater: A facility used for presenting for commercial purposes motion picture films, video cassettes, cable television, live entertainment or any other such material, performance or activity, distinguished or characterized by a predominant emphasis on depiction, description, simulation or relation to specified sexual activities or specified anatomical areas for observation by patrons therein. Structures housing panorams, peep shows, entertainment studios or topless or nude dancing are included in this definition.

3. Merchandise: Shall include, but is not limited to, the following: books, magazines, posters, cards, pictures, periodicals or other printed material; prerecorded video tapes, discs, film, or other such medium; instruments, devices, equipment, paraphernalia, or other such products.

4. Panorams or Peep Shows: Any device which, upon insertion of a coin or token or by any other means, exhibits or displays a picture; an image from a film, video cassette, video disc, or any other medium; or provides a view of a live performance.

Comment [ts1]: Staff edit per 2-17-10 PC direction.
5. Specified Anatomical Areas:
   a. Less than completely and/or opaquely covered human genitals, pubic region, buttock, or female breast below the top of the areola.
   b. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

6. Specified Sexual Activities:
   a. Human genitals in a state of sexual stimulation, and/or
   b. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals, and/or
   c. Acts of human masturbation, sadism or torture in the context of sexual relationship, and/or sadomasochistic abuse in the context of sexual relationship, and/or
   d. Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breast.

7. Stock in Trade: Shall mean either:
   a. The dollar value of all merchandise readily available for purchase, rental, viewing, or use by patrons of the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or
   b. The total volume of shelf space and display area in those portions of the establishment open to patrons.

Adult Family Home: As defined and regulated by Chapter 70.128 RCW, an adult family home is the regular family abode of a person or persons who are providing personal care, special care, and room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

Affordable Housing Unit:
1. Owner Affordable Housing Unit: An owner-occupied dwelling unit affordable to households with household income not exceeding 90 percent of the King County median income, adjusted for household size.
2. Rental Affordable Housing Unit: A renter-occupied dwelling unit affordable to households whose income does not exceed 60 percent of the King County median income, adjusted for household size.
3. King County Median Income: The median yearly income for the average sized family in the Seattle Metropolitan Statistical Area as published by the United States Department of Housing and Urban Development from time to time. In the event such income determination is no longer published, or has not been updated for a period of at least 18 months, the city may use or develop such other reasonable method as it may choose in order to determine the income for families in King County at the median yearly income for King County.

Alteration: Any human-induced action which adversely impacts the existing condition of the area, including grading, filling, dredging, draining, channeling and paving (including construction and application of gravel). “Alteration” does not include walking, passive recreation, fishing, or similar activities.

Antenna: An apparatus, outside of or attached to the exterior of a structure, together with any supporting structure for sending or receiving electromagnetic waves. “Antenna” includes, but is not limited to, a dish antenna, wire or whip antenna, and microwave
transmitting antenna. This definition does not include an antenna mounted on a licensed vehicle; provided, the antenna is a type commonly mounted on a licensed vehicle for the purposes of mobile communication or radio reception within the vehicle (such as AM/FM radio, citizens band radio, two-way radio or cellular telephone).

Appeal, Closed Record: An administrative appeal to the city council following an open record hearing on a project application. Evidence for the appeal is limited to the record of the open record hearing. (See also “Open Record Hearing”).

Appeal, Open Record: An administrative appeal to the planning commission or city council when there has not been an open record hearing on a project application. New evidence or information is allowed to be submitted in review of the decision (See also “Open Record Hearing”).

Appurtenance:

1. Single-Family Residential: A structure which is necessarily connected to the use and enjoyment of a single-family dwelling. An appurtenance includes but is not limited to antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, garages, decks, driveways, utilities, fences, swimming pools, hot tubs, landscaping, irrigation, grading outside the building footprint which does not exceed 250 cubic yards and other similar minor construction.

2. Town Center and Multifamily Zones: A subordinate element added to a structure which is necessarily connected to its use and is not intended for human habitation or for any commercial purpose, other than the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks.

Assisted Living Facilities: Residences for the frail, sick or elderly, excluding special needs group housing, that provide rooms, meals, personal care and supervision of self-administered medication. Other services, such as recreational activities and transportation, may also be provided.

Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. Elevation established by averaging the elevation at existing grade. The elevation points to be averaged shall be located at the center of all exterior walls of the completed building; provided:

1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may project outside exterior walls and are not to be considered as walls.

2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be used to calculate the average building elevation.

3. For Properties within the Town Center: If a new sidewalk is to be installed as the result of a new development, the midpoint elevation for those walls adjacent to the new sidewalk shall be measured from the new sidewalk elevation, rather than existing grade prior to development activity. The city engineer shall determine the final elevation of the sidewalk.

Formula:

Average Building Elevation = \((\text{Mid-point Elevation of Individual Wall Segment}) \times \text{(Length of Individual Wall Segment)}) \div \text{(Total Length of Wall Segments)}\)
B

Bar: A premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

Bed and Breakfast: A single-family dwelling in which public lodging and meals may be provided to guests for periods of 30 days or less.

Best Available Science: Current scientific information based upon scientifically valid methods used to analyze critical areas, as defined by WAC 375-195-900 through 375-195-925, as amended.

Best Construction Practices: Methods, techniques and/or procedures developed by the city arborist to protect trees being retained during construction work from damage.

Best Management Practices: The practices that use the best available technologies or techniques, to prevent or minimize the degradation of any critical area or its buffer.

Binding Site Plan: A method of dividing land that sets out specifications for a number of aspects of development on the site, including streets, building envelopes, improvements, utilities, parking, and open spaces. The requirements of a binding site plan are enforceable against any person acquiring an interest in any lot or parcel created pursuant to the plan.

Boat Ramp: An inclined structure upon which a watercraft is raised or pulled onto land or a dock.

Breakwater: A protective structure usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action.

Buffer: A designated area adjoining a critical area intended to protect the critical area from degradation.

Building: A structure having a roof, but excluding trailers, mobile homes, and all other forms of vehicles even though immobilized. Where this code requires, or where special authority granted pursuant to this code requires that a use shall be entirely enclosed within a building, this definition shall be qualified by adding “and enclosed on all sides.”

Building Footprint: That portion of the lot that is covered by building(s).

Building Height: The vertical distance measured from the average building elevation to the highest point of the roof structure excluding appurtenances. A mezzanine need not be counted as a story for determining the allowable number of stories when constructed in accordance with the requirements of the construction codes set forth in MICC Title 17.

Building Pad: That portion of a lot on which a building may be located based on criteria set forth under the development code.

Bulkhead: A solid or open pile of rock, concrete, steel, timber or other materials erected parallel to, and normally erected at, the ordinary high water line for the purpose of protecting adjacent property from waves or currents.

C

Capital Improvement: Any development by the city upon property owned by or under the control of the city.

Care Services: The provision of rooms, meals, personal care and health monitoring assistance other than in special needs group housing. Other support may be provided as an adjunct to the provision of care services, including recreation, social, counseling,
transportation and financial services. Examples include daycare services, nursing homes, assisted living facilities and retirement homes.

Carport: A covered parking area or an accessory portion of the main building, entirely open on two or more sides, which is used for parking or storage of private vehicles, trailers and boats, by the occupants of the primary building.

Catastrophic Loss: A loss which occurs as a result of accidental fire, storm, earthquake or any other natural disaster, or an act of vandalism, terrorism or war.


City Arborist: The person designated by the code official to administer the provisions of Chapter 19.10 MICC.

City Department: Any division, subdivision or organizational unit of the city established by ordinance, rule or order.

City Street: “City street” means and includes the right-of-way of every principal arterial, secondary arterial, collector arterial or local street or portion thereof, which has been improved for and is used for vehicular travel within the city limits.

Civic and Social Organizations: Organizations primarily engaged in promoting the civic and social interests of their members. Illustrative examples include alumni associations, fraternal lodges, granges, and social clubs. Such organizations may operate bars and restaurants for their members if such uses are otherwise allowed within the zone.

Clearing: The act of destroying or removing trees or groundcover from any undeveloped or partially developed lot, public lands, or public right-of-way. Clearing may only occur on these lots with approval by the city.

Code Official: The director of the development services group for the city of Mercer Island or a duly authorized designee.

Commercial Zone: Any area located within a Town Center, business, planned business or multifamily zone, or any area located on property in a single-family zone containing a nonresidential use.

Conditional Use: A use listed among those permitted in any given zone but authorized only after a conditional use permit has been granted.

Condominium: A multiple-family dwelling, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the dwelling unit owners, and unless a declaration and a survey map and plans have been recorded.

Conifer Trees: Trees that are called evergreen, stay green all year, have needles or scales for leaves, and produce seeds in protective cones. This includes a few rare conifer trees that lose their needles in the fall such as: Tamarack or Larch, Larix sp., Dawn Redwood, Metasequoia glyptostroboides, or Bald Cypress, Taxodium distichum.

Construction Costs: Construction costs shall mean all costs included in the average price per square foot of a building as set forth in the current Mercer Island Building Valuation Data Table on file with the code official.

Construction Work: Any construction or reconstruction creating more than 500 square feet of new impervious surface. Trees are considered cut as a result of construction work if done during the construction work, two years prior to commencement of the work or two years following completion of the work. For these purposes, commencement of
the work shall be the date the initial permit for the work is issued by the city, and completion of the work shall be the date the city finalizes a building permit.

**Covered Moorage**: A pier, dock, boatlift, series of piles, or other structure intended for moorage over which a roof or canopy is erected.

**Critical Area Determination**: An administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope.

**Critical Area Study**: A study prepared by a qualified professional on existing conditions, potential impacts and mitigation measures for a critical area, consistent with MICC 19.07.050.

**Critical Areas**: Geologic hazard areas, watercourses, wetlands and wildlife habitat conservation areas.

**Critical Tree Area**: An area on a lot where trees are provided certain protections that contains any of the following:
1. A geologic hazard area;
2. A watercourse or its buffer;
3. Wetlands or their buffer; or
4. Protected slope area.

**Crown**: The leaves and branches of a tree from the lowest branch on the trunk to the top.

**Crown Cleaning**: The removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches, and watersprouts from a tree’s crown.

**Crown Raising**: The removal of the lower branches of a tree in order to provide a height of up to eight feet for pedestrian clearance, up to 14 feet for equestrian clearance and up to 16 feet for vehicular clearance or such other increased height as deemed appropriate for clearance by the city arborist.

**Crown Thinning**: The selective removal of branches not to exceed more than 25 percent of the leaf surface to increase light penetration and air movement, and to reduce weight.

**Crown Topping**: The removal of the upper portion of the crown of a tree by cutting back young shoots to a bud or older branches or trunk to a stub or lateral branch not sufficiently large enough to assume the terminal role.

**Cut or Cutting**: The intentional cutting of a tree to the ground (excluding acts of nature), any practice or act which is likely to result in the death of or significant damage to the tree or any other removal of a part of a tree that does not qualify as pruning.

**Day Care**: A business that provides personal care, education and/or supervision of minor children age 12 or under for a fee or other consideration for periods lasting less than 24 hours.

**Development**:  
1. A piece of land that contains buildings, structures, and other modifications to the natural environment; or  
2. The alteration of the natural environment through:
a. The construction or exterior alteration of any building or structure, whether above or below ground or water, and any grading, filling, dredging, draining, channelizing, cutting, topping, or excavation associated with such construction or modification.

b. The placing of permanent or temporary obstructions that interfere with the normal public use of the waters and lands subject to this code.

c. The division of land into two or more parcels, and the adjustment of property lines between parcels.

Deviation: A minor modification of standard development code provisions that does not require the special circumstances necessary for granting a variance and which complies with the city’s deviation criteria.

Diameter: The circumference of a tree divided by pi (3.14) and measured at a point four and one-half feet above the ground.

Dish Antenna: A parabolic antenna greater than 24 inches in diameter intended to send or receive signals to or from orbiting satellites or other communications systems.

Ditch: A long, narrow, human-built excavation that conveys storm water or irrigation water that is not identified by the state of Washington as a classified or unclassified stream.

Dwelling:
1. Dwelling Unit: A part of a multiple-family dwelling containing only one kitchen, that houses not more than one family, plus any live-in household employees of such family (see also “Accessory Dwelling Unit (ADU)
2. Multiple-Family Dwelling: A building, other than a single-family dwelling with an accessory dwelling unit, containing two or more dwelling units.
3. Single-Family Dwelling: A building designed and/or used to house not more than one family, plus any live-in household employees of such family.
4. Single-Family Dwelling – Detached: A single-family dwelling that is not attached to any other structure by any means and is surrounded by open space or yards.
5. Single-Family Dwelling – Semi-Detached: A single-family dwelling that is attached to another dwelling unit by a common vertical wall, with each dwelling unit located on a separate lot.

Easement: A grant of one or more of the property rights or privileges by the property owner to and/or for use or protection of a portion of land, by the public, a corporation or another person or entity, that runs with the land.

Enhancement or Enhance: Actions performed to increase the functions of critical areas.

Erosion Hazard Areas: Those areas greater than 15 percent slope and subject to a severe risk of erosion due to wind, rain, water, slope and other natural agents including those soil types and/or areas identified by the U.S. Department of Agriculture’s Natural Resources Conservation Service as having a “severe” or “very severe” rill and inter-rill erosion hazard.

Existing Grade: The surface level at any point on the lot prior to alteration of the ground surface.
Facade: Any exterior wall of a structure, including projections from and attachments to the wall. Projections and attachments include balconies, decks, porches, chimneys, unenclosed corridors and similar projections.

Fair Market Value: The expected price at which a development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation and other costs incurred for the duration of the permitted project (WAC 173-27-030(8)).

Family: One or more persons (but not more than six unrelated persons) living together in a single housekeeping unit. For purposes of this definition, persons with familial status and persons with handicaps within the meaning of the Fair Housing Amendments Act (FHAA), 42 U.S.C. Sections 3602(h) and (k) will not be counted as unrelated persons. The limitation on the number of unrelated residents set forth in this definition shall not prohibit the city from making reasonable accommodations, as required by the FHAA, 42 U.S.C. Section 3604(f)(3)(B) and as provided in MICC 19.01.030. The term “family” shall exclude unrelated persons who are not also handicapped or have familial status within the meaning of the FHAA who live together in social service transitional housing or special needs group housing.

Fence: A barrier composed of posts or piers connected by boards, rails, panels or wire, or a masonry wall.

Fill: The placement of earth material by artificial means.

Financial and Insurance Services: Establishments primarily engaged in financial transactions and/or in facilitating financial transactions. Examples include banks, credit unions, stock brokers, and insurance underwriters.

Finger Pier: An extension from a dock used to create moorage slips.

Fish Use or Used by Fish: Those areas within a watercourse where live fish normally exist for spawning rearing and/or migration. “Fish use” may be presumed to occur in those reaches of watercourses that have year round flow, are accessible from Lake Washington to juvenile salmonid fish and have an average bed slope of less than 12 percent. “Fish use” shall not be presumed for (1) intermittent or seasonal reaches; (2) for reaches with an average bed slope of 12 percent or greater; (3) for reaches upstream from road culverts with a bottom slope of 10 percent or greater; or (4) reaches with greater than a 12-inch drop from the downstream invert of the culvert to the downstream pool elevation at ordinary high water. If the uppermost point of fish use cannot be identified with simple, nontechnical observations, then the upper extent of fish use should be determined using the best professional judgment of a qualified professional after considering actual conditions and the physical abilities and capabilities of juvenile salmonid fish.

Floating Platform: A flat structure or device moored or anchored, not permanently secured by piles, which floats upon the water.

Foster Family Home: A person or persons providing state-licensed foster care on a 24-hour-a-day basis to one or more, but not more than four, children, expectant mothers, or developmentally disabled persons in the family abode of the person or
persons under whose direct care and supervision the child, expectant mother or
developmentally disabled person is placed.

Foster Family Home, Large: At least two persons providing state-licensed foster care on a 24-hour-a-day basis to five or six children, expectant mothers or developmentally disabled persons in the family abode of the persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

G

Garage: An accessory building or an accessory portion of the main building designed and/or used customarily for parking or storage of vehicles, trailers, and boats by the occupants of the main building, which does not meet the definition of a carport.

Geologic Hazard Areas: Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas.

Geotechnical Professional: A practicing, geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, or a licensed engineering geologist with sufficient relevant training and experience as approved by the city.

Government Services: Services provided by the city, King County, the state of Washington, or the federal government including, but not limited to, fire protection, police and public safety activities, courts, administrative offices, and equipment maintenance facilities.

Groin: A structure used to interrupt sediment movement along the shore.

Gross Floor Area: The total square footage of floor area bounded by the exterior faces of the building.

1. The gross floor area of a single-family dwelling shall include:
   a. The main building, including but not limited to attached accessory buildings.
   b. All garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet.
   c. That portion of a basement which projects above existing grade as defined and calculated in Appendix B of this development code.

2. In the Town Center, gross floor area is the area included within the surrounding exterior finish wall surface of a building, excluding courtyards and parking surfaces.

Groundcover: Small plants such as salal, ferns, mosses, grasses or other types of vegetation which normally cover the ground and includes trees less than four inches in diameter measured at 24 inches above the ground level.

H

Handicaps, Persons With:

1. A person who has a physical or mental impairment which substantially limits one or more of such person’s major life activities; or
2. A person with a record of having such an impairment; or
3. A person who is regarded as having such an impairment, but the term impairment does not include current, illegal use of or active addiction to a controlled substance.

Hazardous Tree: Any tree that receives an 11 or 12 rating under the International Society of Arboricultural rating method set forth in Hazard Tree Analysis for Urban
Areas (copies of this manual are available from the city arborist) and may also mean any tree that receives a 9 or 10 rating, at the discretion of the city arborist.


2. Hazardous Waste Treatment: The physical, chemical or biological processing of hazardous waste to make such waste nontoxic or less toxic, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume.

Healthcare Services: Establishments providing outpatient health care services directly or indirectly to ambulatory patients. Examples include offices for doctors, dentists, optometrists, and mental health professionals. This use does not include medical and diagnostic laboratories.

Hotel/Motel: A facility offering temporary accommodations for a fee to the general public and which may provide additional services such as restaurants, meeting rooms, entertainment, and recreational facilities.

Hydric Soils: Soil that is wet long enough to periodically produce reduced oxygen conditions, thereby influencing the growth of plants.

Impervious Surfaces: Includes without limitation the following:

1. Buildings – the footprint of the building and structures including all eaves;
2. Vehicular use – driveways, streets, parking areas and other areas, whether constructed of gravel, pavers, pavement, concrete or other material, that can reasonably allow vehicular travel;
3. Sidewalks – paved pedestrian walkways, sidewalks and bike paths;
4. Recreation facilities – decks, patios, porches, tennis courts, sport courts, pools, hot tubs, and other similar recreational facilities;
5. Landscaping – walls and rockeries are considered impervious surfaces; and
6. Miscellaneous – any other structure or hard surface which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, or causes water to run off the surface in greater quantities or at an increased rate of flow from present flow rate under natural conditions prior to development.

Jetty: A barrier used to protect areas from accumulations of excess sediment.

Kennel:
1. Any lot on which six or more dogs, cats, or other small animals over the age of four months are kept for any reason; or
2. Any lot on which any number of dogs, cats, or other small animals over the age of four months are kept for sale, are bred to produce offspring for sale, or are boarded for a fee or other consideration.

Comment [ts9]: Moved to 19.07.110.A.7.e, per 2-17-10 PC direction.
Kitchen: Any room used, intended, or designed for cooking and/or preparation of food.

Landmark Grove: A healthy grove of trees satisfying one or more of the following criteria and having been designated as a landmark grove under MICC 19.10.140:
1. The grove is relatively mature and is of a rare or unusual nature containing trees that are distinctive either due to size, shape, species, age or exceptional beauty;
2. The grove is distinctive due to a functional or aesthetic relationship to a natural resource, such as trees located along a ridge line; or
3. The grove has a documented association with a historical figure, property or significant historical event.

Landmark Tree: Any healthy tree satisfying one or more of the following criteria and having been designated as a landmark tree under MICC 19.10.140:
1. The tree has a diameter of 36 inches or greater;
2. The tree has a distinctive size, shape or location, or is of a distinctive species or age;
3. The tree possesses exceptional beauty;
4. The tree is distinctive due to a functional or aesthetic relationship to a natural resource, such as trees located along a ridge line; or
5. The tree has a documented association with a historical figure, property or significant historical event.

Landslide Hazard Areas: Those areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors, including:
1. Areas of historic failures;
2. Areas with all three of the following characteristics:
   a. Slopes steeper than 15 percent; and
   b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
   c. Springs or ground water seepage;
3. Areas that have shown evidence of past movement or that are underlain or covered by mass wastage debris from past movements;
4. Areas potentially unstable because of rapid stream incision and stream bank erosion; or
5. Steep Slope. Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.

Landward: Any point located inland from the ordinary high water mark.

Large (Regulated) Tree: Any conifer tree that is six feet tall or more or any deciduous tree with a diameter of more than six inches.

Lateral Line: The extension waterward of a property line into Lake Washington beyond the ordinary high water mark. How property lines extend waterward from the ordinary high water mark is an area of misconception. If the title does not clearly state the location of the property lines waterward from the ordinary high water mark, waterfront owners are not allowed to unilaterally project the upland boundaries out into the shorelands (waterward). There are no statutes defining the direction of the lateral lines waterward from the ordinary high water mark.
Supreme Court has the final word to decide location of lateral line on case-by-case basis.

Lift Station (Boat Hoist): A structure or device normally attached to a dock or pier used to raise a watercraft above the waterline for secure moorage purposes.

Lot: A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law to be used, developed or built upon as a unit.
   1. Corner Lot: A lot located at the junction of and abutting two or more intersecting streets.
   Lot, Conforming: A lot that conforms with the applicable zoning ordinance standards as to size, width, depth and other dimensional regulations.
   Lot, Nonconforming: See Nonconforming Lot.
   Lot Line Revisions: An adjustment of boundary lines between existing lots that does not create any additional lots and which does not reduce the area of any existing lot to the point that it fails to meet minimum development code requirements for area and dimensions.

Lots, Contiguous: Contiguous lots are two or more lots that share a common property line; provided, the existence of a public or private roadway, utility and/or similar easement shall not be deemed to divide or make land noncontiguous if land on both sides of such roadway, utility and/or similar easement is commonly owned or controlled.

Major New Construction: Construction from bare ground or an enlargement or alteration that changes the exterior of an existing structure that costs in excess of 50 percent of the structure's assessed value. Single-family development is excluded from this definition.

Major Site Feature: The public development amenities listed in MICC 19.11.060 that an applicant of major new construction in the Town Center must provide in order to be allowed building height over the base building height of two stories.

Manufacturing: An establishment engaged in the mechanical or chemical transformation of materials or substances into new products. Uses which create or involve the production of hazardous materials or objectionable noise, odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse or water-carried waste are not allowed. Manufacturing uses are limited to 10,000 square feet or less of gross floor area.

Marina: A commercial basin providing rental or sale of docks, watercraft, moorage, and/or supplies. Casual single-family renting of moorage is excluded from this definition.

Master Site Plan: The comprehensive, long range plan intended to guide the growth and development on a parcel of land that shows the existing and proposed conditions on the site including topography, vegetation, drainage, flood plains, wetlands, waterways, landscaping, open spaces, walkways, means of ingress and egress, circulation, utilities, structures and buildings, and any other information reasonably necessary for the design commission to make an informed decision about development of the site.
Mean Low Water: The level of Lake Washington during the fall and winter when the water level is lowered to minimize winter storm damage to lakeside properties. Mean low water is one and one-half feet lower than ordinary high water.

Minor Exterior Modification: Any exterior modification to an existing development or site that does not constitute major new construction.

Minor Modification to Site Plan: Modification of lot lines which does not violate any development or design standards, or increase the intensity or density of uses; reconfiguration of parking lots or landscape areas which does not reduce the required amount of parking or landscaping or negatively impact the screening from adjacent residential property; change in tree and landscape plant material that is less than four-inch caliber in size; modifications of the building envelope which do not increase the building footprint or which constitute minor exterior modification; relocation of fire lanes or utility lines.

Minor Site Feature: The public development amenities listed in MICC 19.11.060 that an applicant of major new construction in the Town Center must include regardless of the building’s height.

Mitigation or mitigate: The use of any or all of the following actions in a critical area:
1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
4. Minimizing or eliminating the impact over time by preservation or maintenance operations;
5. Compensating for the impact by replacing, enhancing or providing substitute critical areas; or
6. Monitoring the impact and taking appropriate corrective measures including any combination of the measures listed in subsections (1) through (5) of this definition.

Mixed Use: Development with a variety of complementary and integrated uses, such as, but not to limited to, residential, office, retail, public, or recreation.

Monitoring: Evaluating the impacts of alterations to critical areas and assessing the performance of required mitigation measures through the collection and analysis of data.

Moorage Facility: Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.

Mortuary Services: The preparation of the dead for burial or internment including conducting funerals, transporting the dead, and selling caskets and related merchandise.

Museums and Art Exhibitions: The exhibition of objects of historical, cultural, and/or educational value that are not offered for sale.
Native Growth Protective Easement (NGPE): An easement granted to the city for the protection of native vegetation within a critical area or buffer.

Native vegetation: Vegetation comprised of plant species which are indigenous to the Puget Sound region and which reasonably could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.

No Net Loss: An ecological concept whereby conservation losses in one geographic or otherwise defined area are equaled by conservation gains in function in another area.

Nonconforming Lot: A lot that has less than the minimum area, width and depth required by the current code for the zone in which the lot is located.

Nonconforming Site, Legal: A developed building site that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements that were in effect regarding site development at the time it was developed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Nonconforming Structure, Legal: A structure that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was constructed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Nonconforming Use, Legal: The use of a structure, site or of land that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was commenced but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Noxious weed: Any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices (see Chapter 5.10 RCW). The state noxious weed list in Chapter 16-750 WAC, as compiled by the State Noxious Weed Control Board, is the officially adopted list of noxious weeds for the city.

Nursing Home: An establishment as defined, regulated and licensed by Chapter 18.51 RCW that provides care to persons who through illness or infirmity are not capable of caring for themselves.

Office Uses: The use of a room or group of rooms for conducting the affairs of a business, profession, service, or government and generally furnished with desks, tables, files and communication equipment.

Open Record Hearing: A hearing conducted by the authorized body that creates the city’s record through testimony and submission of evidence and information, under procedures prescribed by city ordinance and/or adopted by the hearing body.

Ordinary High Water (OHW): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the department.

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

P

Parking: A public or private area, under, within or outside a building or structure, designed and used for parking motor vehicles including parking lots, garages, and driveways. For the purposes of this definition only:
1. “Parking structure” shall mean a building or structure consisting of more than one level and used for the temporary parking and storage of motor vehicles.
2. “Underground parking” shall mean the location of that portion of the parking structure located below the existing grade of the ground abutting the structure.

Patio Home: A single-family dwelling on a separate parcel with open spaces on three sides and with a court.

Pavers: A paver or pavement that allows rain and/or surface water runoff to pass through it and reduce runoff from a site and surrounding areas. Pavers include porous pavement, porous pavers, and permeable interlocking concrete pavement as described in the Washington State Department of Ecology Stormwater Management Manual, as now exists or hereafter amended.

Pedestrian-Oriented Uses: Uses that stimulate pedestrian activity along the sidewalk frontage of a building. Uses include, but are not limited to, small scale retail, restaurants and theaters.

Pedestrian Walkway: A walkway used exclusively for pedestrian trafficway, which may be covered or enclosed.

Person: An individual, partnership, corporation, or association.

Personal Services: A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.

Pile: A timber or section of concrete placed into the ground to serve as a support or moorage.

Places of Worship: A church, synagogue, mosque, or other institution that people regularly attend to participate in or hold religious services, meetings, or other religious activities.

Premises: A piece of land with or without improvements, including but not limited to a building, room, enclosure, vehicle, vessel or other place thereon.

Private Property: Any property other than public property.

Professional, Scientific, and Technical Services: Establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training and include legal services; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; real estate sales services; advertising services; photographic services; translation and interpretation
services; veterinary services; and other professional, scientific, and technical services.

Protected Slope Area: Any area within a 40-foot radius of the base of the subject tree if there is any point within that area that is at least 12 feet higher or lower than the base of the tree.

Prune or Pruning: The pruning of a tree through crown thinning, crown cleaning, windowing or crown raising but not including crown topping of trees or any other practice or act which is likely to result in the death of or significant damage to the tree.

Public Access: A means of physical approach to and along the shoreline, or other area, available to the general public. Public access may also include visual approach.

Public Facility: A building, structure, or complex used by the general public. Examples include but are not limited to assembly halls, schools, libraries, theaters and meeting places.

Public Meeting: A meeting, hearing workshop, or other public gathering of people to obtain comments from the public on a proposed project permit prior to the city’s decision. A public meeting does not include an open record hearing.

Public Property: Any property under direct ownership or control of the city of Mercer Island. This includes, but is not limited to, parks, green belts, open spaces, rights-of-way, and ground around public buildings but excludes Interstate 90 and any property owned by the state of Washington.

Public Tree: Any tree located on public property.

Qualified professional: A person who performs studies, field investigations, and plans on critical areas and has an educational background and/or relevant experience in the field, as determined by the code official.

Reasonable Use: A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public’s interests against the owner’s interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC 19.07.030(B) balances the public interests against the regulation being unduly oppressive to the property owner.

Recreation: In the Town Center, recreation includes a place designed and equipped for the conduct of leisure-time activities or sports.

Recreational Area: For single-family and multifamily residential zones, an area, including facilities and equipment, for recreational purposes, such as a swimming pool, tennis court, a golf course, or a playground.

1. Commercial Recreational Area: A recreational area maintained and operated for a profit.
2. 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.

3. Recreational Area, Private: A recreational area maintained by an individual for the sole use of his/her household and guests, located or adjacent to his/her residence, not for profit or in connection with any business operated for profit.

4. Semi-Private Waterfront Recreational Area: A separate shoreline property interest established in fee simple or by easement in favor of one or more upland lots which is used for water-related recreational purposes.

Regulated Improvements: Any development of any property within the city, except:

1. Property owned or controlled by the city; or
2. Single-family dwellings and the buildings, structures and uses accessory thereto.

Repair Services: The repair and maintenance of personal and household goods, including locksmithing, appliance repair, furniture reupholstery, and shoe repair.

Replacement Tree: Any tree that is planted in order to satisfy the tree replacement requirements of a tree permit.

Residential Care Facility: A facility, licensed by the state that cares for at least five but not more than 15 people with functional disabilities, that has not been licensed as an adult family home pursuant to Chapter 70.128 RCW.

Residential Dwelling: A home, abode or place that is used for human habitation.

Residential Uses: For purposes of the shoreline management provisions of this code, residential uses shall mean those uses allowed in the R-8.4, R-9.6, R-12, R-15, MF-2L, and MF-2 zones.

Restaurant: An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services.

Restoration or restore: Actions performed to return a critical area to a state in which its functions approach its unaltered state as closely as possible.

Retail Use: An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods.

1. Small Scale Retail: A retail establishment occupying a space of 20,000 square feet or less.
2. Large Scale Retail: A retail establishment occupying more than 20,000 square feet.
3. Outdoor Retail: The display and sale primarily outside a building or structure of the following: vehicles, garden supplies, gas, tires, boats, aircraft, motor homes, building and landscape materials, and lumber yards.

Retaining Walls/Rockeries: A wall of masonry, wood, rock, metal, or other similar materials or combination of similar materials that bears against earth or other fill surface for purposes of resisting lateral or other forces in contact with the wall, and/or the prevention of erosion.

Retirement Home: An establishment operated for the purpose of providing domiciliary care or assisted living for a group of persons who by reason of age are unable to or do not desire to provide such care for themselves and who are not in need of medical or nursing aid, except in cases of temporary illness.

Right-of-way: Land acquired by reservation, dedication, prescription or condemnation, and intended to be used by a road, sidewalk, utility line or other similar public use.
Riprap: Hard angular carry rock or other similar materials used for erosion control and/or land or bank stabilization.

Rooming House: A home or other facility, other than special needs group housing or social service transitional housing as provided in MICC 19.06.080(A) and (B), that provides room or room and board to seven or more persons unrelated to the operator, and does not include persons with handicaps or persons with familial status within the meaning of the FHAA.

S

Salmonid: A member of the fish family Salmonidae.

Scale: The height, width and general proportions of a structure or features of a structure in relationship to its surroundings. Human or pedestrian scale is building form or site design that is intimate, comfortable and understandable from the perspective of an individual walking.

Seismic Hazard Areas: Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

Senior Citizen Housing: Dwelling units which are used exclusively for housing persons 60 years of age and older.

SEPA Rules: Chapter 197-11 WAC adopted by the Department of Ecology, as now or hereafter amended.

Service: An establishment primarily engaged in providing assistance as opposed to products. Examples include but are not limited to personal services, business, financial and insurance services, mortuary services, tailors, healthcare services, educational services, repair services, amusement services, membership organizations, and other professional, scientific, and technical services.

Service Stations: Establishments retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol) and automotive oils. These establishments may also provide repair and maintenance services for automotive vehicles and/or convenience store retailing.

Shared Pier: A dock or pier which is shared by two or more waterfront lots.

Shrub: Any living woody plant species characterized by having multiple vertical or semiupright branches originating at or near the ground and is known to achieve a typical mature height of less than 15 feet. Species include without limitation, rhododendrons, pyramidalis, laurel, boxwood and other ornamental shrubs.

Sign: Any series of letters, figures, design symbols, lights, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, or thing. Excluded are official traffic signs or signals, public notices, and governmental flags.

Sign, Directional: A sign which contains only the name and location of a use located elsewhere and intended for guidance only.

Significant Affordable Housing: Affordable housing in the Town Center meeting the requirements of MICC 19.11.050(B)(5).

Significant Pedestrian Connection or Connection: A pedestrian connection in the Town Center meeting the requirements of MICC 19.11.050(B)(3).
Significant Public Amenity or Amenities: The public development amenities listed in MICC 19.11.050 that an applicant must provide in order to be permitted the maximum allowed building height in the Town Center.

Significant Public Plaza or Plaza: A public plaza in the Town Center meeting the requirements of MICC 19.11.050(B)(2).

Slope: A measurement of the average incline of a lot or other piece of land calculated by subtracting the lowest elevation from the highest elevation, and dividing the resulting number by the shortest horizontal distance between these two points.

Small Tree: Any conifer tree that is less than six feet tall or any deciduous tree with a diameter of six inches or less.

Social Service Transitional Housing: Noninstitutional group housing facilities for unrelated persons, other than special needs group housing or rooming houses, that are privately or publicly operated, including those facilities required to be licensed by the state or federal governments as well as those that may not be required to be licensed, that provide temporary and transitional housing to meet community social service needs including, but not limited to, work-release facilities and other housing facilities serving as an alternative to incarceration, halfway houses, emergency shelters, homeless shelters, domestic violence shelters and other such crisis intervention facilities. Social service transitional housing excludes institutional facilities that typically cannot be accommodated in a single-family residential structure.

Solar Energy System: Any device, structure, mechanism, or series of mechanisms which use solar radiation as an energy source for heating, cooling, or electrical energy.

Special Needs Group Housing: Noninstitutional group housing that primarily supports unrelated persons with handicaps or persons protected by familial status within the meaning of the FHAA, but not including individuals whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Special needs group housing includes, but is not limited to, foster family homes, adult family homes and residential care facilities as provided in Chapter 70.128 RCW, but excludes facilities that typically cannot be accommodated in a single-family residential structure such as hospitals, nursing homes, assisted living facilities and detention centers.

Stealth Design: Wireless communication facilities designed to blend into the surrounding environment as determined by the design commission. Examples of stealth design include architecturally screened roof-mounted antennas, facilities integrated into architectural elements, and facilities designed to blend with or be integrated into light poles, utility poles, trees, steeples, or flag poles.

Steep Slope: Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run. Steep slopes do not include artificially created cut slopes or rockeries.

Story: Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet (1,829 mm) above grade for more than 50 percent of the total perimeter, or is more than 12 feet (3,658 mm) above grade at any point, such usable or unused under-floor space shall be considered as a story. Grade is
measured as the lowest point on the property within a distance of five feet from the exterior wall.

Street: An improved or unimproved public or private right-of-way or easement which affords or could be capable of affording vehicular access to property.

1. Collector Arterial: A street designed to collect and distribute traffic from major arterials to the local access streets. The collector arterial is similar to a local access street except for stop and yield privileges over a local access street and restrictions for on street parking.

2. Local Access Street: A street designated for direct access to properties, and which is tributary to the arterial system.

3. Major Arterial Street: A street designed to collect and distribute large volumes of traffic from the freeway, Town Center and less important arterial streets. This type of arterial normally is designed to expedite through traffic.

4. Second Arterial Street: A street designed to collect and distribute traffic from the freeway or major arterials and less important streets.

Street Furniture: Structures located in streets, rights-of-way, parking lots, or other similar open spaces on a site, including, but not limited to, light standards, utility poles, newspaper stands, bus shelters, planters, traffic signs, traffic signals, benches, guard rails, rockeries, retaining walls, mail boxes, litter containers, and fire hydrants.

Structural Alteration: Any change, addition, or modification to elements of a structure that are or relate to load-bearing members or the stability of the structure (as distinguished from screening or ornamental elements). Examples of structural alterations include, but are not limited to, any change in the supporting members of a structure, such as foundations, studs in exterior or bearing walls or bearing partitions, columns, beams, headers, girders, joists or rafters. Replacement of exterior cladding and replacement of glazing in existing openings shall not be considered structural alteration.

Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Subdivision: The division or platting of, or the act of division or platting of, land into two or more lots for the purpose of transfer of ownership, building development, or lease, whether immediate or future, and shall include all resubdivision of land.

1. Short Subdivision or Short Plat: A subdivision consisting of four or less lots on four or less acres.

2. Long Subdivision or Long Plat: A subdivision consisting of five or more lots on any number of acres or any number of lots on more than four acres.

Substantial Development: A development of which the total cost or fair market value exceeds $2,500 or any development that materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3e) and WAC 173-27-040.


Teen Dance: Any dance that is open to the public and is held and conducted directly or indirectly for a profit, or requires a monetary contribution from any of the persons
admitted or from a parent, and which permits the entry of persons under the age of 20 years. Teen dance does not include noncommercial dances sponsored by an accredited educational institution, nor does it include a dance sponsored by churches or other religious institutions, community organizations or other nonprofit tax-exempt organizations.

Temporary Erosion and Sediment Control Plan: A plan that details the location and type of temporary physical, structural and/or managerial practices an applicant will use to reduce erosion, prevent pollution of water with sediment and comply with the adopted storm water manual pursuant to Chapter 19.09 MICC.

Theaters: Establishments primarily engaged in either (1) producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists or (2) exhibiting motion pictures or videos.

Top and Toe of Slope: The points at which a critical slope decreases to less than 30 percent slope. The upper edge is the "top" of the slope and the bottom is the "toe".

Townhouse: A single-family dwelling unit at least two stories in height constructed in a group of two or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides and a separate means of ingress and egress.

Tract: A piece of land designated and set aside as either public or private open space. No dwelling shall be constructed on the tract, and only those structures that are in keeping with the tract’s use as open space shall be allowed.

Trailer: A vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a mobile home or trailer coach and any self-propelled vehicle having a body designed for or converted to the same uses as an automobile trailer without motor power.

Transportation/Utility: A facility primarily engaged in providing transportation services, including automobile service stations and transit stations; the generation, transmission, distribution of energy; or the collection of waste and recycled materials.

Tree: Any living woody plant species other than a shrub, characterized by one main trunk or few dominant trunks and many branches, known to achieve a typical mature height of at least 15 feet.

Tree Permit: A permit issued by the city arborist under Chapter 19.10 MICC.

Uplighting: Illumination of an object by methods that project light upward and onto the object to be illuminated, primarily to enhance visual interest at night.

Usable Signal: An unscrambled signal, which when acquired or transmitted by use of a properly installed, maintained and operated antenna, is at least equal in sound or picture quality to that received from local commercial radio or television stations or by way of cable.

Utilities: Facilities providing infrastructure services by a public utility or private utility regulated by the state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. “Utilities” does not include wireless facilities.
V

Variance: A modification of standard development code provisions based on special circumstances and complying with the city’s variance criteria.

Vegetative Cover: All significant vegetation (excluding exotic or invasive species) in a critical tree area, the existence or loss of which will have a material impact on the critical tree area.

Vehicle: An instrument capable of movement, by means of wheels, skids or runners of any kind, along roadways, paths, or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, buses, trucks, cars and vans, and all forms of trailers or mobile homes of any size whether capable of supplying their own motor power or not, regardless whether the primary purpose of such instrument is or is not the conveyance of persons or objects. A vehicle includes all such instruments even if immobilized in any way and for any period of time.

W

Warehouse: A building used primarily for the storage of goods and materials, including facilities available to the public for a fee.

Warehousing: The storage of goods and materials, including facilities available to the public for a fee.

Water-Dependent: A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed, banks, or sides throughout substantially all its length, along which surface waters, with some regularity (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters that were naturally occurring prior to construction.

Watercourses – Intermittent or Seasonal Flow: Those watercourses that go dry or exhibit zero surface discharge at any point during water years with normal rainfall as determined from climatological data published for the Seattle-Tacoma International Airport by the National Oceanic and Atmospheric Administration or its successor agency.

If the lowermost point of either year-round flow or intermittent or seasonal flow cannot be identified with simple, nontechnical observations, or if climatological data show that rainfall is significantly above normal for the water-year, then the point of flow should be determined using the best professional judgment of a qualified professional after considering actual conditions and the climatological data.

Watercourses – Year Round Flow: Those watercourses that do not go dry any time during water-years with normal rainfall as determined from climatological data published for the Seattle-Tacoma International Airport by the National Oceanic and Atmospheric Administration or its successor agency. For the purpose of watercourse typing,
watercourses with year round flow may include intermittent or seasonal reaches below the uppermost point of year round flow during normal water-years.

**Wetland Classification System:** Those categories set forth in the Washington State Wetland Rating System for Western Washington, Publication #04-06-025 dated August, 2004. A summary of the classification system is provided below:

1. **Category I.** Category I wetlands are those that meet the following criteria:
   a. Wetlands that are identified by scientists as high quality or high function wetlands;
   b. Bogs larger than one-half acre;
   c. Mature and old-growth forested wetlands larger than one acre; or
   d. Wetlands that are undisturbed and contain ecological attributes that are impossible to replace within a human lifetime.

2. **Category II.** Category II wetlands are not defined as Category I wetlands and meet the following criteria:
   a. Wetlands that are identified by scientists as containing “sensitive” plant species;
   b. Bogs between one-quarter and one-half acre in size; or
   c. Wetlands with a moderately high level of functions.

3. **Category III.** Category III wetlands do not satisfy Category I or II criteria, and have a moderate level of functions. These wetlands generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources than Category II wetlands.

4. **Category IV.** Category IV wetlands do not satisfy Category I, II or III criteria; and have the lowest level of functions; and are often heavily disturbed.


**Wildlife Habitat Conservation Areas:** Those areas the city council determines are necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created consistent with WAC Title 365.

**Windowing:** The selective removal of branches not to exceed more than 25 percent of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.
Wireless Communications:
1. Attached Wireless Communication Facility (Attached WCF): An antenna array that is attached to an existing building or structure, including utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.
2. Microcell: An attached WCF which consists of antennas four feet or less in height and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or a two-foot by one-and-one-half-foot panel) as viewed from any one point, or a tubular antenna that is four inches in diameter and no more than six feet long.
3. Wireless Communication Antenna Array (Antenna Array): One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
4. Wireless Communications Facility (WCF): Any unstaffed facility for the transmission and/or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.
5. Wireless Communication Support Structure (Support Structure): A structure designed and constructed specifically to support an antenna array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an attached WCF to an existing building or structure (hereinafter “attachment structure”), shall be excluded from the definition of and regulations applicable to support structures.

Yard: An open, unoccupied space, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated, required to be kept open by the yard requirements prescribed herein.
1. Front Yard: The front yard is the yard abutting an improved street from which the lot gains primary access or the yard abutting the entrance to a building and extending the full width of the lot. If this definition does not establish a front yard setback, the code official shall establish the front yard based upon orientation of the lot to surrounding lots and the means of access to the lot.
2. Rear Yard: The yard opposite the front yard.
3. Side Yard: Any yards not designated as a front or rear yard shall be defined as a side yard. (Ord. 08C-01 § 9; Ord. 07C-02 § 1; Ord. 06C-04 § 2; Ord. 05C-16 § 2; Ord. 05C-12 § 4; Ord. 04C-12 § 17; Ord. 04C-08 § 11; Ord. 04C-02 § 2; Ord. 03C-08 § 11; Ord. 03C-01 § 5; Ord. 02C-10 § 4; Ord. 02C-09 § 5; Ord. 02C-05 § 5; Ord. 02C-04 § 8; Ord. 02C-01 § 2; Ord. 01C-06 § 1; Ord. 99C-13 § 1).
INTRODUCTION

The purpose of this document is four-fold:

1. To fulfill the requirements of the Shoreline Management Act of 1971, Chapter 286, Laws of 1971, Chapter 90.58. RCW and Chapter 173-26 WAC by developing a Master Program to guide the future use and development of Mercer Island’s shoreline.
2. To recognize the Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan
3. To provide guidelines for revising local ordinances and zoning codes.
4. To provide a basis for evaluating applications for shoreline permits on Mercer Island.

The State of Washington Shoreline Management Act of 1971 recognizes that the shorelines of the state are among our most valuable and fragile natural resources and directs all local governments to develop a Master Program for the management of these shorelines. The Law specifies that all lakes over 1,000 acres in surface area are Shorelines of Statewide Significance. Lake Washington is such a shoreline and in our planning we must, as the Shoreline Management Act specifies, provide for uses in the following order of preference: those which

1. Recognize and protect the state-wide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shoreline;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element deemed appropriate or necessary.

PROLOGUE

To the early developers who built metropolitan Seattle, Lake Washington was perceived as a utilitarian resource. During the past hundred years the Lake has been utilized for transportation, agricultural and domestic water supplies, waste disposal, and numerous types of commercial and industrial enterprises. Many of these activities had adverse impacts on the Lake, and the discharge of sewage eventually led to serious problems with respect to water quality. In response to the rapidly declining quality of Lake Washington, the public voted to create the Municipality of Metropolitan Seattle (METRO) for the purpose of treating sanitary sewage and diverting its discharge from the Lake to Puget Sound. Today the lake is once again suitable for swimming and other recreational activities.

Many of the functions previously related to the lake are now met by other means. The region’s water supply is from rivers, one of which feeds into Lake Washington. Sanitary sewers have been diverted and measures are being taken to minimize further pollutants...
from entering the Lake. Water-borne transportation has been largely replaced by an extensive road network around and across the Lake. Also, commercial and industrial uses of the Lake have declined in recent years. In contrast, the use of Lake Washington for leisure activities has increased. The vast majority of the Lake is presently used for residential or recreational purposes. Thus, the future of Lake Washington may be quite different from the expectations of its early developers.

Mercer Island was originally utilized as a source of timber, and although proposed as a “regional park” in its entirety at one time, it became a recreational and, later, a prime residential area. Until 1940, boat and ferry travel was the primary means of reaching the Island from Seattle. In 1940 the Lake Washington floating bridge was completed. At this time the population of the Island and, subsequently, the complexion of development changed rapidly. Developers took advantage of the relatively easy access and relatively close proximity to Seattle’s employment centers, and land quickly changed from forest to subdivision.

Planning during this time and up until the early 1960’s was done conducted by King County. Since accepting the County zoning upon incorporation of the City in 1960, few changes affecting the shoreline uses have occurred, with single-family residential and recreation constituting the primary shoreline uses.

The City developed its first Shoreline Master Program in 1974. Key considerations within this plan included conservation, public access to the shoreline, residential development, and the guidance for recreational uses along the Mercer Island shoreline. These initial policy objectives are reflected in today’s protection of the City’s shoreline, which includes approximately 6,000 lineal feet of publicly owned shoreline, developed as waterfront recreation areas. Included in these publicly owned lands are nineteen street ends; Groveland Beach Park; Clarke Beach Park; and Luther Burbank Park, which was transferred in 2003 from King County to the City of Mercer Island via an Intergovernmental Land Transfer Agreement.

Over the course of the City’s development, the lake environment has also been impacted by new challenges. The shoreline character has continued to change over time, as additional docks and bulkheads have been built, and an increase of impervious surfaces within the shoreline area and in adjacent watersheds has occurred. These and other changes have impacted the habitat for salmonids. In 1999, Chinook salmon and bull trout were listed as Threatened under the Federal Endangered Species Act. The region’s response to this listing has resulted in new scientific data and research that has improved our understanding of shoreline ecological functions and their value in terms of fish and wildlife, water quality, and human health.

**INTENT**

To address changes in the shoreline environment, comply with the mandates of the Shoreline Management Act, and enable the City to plan for emerging issues, the City has initiated an extensive update of its Shoreline Master Program. The new program is intended to respond to current conditions and the community’s vision for the future.
In updating the program, the City’s primary objectives are to:

- Enable current and future generations to enjoy an attractive, healthy and safe waterfront.

- Protect the quality of water and shoreline natural resources to preserve fish and wildlife and their habitats.

- Protect the City’s investments, as well as those of property owners along and near the shoreline.

- Produce an updated Shoreline Master Program (SMP) that is supported by Mercer Island’s elected and appointed officials, citizens, property owners, the State of Washington, and other key groups with an interest in the shoreline.

- Efficiently achieve the SMP mandates of the State.

The City of Mercer Island, through adoption of the Shoreline Master Program, intends to implement the Washington State Shoreline Management Act (RCW 90.58) and its policies, including protecting the State’s shorelines and their associated natural resources, planning for and fostering all reasonable and appropriate uses, and providing opportunities for the general public to have access to and enjoy shorelines.

The City of Mercer Island’s Shoreline Master Program represents the City’s participation in a coordinated planning effort to protect the public interest associated with the shorelines of the State while, at the same time, recognizing and protecting private property rights consistent with the public interest. The Program preserves the public’s opportunity to enjoy the physical and aesthetic qualities of shorelines of the State and protects the functions of shorelines so that, at a minimum, the City achieves a ‘no net loss’ of ecological functions, as evaluated under the Final Shoreline Analysis Report issued in July 2009. The Program also promotes restoration of ecological functions where such functions are found to have been impaired, enabling functions to improve over time.

The goals and policies of the SMA constitute one of the goals for growth management as set forth in RCW 36.70A.020 and, as a result, the goals and policies of this SMP serve as an element of Mercer Island’s Comprehensive Plan and should be consistent with other elements of the Comprehensive Plan. In addition, other portions of the SMP adopted under chapter 90.58 RCW, including use regulations, are considered a part of the city's development regulations.

Most of the shoreline of Mercer Island had been platted previous to incorporation. Some of these areas are zoned R-8.4 which is a higher density than the R-15 which Mercer Island preferred to impose on the unplatted land it had the opportunity to regulate. Changes in zoning to a lower density along the shoreline have been virtually impossible to achieve. However, the City has developed several ordinances such as those relating to waterfront structures, community waterfront tracts, tree clearing, preserving of watercourses and
INTENT
The Lake Washington Regional Citizens and Technical Committees have recognized that the shoreline of Lake Washington is a valuable and fragile natural resource and that there is a great concern throughout the region relating to its utilization, protection, restoration, and preservation. They further recognized that unrestricted construction on the shoreline of Lake Washington is not in the best public interest, while at the same time recognizing and protecting private property rights consistent with the public interest. In addition, they recognized that the shoreline of Lake Washington is located within a major urbanized area and is subjected to ever-increasing pressures of additional uses necessitating increased coordination in the management and development of said shoreline. They stated that there is a clear and urgent demand for a planned, rational and concerted effort to insure coordinated and optimum utilization of the shoreline of Lake Washington.

Although the Regional Program provides a basis for the Mercer Island Master Program, historically, shoreline development and, more recently, the nature of our land-use ordinances, zoning codes and comprehensive plan, have established a fairly set land-use pattern. Community attitudes have strongly emphasized the desire to retain the residential/recreational uses of the shoreline. Therefore, there appears to be a need to slightly modify the tone of the Regional Program to fit Mercer Island.

The Mercer Island Citizen Advisory Committee has indicated that the order of preference for shoreline development should be evaluated according to the following considerations:

1. Low-density single-family residences should continue to be the primary land use of the shoreline of Mercer Island.
2. Conservation of marshes, spawning grounds and other unique or fragile areas is of primary concern.
3. Importance of the public having ample access to the shoreline.
4. Water-oriented recreation is deemed to be appropriate and desirable.

Planning and usage of the Mercer Island shoreline should reflect these priorities.

This document should be read in its entirety and be considered as a whole. These goals and policies were developed with the above priorities in mind and should be applied accordingly. The goals and policies within the following Elements: Shoreline Uses and Activities, Conservation, Public Access, and Components are intended by the Committees to be applicable in all cases.
Island. The Regional Goals are, therefore, summarized below to provide a reference to the Goals and Policies formulated by the Mercer Island Citizens Committee.

**PRIMARY GOAL**
The natural amenities and resources of Lake Washington are to be conserved in a predominately recreational/residential environment with adequate access available to the public.

The regional goals established by the Regional Committees are listed below in order of preference:

- The shoreline of Lake Washington is to be planned and coordinated to afford optimal use of the limited water resource.
- The shoreline of Lake Washington is to provide natural amenities within an urban environment.
- The resources and amenities of Lake Washington are to be protected and preserved for use and enjoyment by present and future generations.
- Increase public access to and along the shoreline areas, provided public safety, private property rights, and unique or fragile areas are not adversely affected.
- Water-dependent recreational activities available to the public are to be encouraged and increased on the shoreline of Lake Washington where appropriate and consistent with public interest.
- Existing residential uses are to be recognized and new residential construction will be subject to certain limitations if applicable.
- Existing economic uses and activities on the shoreline of Lake Washington are to be recognized, while economic uses of activities that are not dependent on a Lake Washington location are to be discouraged.
- A balanced transportation system for moving people and goods is to be encouraged within existing corridors.

**DESIGNATED ENVIRONMENTS**

WAC 173-26-211 states, “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.”

WAC 173-26-211(4)(b) recommended system classifies shorelines into four distinct environments (natural, rural conservancy, aquatic, high intensity, rural and urban conservancy and shoreline residential) which provide the framework for implementing shoreline policies and regulatory measures.

WAC 173-26-211(4)(c) allows for local governments to establish a different designation system or to retain their current environment designations, provided it is consistent with the purposes and policies of WAC 173-26-211 and WAC 173-26-211(5).

Mercer Island contains two distinct shoreline designations, pursuant to WAC 173-26-211(4)(c): urban residential, and urban park.

This system is designed to encourage uses in each environment which enhance the character of that environment. The basic intent of this system is to utilize performance standards which regulate use activities in accordance with goals and objective defined locally. Thus, the particular uses or type of developments placed in each environment should be designed and located so that there are no effects detrimental to achieving the objectives of the environment designations and local development criteria. This approach provides an ‘umbrella’ environment class over local planning and zoning on the shorelines. Since every area is endowed with different resources, has different intensity of development and attaches different social values to these physical and economic characteristics, the enforcement designations should not be regarded as a substitute for local planning and land-use regulations.”

Urban Residential

The purpose of the urban 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.

Designation Criteria. Areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development.

Management Policies.

1. 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.

2. Development of multifamily, recreational and residential subdivisions of five or more lots should provide public access and joint use for community recreational facilities.
3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

4. Commercial development should be limited to water-oriented uses.

Urban Park Environment
The purpose of the urban park environment is to protect and restore ecological functions in urban and developed settings, while allowing public access and a variety of park and recreation uses.

Designation Criteria. An urban park environment designation will be assigned to publicly owned shorelands, including all parks, street ends and public access points.

Management policies

1. Uses that preserve the natural character of the area or promote preservation of open space, 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.

2. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the urban park 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.

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

4. Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

SHORELINE USES AND ACTIVITIES

The following goals and policies address the general distribution, location, and extent of all uses within shoreline jurisdiction.

GOALS

1. **Ensure that the land use patterns within shoreline areas are compatible with shoreline environment designations and will be sensitive to and not degrade habitat, ecological systems, and other shoreline resources.** The Shoreline of Mercer Island
is to be planned and coordinated to afford optimal use of the limited resource.
2. The shoreline of Mercer Island is to provide natural amenities within an urban environment.

POLICIES

1. Plans should be made for reasonable and appropriate shoreline uses and activities.
   a. Short-term economic gain or convenience in development should be evaluated in relationship to potential long-term effects on the shoreline.
   b. Preference should be given to those uses or activities which enhance the natural amenities of the Lake and which depend on a shoreline location or provide public access to the shoreline.
   c. Planning, zoning, capital improvements and other policy and regulatory standards should not increase the density or intensity of shoreline uses or activities.
   d. Shorelines particularly suited for a specific appropriate water-dependent use or activity should be planned for and designated.
   e. Multiple-use of shorelines should be planned where location and integration of compatible uses or activities are feasible.
   f. Aesthetic values must be considered when evaluating new development, redevelopment of existing facilities or for general enhancement of shoreline areas.
   g. Shoreline uses and activities should be discouraged if they are objectionable due to — noise or odor of it they create offensive or unsafe conditions in relating to reasonable and — appropriate uses and activities. New residential development should be designed to protect existing shoreline, promote public safety, and avoid adverse impacts to shoreline habitats.

2. All activities, development and redevelopment within the City’s shoreline jurisdiction should be designed to ensure public safety, enhance, public access, and achieve no net loss of shoreline ecological functions.
   a. Existing shoreline use or activities identified as being inappropriate should be encouraged to relocate away from the shoreline.
   b. Uses and activities in unique or fragile shoreline areas should be discouraged unless measures can be satisfactorily undertaken to mitigate all related adverse impacts.
   c. Sufficient amounts of open space should be distributed along the shoreline to provide nearby recreational opportunities for the general public.
5. Shoreline uses or activities not specified in this document should be consistent with the intent of the goals and policies stated herein.

CONSERVATION ELEMENT

The following goal and policies address the protection of the resources of the shoreline. According to the Shoreline Management Act, three of the highest priorities for Shorelines of Statewide Significance are to a) preserve the natural character of the shorelines; b) result in long term over short term benefit; and c) protect the resources and ecology of the shoreline. Although some natural resources are non-renewable in character, Lake Washington is a unique biological, economic and recreational resource which can be managed in a way to allow its assets to be continually available to the region and the state.

Human activities have either directly or indirectly influenced the Lake’s entire shoreline. Some areas (stream outlets, marshes, embayments, wooded areas and others) have remained in a somewhat natural condition. As the population of the Island increases, the pressures to develop these natural condition. But the costs involved in preparing some of these sites for development may be high due to soil or hydrologic conditions. There may be greater long term value in preserving these areas for purposes of open space within an urbanizing region. Often these areas are also important habitats for fish and wildlife. Preservation of these remaining areas, during the subdivision or development process, could be accomplished through the use of the open space option of the Subdivision Ordinance.

Conservation efforts are not directed solely toward undeveloped areas. Activities on the shoreline or within the drainage basin may adversely affect water quality, aquatic life or other resources of the Lake. Normal single-family residential activities within the shoreline appear to have minimal negative effects on the resources of the Lake. Long Range planning should seek to minimize such adverse impacts.

The concept of conservation should also apply to structures or areas worth preserving for their historical, cultural, educational or scientific value. The use of some areas, either on a temporary basis for special events or festivals, or permanently for facilities reflecting our past or enhancing our future, are considered as reasonable and appropriate.

GOAL

The resources and amenities of Lake Washington are to be protected and preserved for use and enjoyment by present and future generations.

POLICIES:

1. Existing natural resources should be conserved, consistent with private property rights.
a. Aquatic habitats, particularly spawning grounds, should be protected, improved and, if feasible, increased.

b. Wildlife habitats should be protected, improved and, if feasible, increased.

c. Unique and fragile areas should be so designated and mapped. Access and use should be restricted if necessary for the conservation of these areas. The type and degree of development to be allowed should be based upon such factors as: slope, soils, vegetation, geology and hydrology.

d. Water quality should be maintained at a level to permit recreational use (specifically swimming), provide a suitable habitat for desirable forms of aquatic life and satisfy other required human needs.

2. Existing and future activities on Lake Washington and its shoreline should be designed to minimize adverse effects on the natural systems.

3. Uses or activities within all drainage basins related to Lake Washington should be considered as an integral part of shoreline planning.

a. Developers should be required to bear the cost of providing safeguards to prevent storm drainage damage resulting from their development.

b. Excessive soil erosion and sedimentation and other polluting elements should be prevented from entering and adversely affecting the Lake and its constituent watercourses.

c. Restoration of natural systems adversely affected by sedimentation and pollution should be encouraged.

d. The destruction of watercourses feeding into Lake Washington should be discouraged.

e. The planning and control of surface drainage water from Mercer Island into Lake Washington should be based on such factors as the quality and quantity of water, rate of flow and containment, etc. The latest applicable data should be used in the implementation of a storm drainage system.

4. Shoreline areas having historical, cultural, educational or scientific value should be protected and restored.

a. Public and private cooperation should be encouraged in site preservation and protection.

b. Suspected or newly discovered sites should be kept free from intrusion until their value is determined.

c. Festivals and temporary uses involving public interest and not substantially or permanently impairing water quality or unique and fragile areas should be permitted.

Comment [ts9]: Mapping has been completed
**RECOMMENDATIONS**

1. Since the shorelines are valuable and fragile resources, Mercer Island should designate use regulations to minimize man-made intrusions on the shoreline. Conservancy environments should be designated and mapped where the natural conditions so indicate.

2. Unique and fragile areas on the Island’s shoreline should be further defined, inventoried and mapped by August, 1974.

3. Discharge of sewage (sewage is defined as treated or untreated wastes which do not meet Federal, State, or local standards for discharge in Lake Washington), waste, rubbish and litter from boats on Lake Washington should not be permitted. Pumping and tank facilities for the discharge of sewage, waste, rubbish and litter from boats equipped with marine toilets and/or galleys, should be provided in all new marinas or public moorages.

4. Comment should be solicited from Metro concerning proposed activities affecting water quality in Lake Washington or its tributaries.

5. Mercer Island should consider designating sites of historic value such as the passenger boat and ferry landings and areas of early settlement such as the Proctor, Calkins and Olds homesteads.

6. Where appropriate, natural watercourses should be retained.

7. A watercourse ordinance to preserve the systems of natural drainage on the Island should be passed.

8. Information concerning the use of the State Open Space Taxation legislation of 1970, 1971 and 1973 should be made available to encourage preservation of unique and fragile areas.

9. The open space option of Mercer Island’s Ordinance 59, the Subdivision Ordinance, should be utilized for preserving unique and fragile areas.

**PUBLIC ACCESS ELEMENT**

The waters of Lake Washington are in the public domain and should be readily accessible to the public. As the population around Lake Washington grows, there will be an increasing need for public access to the shoreline. The Shoreline Management Act and the Final Guidelines make repeated reference to the issue of public access to the shoreline. In accordance with the Act, a Public Access Element has been included in this study.
However, this situation is not unique to Lake Washington, and other planning efforts have addressed this challenge in a variety of ways.

The intent of the Shoreline Management Act and these goals and policies is not to reduce unlawfully the rights attached to private property to condone trespass, but rather to recognize and protect private property rights consistent with the public interest. The public access requirements of this section are not applicable to single family residences. The following goals and policies address the ability of the public to reach, touch, view, and travel on Lake Washington and to view the water and the shoreline from public places.

GOAL

Increase and enhance public access to and along the Mercer Island Shoreline where appropriate and consistent with public interest, provided public safety, private property rights, and unique or fragile areas are not adversely affected.

POLICIES:

1. Public access to and along the water’s edge should be consistent with the public safety, private property rights, and conservation of unique or fragile areas.

2. Public access to and along the water’s edge should be available in publicly owned shoreline areas.

3. In new substantial shoreline development, developers should be encouraged to provide public access to and along the water’s edge provided that no private property shall be taken involuntarily for public purposes without due compensation.

4. When substantial modifications or additions are proposed to substantial developments, the developer should be encouraged to provide for public access to and along the water’s edge if physically feasible provided that no private property be taken involuntarily without due compensation.

5. In new developments on the shoreline, the water’s edge should be kept free of buildings.

6. Where publicly owned shoreline areas are available for public pedestrian and bicycle pathways, these should be developed as close to the water’s edge as reasonable.

7. Views of the shoreline and water from shoreline and upland areas should be preserved and enhanced. Enhancement of views shall not be construed to mean excessive removal of vegetation.

8. Rights-of-way on the shoreline should be made available for public access where appropriate.

9. Access onto shoreline public street ends should be enhanced.

RECOMMENDATION
10. Consideration should be given to provisions for the handicapped, disabled, and elderly when developing public access to shoreline areas.

RECREATION ELEMENT

Mercer Island has approximately 15 miles of shoreline most of which is devoted to low density single family residences. It could be said that almost 100% of the developed shoreline of Mercer Island is devoted to water-dependent recreation, assuming that the waterfront residents find both active and passive enjoyment from their shoreline location. The remainder of the shoreline is set aside for public or semi-public water-related recreation except for a fraction which is utilized for bridge crossings and utilities. The latter, in some cases, is also available for public access to the water.

The City presently owns approximately 6,000 feet of shoreline which is developed as waterfront parks with facilities for swimming, fishing and car-top boat launching. Beaches at Luther Burbank Park and Groveland Beach Park are staffed with lifeguards during the summer season. Unguarded designated swimming areas also exist at Calkins Landing and Clarke Beach Park. Dock facilities that serve fishing and other activities are located at Luther Burbank Park and Proctor Landing, and seasonally at Clarke and Groveland Beaches. The City manages several summer camps for youth and adult with instruction on sailing and kayaking based at Luther Burbank Park.

Nineteen street ends of widths varying from 30’ to 75’ add an additional 600 lineal feet of shoreline to the public domain and provide the potential for considerable access to the water’s edge in all segments of the Island. Development of some street ends has been undertaken as a cooperative effort between the city and the adjacent neighborhoods. Some provide swimming access, others offer car-top launching access, others provide minimal access solely for passive enjoyment because of the limitation of size or topography, and lack of neighborhood interest and availability of funds. Three street ends were re-developed in 2003, which included eliminating bulkheads and enhancing near shore habitat.

There are two private waterfront clubs owning a combined 1,401,194 feet of frontage. They provide swimming, moorage, and boat launching facilities to a significant portion of the Island’s families.

Covenant Shores, a continuing care retirement community, owns approximately 650 feet of shoreline which serves as open space, swimming, picnicking, and moorage for its residential units. Numerous private neighborhood waterfront “parks,” with shared access for neighboring residences, exist along the shoreline.

Regarding waterfront recreation, The City of Mercer Island Parks and Recreation Plan, adopted in 2007, calls for Capital improvements at 2 waterfront facilities to enhance recreation opportunities. Shoreline restoration, swim beach enhancements and dock area improvements are anticipated at Luther Burbank Park, and improved boat launching and retrieval is anticipated.

Comment [ts18]: Staff edit per 2-17-10 PC direction
Comment [ts19]: Staff edit per 2-17-10 PC direction
Comment [ts20]: Edit per 2-17-10 PC comment
with planned improvements at the Mercer Island Boat Launch. Future development of Luther Burbank Park is also subject to the Luther Burbank Master Plan.

GOAL

Water-dependent recreational activities available to the public are to be encouraged and increased on the shoreline of Mercer Island where appropriate and consistent with the public interest.

POLICIES

1. Provide additional public water-oriented recreation opportunities.

2. Locate public recreational uses in shoreline areas that can support those uses without risks to human health, safety, and/or security, while minimizing effects on shoreline functions, private property rights, and/or neighboring uses.

Water-dependent recreational activities should be increased and given priority.

b. Public shoreline parks should be increased in size and number.

c. Additional swimming areas should be developed on the shoreline.

d. Recreational boating activities should be encouraged as long as they are compatible with other uses. Day moorage should be a permitted use in recreational areas where feasible except in unique and fragile areas.

e. Accommodations should be made for launching small water craft at public shoreline parks and street ends where feasible.

2. Open space and opportunity for passive forms of recreation should be encouraged and increased.

3. Retention of some public shoreline in a nearly natural state is desirable.

4. Based on the Mercer Island Comprehensive Plan, the appropriate governmental agency should avail itself of the earliest opportunity to acquire shoreline when available. See Recommendations.
5. Mercer Island and other appropriate governmental agencies should join in a cooperative effort to expand recreational opportunities through programs of acquisition, development, and maintenance of waterfront areas.

6. Semi-public water-dependent recreational facilities (e.g., private beach clubs, yacht clubs, etc.) should be permitted and recognized as providing access to the water for a segment of the population of Mercer Island and should be recognized as providing a vital part of the island’s recreational facilities.

7. Every opportunity should be taken to acquire private recreational facilities if they are likely to be developed for other than recreational purposes.

8. Recreational shoreline activities adjacent to residential uses are not to constitute a public nuisance.

RECOMMENDATIONS:

1. The Mercer Island Park and Open Space Plan should be coordinated with appropriate, adopted regional plans.

2. Early efforts should be made to suitably develop presently held public shoreline for water-dependent public recreational uses and open space.

3. Cooperation between the City of Mercer Island and neighborhoods should be continued in the planning and development of small neighborhood parks and street ends.

4. Mercer Island should cooperate with other governmental agencies to undertake studies to determine the optimum level of boating activity on Lake Washington.

5. Rental or provision of small, non-motorized water craft and water-related recreational equipment should be made available at several waterfront parks when feasible.

6. Small non-motorized water craft are nondestructive to the shoreline environment and such boating activity should be shown preference by policies governing waterfront recreation facilities.

7. The designation of underwater areas for skin or scuba diving should be considered.

8. Interest in fishing for bass, perch, crappie, and other under-utilized species should be stimulated through community education.

9. Procedures should be developed for real estate agencies to notify public agencies when waterfront property is available for purchase.
RESIDENTIAL ELEMENT

Present residential zoning on Mercer Island’s shoreline is for single family residential uses, and conditional uses that are complementary to the single family environment, such as public parks, private recreational areas, retirement homes located on properties used primarily for a place of worship, and noncommercial recreational areas. It should be noted that some of the shoreline is not yet developed as intensely as it could be under existing zoning. Several large shoreline properties now used by one family could be subdivided to allow from one to three additional residences.

GOAL

Existing residential uses are to be recognized, and new residential construction will be subject to certain limitations where applicable.

POLICIES

1. Existing single-family residential uses will be protected. New construction or modifications shall be allowed within the framework of the policies in this document and City Ordinance.

2. New residential uses over water will not be permitted.

3. In single-family development developments within the shoreline, the water’s edge should be kept free of buildings other than components required for boat and equipment storage. Such components should be screened by appropriate landscaping. Single-family uses may include fences or other means to minimize trespassing and provide protection.

4. Public access to and along the water’s edge should be encouraged in the design of multi-family structures, subdivisions of five or more lots, and planned unit developments occurring on the shoreline, provided that no private property shall be taken involuntarily without due compensation.

5. Public access does not include the right to enter upon single-family residential property without the permission of the owner.

RECOMMENDATIONS

1. The Mercer Island Planning Department should have information available for shoreline homeowners regarding the enhancement of fish and wildlife habitats, especially at the water’s edge.

2. Consideration should be given to revising the Mercer Island Zoning Code regarding back yard structures to reflect the intent of Policy No. 2. Boat houses on the water’s...
edge should be considered as an alternative to, not in addition to, a boat moorage.

3. The Planning Commission should consider actions to clarify the City Zoning Code to provide for a minimum twenty-five (25) foot setback from the water’s edge for all primary residential structures and appropriate accessory structures.

ECONOMIC DEVELOPMENT ELEMENT

Economic development of the shorelines of Mercer Island is essentially non-existent. Such shorelines and associated wetlands, being zoned single-family, preclude economic development other than that associated with recreation. Thus, zoning and the Comprehensive Plan do not allow for economic development on the shoreline of Mercer Island.

GOAL

Existing economic uses and activities on the shorelines of Mercer Island are to be recognized. Economic uses or activities that are not dependent upon a Mercer Island Shoreline location are to be discouraged.

POLICIES

1. Shoreline economic uses and activities on Lake Washington should locate where commercial or industrial areas exist.

2. Economic uses and activities which do not depend on a Mercer Island shoreline location shall not be permitted.

3. Drilling for oil or gas and deep or surface mining for minerals is prohibited in the shoreline areas of Mercer Island.

CIRCULATION ELEMENT

Lake Washington is a 22,139 acre body of water located in the midst of an urban area. An extensive network of transportation routes exists around and across the Lake. Although transportation facilities were developed in response to projected demands, these facilities have in turn helped generate additional transportation needs. For example, construction of the Lake Washington bridges has permitted the eastern portion of the region to change from a low density, summer home area to a higher density, suburban/commercial area. This increase in activity has resulted in suggestions for third and fourth bridges crossing the Lake. Lake Washington itself is a navigable body of water and is connected to Puget Sound by a system of canals and locks. Although some commercial navigation does occur, most of the boating activities in Lake Washington and recreational in nature. Seaplane activity is also present on the Lake, and three airfields are located on the shoreline. The
automobile, however, is the predominant means of transportation to, from, around and across the lake. Our heavy reliance on the automobile has contributed to problems in air quality, fuel supply and traffic congestion. In the long term, urban areas should look toward providing alternatives to the automobile as the primary means of transportation.

Principal transportation routes on Mercer Island include Inter-State 90, a highway that crosses Lake Washington via Mercer Island and two connecting bridges, and a series of arterial roads that follow the shoreline around the Island a short distance inland. Thus, shoreline-related roads form an important element of principal transportation routes on the Island. In addition, numerous lateral roads connect the shoreline following arterials with properties along the water’s edge, and frequently provide public access to the lake through developed and undeveloped street ends as well as visual access to the lake.

A rudimentary system of pedestrian and bicycle ways has gradually developed along portions of the shoreline following arterials; more definitive development of such ways is planned via the City’s Pedestrian and Bicycle Facility Plan. Metro buses provide important modes of on-Island transportation as well as access to neighboring municipalities and employment centers. Other forms of transportation are non-existent, except for privately owned boats and a few seaplanes along the shore.

**GOAL**

*A balanced transportation system for moving people and goods is to be encouraged within existing corridors.*

**POLICIES**

1. **Develop efficient circulation systems in a manner that assures the safe movement of people and goods while minimizing adverse effects on shoreline use, developments and shoreline ecological functions.**
2. **Provide and/or enhance physical and visual public access to shorelines along public roads in accordance with the public access goals.**
3. **Encourage shoreline circulation systems that provide alternative routes and modes of travel, including non-motorized travel.**
4. **Roadways serving shoreline areas should be developed principally as scenic avenues rather than major arterials.**
5. **Public transportation should be provided to facilitate access to recreation areas on the shoreline.**
6. **Pedestrian and bicycle pathways, including provisions for maintenance, operation and security, should be developed around and across the Lake, consistent with private property rights.**

**Access points to and along the shoreline should be linked by pedestrian and bicycle pathways developed as close to the water’s edge as reasonable.**
Pedestrian and bicycle pathways should be included in new or expanded bridges.

Pedestrian and bicycle pathways should be included in publicly-financed transportation systems or rights-of-way, consistent with public interest and safety.

4. Provisions for METRO Public Transit should be implemented in transportation facilities crossing Mercer Island.

5. No new regional vehicular traffic corridors should be opened across Mercer Island’s shoreline.
   a. The width of the I-90 corridor shall be limited to that approved by the City of Mercer Island as stated in Mercer Island Resolution 595 adopted September 24, 1973.
   b. Future regional requirements for moving people through Mercer Island’s shorelines shall be limited to public mass transit systems constructed within the approved I-90 corridor.

6. Commercial aircraft facilities on the shoreline should not be permitted.

7. Moorage, storage, servicing and operation facilities for ocean-going or commercial ships and barges should not be permitted on the shoreline.

8. Proposals for additional transportation across Lake Washington should consider alternative modes above, on, or below the surface of the Lake.

9. Cross-lake transportation facilities must be designed to minimize the increase in noise, air or water pollution above existing levels and, in addition, must reduce to the maximum extent, similar impacts from existing facilities via upgrading and improvement.

RECOMMENDATIONS

1. Mercer Island should cooperate with Metro to coordinate public transportation routes with public access points along the shoreline.

2. Mercer Island should coordinate with King County and neighboring communities in the implementation of its Trails Plan when feasible.

3. The connection of upland trails on the Island to the shoreline activity nodes and pedestrian and bicycle pathways, along the Mercer Ways, should be encouraged and developed.

4. To assist in developing pedestrian and bicycle pathways, easements along rights-of-way

Comment [ts37]: Please note; if the Commission chooses to retain this language, it should be updated to reflect the Memorandum Agreement of December, 1976 and the Amendment to the I-90 Memorandum Agreement of August, 2004.

Comment [ts38]: Staff edit per 2-17-10 PC direction

Comment [ts39]: Edit per 2-17-10 PC comment
should be obtained and incentives should be offered to property owners for utilizing setback areas.

5. Mercer Island and other governmental agencies should consider using waterborne modes of transporting commuters and sightseers in a manner compatible with environmental quality and recreational activity. Such considerations should include terminals and connections.

COMPONENTS

Lake Washington’s shoreline has been recognized as a “valuable and fragile resource” by the Shoreline Management Act of 1971. The extent and the desirability of man-made modifications to these shorelines has not yet been determined. Although several studies relative to this issue have been made, are being conducted, and are envisioned, it is unlikely that any conclusive evidence will be available in the near future.

In instances where the literal interpretation of the policies in the Components Element create a demonstrated hardship, unique to an individual property, relief may be sought through the variance process as delineated in the Variance and Conditional Uses Section, pages 38 and 39.

POLICIES

Activities, Conservation, Public Access, NOTE: The policies set forth within the following Elements: Shoreline Uses and Components, are to apply to all uses and activities contained within this document. The policies under this heading are to apply to all components.

1. Components in or near the water should not be constructed from materials which have significant adverse physical or chemical effects on water quality, vegetation, fish and/or wildlife.

2. Components should be discouraged in unique or fragile areas, unless it can be shown that measures can be taken to adequately mitigate all related adverse impacts.

3. Components should be designed to permit normal circulation of water, sediments, fish and other aquatic life in and along the shoreline area.

4. High rise structures should be prohibited on the shoreline.

5. Shoreline low-rise development should provide substantial grade level views of the water from public-shoreline roads running generally parallel to the water’s edge.

6. Enclosed overwater structures should not be allowed except when overriding considerations of the public interest are served. This would not preclude the use of covered, unenclosed moorage’s.
7. Substantial repairs or alterations to nonconforming structures should be in conformance with the policies contained herein.

8. Non-conforming shoreline structures which receive little use and/or are in a general state of disrepair should be abated within a reasonable period of time.

RECOMMENDATIONS:

1. The Component Section of this document should be reviewed and modified as necessary at the completion of the research program being undertaken by the cooperative Fishery Unit at the University of Washington, and any other relevant studies.

2. Site planning should include setbacks from the shoreline. Landscaping should also be considered as a method of retaining a sense of nature in developed shoreline areas. Retention of trees and other natural vegetation should be encouraged where possible, particularly in those areas in or adjacent to marshes, wetlands, or other areas of ecological and environmental significance. (Note: all site planning, landscaping, and development for non-single-family uses is subject to review by the Design Commission under Ordinance No. 297 and the Design Commission Guidelines.)

LANDFILL AND DREDGING

Landfill is usually contemplated in locations where the water is shallow and where rooted vegetation often occurs. In their natural condition these same areas provide suitable habitat for fish and wildlife feeding, breeding and shelter. Biologically the shallow vegetation areas tend to be highly productive portions of the Lake. For these reasons governmental agencies and scientific experts have generally taken a stand against landfill.

In most cases when dredging is done it also occurs in shallow areas and may disturb the environment in the following ways: 1) temporary reduction of water clarity from suspended sediments, 2) losses in aquatic plants and animals by direct removal or from the sedimentation of suspended materials, 3) alteration in the nutrient and oxygen levels of the water column, and 4) suspension of toxic materials from the sediments into the water column.

Mercer Island has some uneven shorelines due to the historically varying degrees of control over filling and bulkheading beyond the ordinary high water line. In some instances, it may be appropriate to bulkhead and do minor landfill. These instances may include, but not be limited to, provision of protection of slide prone areas where necessary and to add to or repair failing bulkheads. These and other unusual situations in which the literal interpretation of the Shorelines Master Program, Guidelines or Mercer Island Goals and Policies creates a demonstrated hardship can be addressed through variance procedures. (Note: See Variance and Conditional Uses Section)
POLICIES

1. Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.

2. Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support: water-dependent use, public access, cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan, disposal of dredged material considered suitable under, and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources, expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible, mitigation action, environmental restoration, beach nourishment or enhancement project. Fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.

3. Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

4. New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. Dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

5. Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark. The project must be either associated with a MTCA or CERCLA habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.

Landfill and dredging should be prohibited in unique or fragile areas.

2. Landfill or dredging should not be permitted except in the following cases, and even then should generally be discouraged.

a. Landfill or dredging may be permitted where necessary for the development and maintenance of public shoreline parks.
b. Landfill or dredging may be permitted where necessary to improve water quality where no other possible alternatives are available.

c. Replenishing sand on public and private community beaches should be allowed.

d. Landfill or dredging may be permitted where additional public access is provided, and/or where there is anticipated to be a significant improvement to fish or wildlife habitat; provided there is no major reduction upon the surface waters of the Lake.

3. Dredging spoils should be deposited on approved dumping sites. Dumping sites should not be allowed in the Lake or in unique or fragile areas.

4. Dredging should be permitted to maintain water flow, navigability, and water depth in cases of water course siltation.

5. Dredging for the purpose of obtaining fill or construction material should be prohibited.

RECOMMENDATIONS

1. When reviewing applications for landfill intended to improve water quality, Mercer Island Planning Department should consult with appropriate governmental agencies to determine the necessity and proper location for such fill.

2. Appropriate governmental agencies and local jurisdictions should approve funding and/or personnel to undertake a short-term study on the biological impacts of dredging and landfills and to devise suitable criteria or guidelines for such activities.

SHORELINE STABILIZATION

The following policies address shoreline stabilization.

POLICIES

1. Non-structural stabilization measures are preferred over “soft” structural measures. “Soft” structural shoreline stabilization measures are strongly preferred over hard structural shoreline stabilization. Proposals for hard and soft structural solutions, including bulkheads, should be allowed only when it is demonstrated that nonstructural methods are not feasible. Hard structural shoreline stabilization measures should be allowed only when it is demonstrated that soft structural measures are not feasible.

2. Bulkheads and other structural stabilizations should be located, designed, and constructed primarily to prevent damage to existing development and minimize adverse impacts to ecological functions.
3. New development requiring bulkheads and/or similar protection should not be allowed. Shoreline uses should be located in a manner so that bulkheads and other structural stabilization are not likely to become necessary in the future.

PIERS AND MOORAGES

The following policies address piers and moorages. A majority of the single family properties on the shoreline have piers and/or moorages. The only multi-family areas, Shorewood, also has piers along its waterfront area. These waterfront components provide desirable facilities to the property owners but may, at some future date, if totally uncontrolled, result in some undesirable consequences for the Lake and the community. Further, the Shoreline Management Act directs the Local Master Program to address itself to this possibility. Therefore, it is appropriate to consider additional piers and/or moorages in light of future as well as existing uses and patterns and further, to provide general guidelines and controls for issuing permits and reviewing new development proposals.

Existing City zoning codes contain sections on pier length and setbacks as well as moorages. These should be reviewed in light of the recommendations contained in this Master Program. In addition, any relevant data generated from local and regional studies on piers and moorages should be considered in the periodic updating of the Mercer Island Master Program.

POLICIES

1. New piers and docks shall be allowed only for water-dependent uses or public access. Piers and docks associated with single family residences are considered a water-dependent use.

2. Piers and docks shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.

Construction of new or expanded piers should generally be regulated, and the following limitations shall apply:

Piers should be allowed only for moorage of pleasure craft, for water-dependent recreation, for water-dependent economic activities, for utility maintenance, or for required emergency vessels.

Temporary moorages may be permitted for vessels used in the construction of shoreline facilities.
Adjoining waterfront property owners should be encouraged to share a common pier.

The size and extent of a pier should not exceed that which is required for the water-dependent purposes for which it was constructed.

In multi-family or condominium developments the ratio of moorage berths to residential units should be equal to or some fraction less than one.

2. The use of buoys for moorage should be considered as an alternative to the construction of piers for this purpose. Such buoys should be placed as close to shore as possible in order to minimize hazards to navigation.

3. Exterior lighting utilized in conjunction with piers and waterfront structures should be directed away from adjacent property and the water wherever offensive.

**RECOMMENDATIONS**

1. Mercer Island should establish uniform standards governing the design of piers including criteria for length, width, location, density and floating versus pile construction. It should be noted that floating piers can be rearranged, removed or relocated as needs or regulations change.

2. Consideration should be given to revising Ordinance 15, the Zoning Code, to reduce setbacks along property lines for piers from ten (10) feet to zero (0) feet.

3. Regulation of spacing between piers and total number of piers in a designated distance should be considered.

4. Study and consideration should be given to revising Ordinance 15, the Zoning Code, as it prescribes dock length at 100 feet. Dock length should be related to intended use and water depth which may be greater or less than that prescribed by the Code.
UTILITIES

The following policies address utilities. Utilities are services which produce or carry electric power, gas, sewage, water, communications or oil products. The potential exists for combining some of these uses with other shoreline uses, including public access.

Although the diversion of sewage away from Lake Washington has substantially improved water quality in the Lake, storm sewers continue to affect water quality. As rain and other waters pass over impervious land surfaces, these waters pick up large quantities of sediments, oil, litter, heat and other contaminants. The impact of surface runoff from construction sites is of particular concern. Excessive quantities of suspended solids and oil are carried away and may significantly affect the quality of the receiving waters and associated aquatic life.

It should be noted that the Federal Water Pollution Control Act of 1972 may apply to surface runoff if there is a recognizable source of contamination (for example, business districts, parking lots, major land developments, and others). But the issue is complicated by the fact that much contamination comes from numerous sources which are small and often very difficult to identify.

POLICIES

1. Utility facilities should be designed and located to assure no net loss of 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.

2. 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.

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

1. Whenever possible, consolidation of utilities should be encouraged within rights-of-way.

2. These facilities should be placed underground, except where it is clearly technically and economically not feasible.

3. After completion of installation or maintenance of these facilities, the shoreline area should be restored to its pre-project condition. If the previous condition is identified as being undesirable, then landscaping and other improvements should be undertaken.

4. In all new developments, the developer should install means to control the entry of
contaminants into the Lake within acceptable water quality standards.

5. Prior to construction of major new outfalls, water circulation studies should be conducted to determine the best shoreline location for such facilities.

6. Major shoreline outfalls should be designed and constructed to minimize damage to the lake’s edge and be placed below the surface of the Lake where feasible.

RECOMMENDATIONS

1. The proliferation of impervious surfaces in the drainage basins serving Lake Washington should be kept to a minimum.

2. Whenever possible contaminants should be removed from surface runoff at the source of contamination. Methods of removing contaminants include oil skimmers, sediment traps, and street sweeping.

3. When contemplating the construction of a major new outfall, Metro and other appropriate governmental agencies should be consulted regarding the appropriate location and design for the outfall.

PARKING

The following policies address parking. Whether for work or leisure time, many people reach the shoreline by automobile. The use of shoreline areas for parking, however, precludes other more appropriate uses of the land. Since landfill as a means of increasing dry land areas is to be discouraged, the storage space for automobiles is limited. Thus, the number of required parking spaces for new construction can severely restrict the density in many developments.

The use of the automobiles as the primary mode of transportation is expected to continue. Any reliable public transportation system may take years to develop. The problem of the automobile as a major waterfront land user may increase as the demand for various waterfront uses and activities increases.

POLICIES

Parking facilities for motor vehicles or boat trailers should be minimized in the shoreline area.

a. Parking facilities should not be permitted along the water’s edge.

b. Upland parking facilities for shoreline activities should provide adequate pedestrian access to the shoreline.
c. Upland parking facilities should be designed and landscaped to minimize adverse impacts on the shoreline and adjacent lands.

d. Parking facilities shall be planned, located and designed where they will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

e. Parking facilities in shorelines shall minimize the environmental and visual impacts.

**BOAT LAUNCHING FACILITIES**

The following policies address boat launching facilities. Boating is a popular form of recreation in the Lake Washington area, and demand for boating is expected to increase as the population in the region grows. The use of boat launching facilities permits dry land storage of vessels and reduces the need for marinas and piers. At present there are 41 public boat launching ramps on Lake Washington; however, none exist on Mercer Island at present. The proposed Comprehensive Plan envisions two areas for boat launching and water-related recreation under the future I-90 bridge approaches.

**POLICIES**

1. Regional boat launching facilities should be provided which are adequate for the needs and carrying capacity of the Lake subject to other policies herein governing land and water use.

12. Boat launching facilities should not be constructed in unique and fragile areas.

23. Boat launching facilities should be separated from swimming areas wherever possible.
MARCH 3, 2010
TO: DSG Staff
FROM: Richard Hart, Development Services Director
DATE: May 12, 2005
RE: Loss of legally nonconforming status for docks

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

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

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

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

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

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

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

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

In Summary, it is concluded that:

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

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

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

4) *Replacement* piles may be placed in a non-conforming location only if the total number of such piles is determined to be less than the number of replacement piles than would be required if the dock was brought into conformance (or more into conformance). Said another way, if the City clearly demonstrates that the applicant can reduce the number of required replacement piles by bringing the dock more into conformance, this will be required. In no case shall this provision
MICC 19.16.010 - Definition

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

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

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