TO: DSG Staff

FROM: Mercer Island Planning Commission

DATE: September 17, 2014

RE: Review of Shoreline Conditional Use Permits

APPROVED BY MERCER ISLAND PLANNING COMMISSION, September 17, 2014

MICC SECTION(S) INTERPRETED

MICC 19.15.010.E

AUTHORITY

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

ISSUE(S)

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

FINDINGS

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

2. RCW 36.70A.200(5) states “No local comprehensive plan or development regulation may preclude the siting of essential public facilities.”
3. MICC 19.07.110.B.3 establishes permit requirements for shoreline uses and development. Listed uses can be categorically exempt, require a Shoreline Exemption Permit, require a Shoreline Substantial Development Permit, or are not permitted. Uses not listed are not permitted. Light rail facilities are not listed as a permitted or prohibited use.

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

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

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

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

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

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

CONCLUSIONS AND INTERPRETATION

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

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

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