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 November 3, 2010

REGULAR BUSINESS 7:45 PM
Shoreline Master Program update –
  a. Review of Authority and Purpose
  b. General Regulations
  c. Shoreline Map and Designations
  d. Shoreline Permits Administration and Procedures

OTHER BUSINESS Council Liaison Report
  Staff Comments
  Planned Absences for Future Meetings
  Announcements & Communications
  Next Regular Meeting: January 19, 2011

ADJOURN

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

ROLL CALL:
Commissioners Bryan Cairns, Jon Friedman, Steve Marshall, Craig Olson and Kristen White Orndorff were present. Chair Adam Cooper and Vice Chair Eric Laschever were excused. Council Liaison El Jahncke was present. City staff was represented by Shane Moloney, Assistant City Attorney; Tim Stewart, Development Services Director; George Steirer, Principal Planner; and Travis Saunders, Planner.

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

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

Liz Sanderson of 3985 92nd Place SE provided comment regarding the Shoreline Master Program update.

MINUTES:
Commissioner Marshall motioned to approve the minutes from October 20, 2010. Commissioner Olson seconded the motion. The Commission unanimously approved the minutes as written.

REGULAR BUSINESS:
Agenda Item #1: Shoreline Master Program – Policy Review

Travis Saunders, Planner, provided a staff presentation. The Planning Commission discussed the policy document provided by staff, asking questions and directing staff on revisions.

COUNCIL LIAISON REPORT:
The 2011-2012 Budget is currently in front of the Council; a special meeting is scheduled for November 4, 2010. A summary of election results was provided.

STAFF COMMENTS:
None
PLANNED ABSENCEs FOR FUTURE MEETINGS:
None

ANNOUNCEMENTS AND COMMUNICATIONS:
None

NEXT REGULAR MEETING:
The next Planning Commission meeting is scheduled for December 1, 2010.

ADJOURNMENT:
The Planning Commission meeting was adjourned at 9:27 PM.

Respectfully submitted by Travis Saunders, Planner
To: Planning Commissioners and Council Member Jahncke  
From: George Steirer, Principal Planner  
Subject: January 5, 2011 Meeting Regarding SMP Update  
Date: December 30, 2010

**Background**
At the October 20, 2010 meeting, the Planning Commission approved a motion to rewrite Mercer Island City Code (MICC) 19.07.100 in a manner to ensure compliance with the mandates of the Shoreline Management Act (SMA). Staff has prepared three exhibits to begin the process.

**Enclosed Materials**

**Exhibit 1** - Shoreline Master Program. The exhibit is the first outline, in an ordinance format, with certain details previously discussed regarding the changes to MICC 19.07.100. Staff is looking for feedback on the draft, including the language contained within the ‘Authority and Purpose’ section and the ‘General Regulations’ section. The most significant changes from the existing code are:

a. Overwater uses and structures, and those 25 feet landward from the OHWM, would be allowed to be repaired, renovated, remodeled and completely replaced. Please see draft MICC 19.07.110.B.1 on page 3 of Exhibit 1.

b. Projects involving restoration of ecological functions would be a shoreline exempt activity, with no change in shoreline jurisdiction if the OHWM moves landward. Please see draft MICC 19.07.110.B.4 on page 3 of Exhibit 1 and MICC 19.15.020.G.6.b.i.(H) on page 3 of Exhibit 3.

c. “Shoreline Deviations” permits would be eliminated. Currently, a deviation application for be submitted for a 25 foot high covered moorage, rather than the standard 20 foot maximum height. Staff would place language in the code to allow a 25 foot canopy, if certain criteria are met, without a permit. Please see draft MICC 19.15.010.E on page 7 of Exhibit 3.

**Exhibit 2** – Appendix F: Shoreline Environment Designations Map. The map consolidates the ‘Conservancy Environment’ and ‘Urban Park Environment’ into a single ‘Urban Park Environment’ designation as previously approved by the Planning Commission.

**Exhibit 3** – Shoreline Master Program Administration and Procedures. The draft proposes to place the regulations for processing of shoreline permits in MICC 19.15.020, as this section contains the procedures for processing other land use permits. Added language, when compared to the existing code, is provided for
clarification purposes or as required to be consistent with WAC 173-27 and RCW 90.58 (the SMA).

**Next Steps**

At the January 5, 2011 meeting, staff will present the exhibits and seek the Commission’s comments. Staff anticipates returning to the Planning Commission on the following dates:

  a. January 5, 2011: Provide staff with direction on Draft Ordinances (Exhibit 1, 2, 3)
  b. January 19, 2011: Continue discussion of Exhibits 1, 2 and 3 (as needed) and/or initial review of “Use Regulations”
  c. Future Meeting: Final Review of Use Regulations; initial review of “Development Standards”
  d. Future Meeting(s): Review “Final Draft” of entire Shoreline Master Program Regulations.
  e. Future Meeting(s): Planning Commission formal vote on recommendation on the SMP to the City Council.

Please do not hesitate to contact me at (206)275-7719 or via email at george.steirer@mercergov.org if you have any questions or concerns. Thank you for your volunteer time and consideration of the detailed issues.
WHEREAS, the City has previously adopted a Shoreline Master Program; and

WHEREAS, the State of Washington passed the Shoreline Management Act of 1971 governing the adoption of Shoreline Master Programs, as currently set forth within Chapter 58 of Title 90 of the Revised Code of Washington, and subject to the Washington State Department of Ecology’s administrative rules contained within Title 173 of the Washington Administrative Code; and

WHEREAS, the City applied for, and obtained a grant from the Washington State Department of Ecology in to assist in the preparation and adoption of a mandated update to the Mercer Island Shoreline Master Program; and

WHEREAS, the City has completed the preparation of supporting information and background material for the 2011 Shoreline Master Program update; and

WHEREAS, the updated Shoreline Master Program provides for additional protection and development standards on Lake Washington; and

WHEREAS, development applications are reviewed for compliance with these regulations; and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non Significance for the 2011 Shoreline Master Program update was issued on March 15, 2010; and

WHEREAS, in accordance with WAC 365-195-620, a notice of intent to adopt the proposed Mercer Island Shoreline Master Program was received by the State of Washington Department of Commerce on xxx, 2011; and

WHEREAS, the public process for the proposed amendments has provided for extensive public participation opportunities at more than #### public meetings and hearings before the Planning Commission and City Council as well as a public open houses, and dialogue sessions between May of 2009 and xxxx of 2011; and

WHEREAS, the Planning Commission held public meetings and public hearings in 2010, and 2011 and forwarded a recommend Shoreline Master Program to the City Council on xxx, 2011; and
WHEREAS, the City Council considered the proposed Mercer Island Shoreline Master Program at a City Council public hearing on xxxx, 2011; and

WHEREAS, the City Council considered the Planning Commission’s recommendation, public comment, and other available information.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Repeal and Replace MICC Section 19.07.110, Shoreline Management Master Program.** MICC 19.07.110 “Shoreline Management Master Program” is hereby repealed in its entirety, is replaced with the following new Section 19.07.110 “Shoreline Master Program” and shall read as follows:

**19.07.110 Shoreline Master Program.**

A. Authority and Purpose.

1. Authority. This Section is adopted as part of the shoreline master program of the city. It is adopted pursuant to the authority and requirements of Chapter 90.58 RCW and Chapter 173-26 WAC.

2. Applicability. The requirements of this Section apply to all uses, activities and development within the shorelands, unless specifically exempted.

3. Purpose and Intent. It is the purpose and intent of this section to achieve the Shoreline Master Program (SMP) mandates of the State of Washington and to adopt property development standards within the shorelands that protect the health, safety, welfare, values and property interests of the City of Mercer Island and its residents.

4. Relationship with other Mercer Island Codes and Ordinances. This section is an integrated element of the City of Mercer Island Unified Development Code (Title 19) and other applicable development regulations contained in the Mercer Island City Code, including the storm water management regulations in Title 15. To the extent this section conflicts with any other section of the Mercer Island Municipal Code, the provisions of this Section shall govern within the shorelands.

5. Relationship with other Federal and State Law. The provisions of this Section shall not relieve any responsibility to comply with other Federal and State laws. All work at or waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources or Washington Department of Ecology. Whenever the regulations of this Section conflict with any provision of Federal or State law, or permit, the provisions of the Federal or State law or permit shall apply.
EXHIBIT 1

B. General Regulations.

1. Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and uses and structures twenty five (25) feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that non-conformance with the standards and regulations of this Section are not increased.

2. No Net Loss Standard and Mitigation Sequencing. No substantial development will be permitted unless the permit applicant demonstrates to the code official’s satisfaction that the substantial development will not create a net loss of ecological function in the shorelands. Except as specified elsewhere in this section, when a substantial development project complies with all of the applicable defined mitigation standards of this section, there will be a rebuttable presumption that the project does not create a net loss of ecological function to the shorelands. Where such presumption is met, the City shall not require additional mitigation analysis unless there is a substantial basis for the code official to determine that the specific mitigation standards of this section do not contemplate identifiable harmful ecological consequences of the proposed development project. Whenever a substantial development project is proposed and there are no applicable specific mitigation standards required by this section, there are optional flexible mitigation measures allowed for the project, or a discretionary decision such as a variance or conditional use permit is required for approval of the project, the applicant shall provide the City with a mitigation plan that demonstrates the proposed project will not create a net loss in ecological function to the shorelands. The mitigation plan should accomplish no net loss of ecological function by avoiding, minimizing and mitigating adverse impacts to ecological functions or ecosystem-wide processes. This mitigation analysis may be conducted through the SEPA process. While on-site mitigation is preferred, off site mitigation may be permitted at the discretion of the code official. The code official may require any applicant to provide reports by qualified professionals that demonstrate to the code official’s satisfaction that the applicant’s proposed mitigation plan avoids a net loss in ecological function.

3. Expansion of Legal Nonconforming Uses and Structures. Expansions of legal nonconforming over water uses and structures and uses and structures upland twenty five (25) feet from the OHWM are permitted provided that the expanded use or structure is constructed in compliance with all of the standards and provisions of the Mercer Island development regulations.

4. Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM moves further landward as a result of any action required by this Section, or in accordance with permits involving a shoreline habitat and nature systems enhancement approved by the city, a state or federal agency, the shoreline setback shall be measured from the location of the OHWM that existed immediately prior to the action or enhancement project.
C. Shoreline Map and Designations. The Shoreline Map with Designations, dated May 19, 2010 as shown by Appendix F is adopted as the Official Mercer Island Shoreline Map and Designation.

1. Urban Park Environment. [details to be added at a future date]
2. Urban Residential Environment. [details to be added at a future date]

D. Use Regulations.

[To be added at future date]

E. Development Standards

[To be added at future date]

Section 2. Amendments to MICC 19.16.010, Definitions. MICC 19.16.010 “Definitions” is hereby amended as follows:

E

…

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.
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 High Water Mark (OHWM): 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; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the State. For Lake Washington, the OHWM corresponds with a lake elevation of 21.8 feet, based on the National Geodetic Vertical Datum of 1929 (NGVD 29). The OHWM corresponds with a lake elevation of 2x.x feet, when based on North American Vertical Datum of 1988 (NAVD 88).

Restoration of ecological functions: 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.

Shorelands: Lake Washington, its underlying land, associated wetlands, and those lands extending landward 200 feet from its Ordinary High Water Mark (OHWM).

Shorelands: Those areas extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high water mark, floodways and contiguous floodplain areas landward 200 feet from such floodplains and all wetlands and river deltas associated with the streams, lakes and tidal waters subject to the Shoreline Management Act (Chapter 90.58 RCW).
Section 3: **Repeal and replace to Appendix F of Title 19 MICC, Shoreline Designated Environments.** Appendix F of the Title 19 MICC, the map identifying Shoreline Designated Environments, is hereby replaced with Exhibit X.

Section 4: **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 5: **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6: **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the ____ day of _____________, 20___ and signed in authentication of its passage.

CITY OF MERCER ISLAND

________________________________
Jim Pearman, Mayor

ATTEST:

________________________
Allison Spietz, City Clerk

Approved as to Form:

________________________
Katie Knight, City Attorney

Date of Publication: ____________

Recommended by the City of Mercer Island Planning

Adam Cooper, Chair
Mercer Island Planning Commission

Draft: 12/30/10
AB 46XX
Exhibit X
Page 6
Appendix F - Proposed Shoreline Environment Designations

Shoreline Master Program - City of Mercer Island

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

1. Landward extent of Shoreline Management Area is measured 200 ft landward of the Ordinary High Water Mark.
2. Waterward extent of City jurisdiction is measured to the middle of Lake Washington, pursuant to RCW 35.21.160.
3. Waterward extent of Shoreline Management Area is measured from the Ordinary High Watermark to the middle of Lake Washington.
4. Major Roads
5. Minor Roads
6. Watercourse
7. Urban Park Environment
8. Urban Residential Environment

Produced by the City of Mercer Island. March 2010.
All rights reserved. No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.
AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING MICC 19.07.110 AND 19.15.010(E) IN ORDER TO
PROVIDE CONSISTENCY WITH THE PROCEDURAL
REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT (RCW 90.58) AND THE MERCER ISLAND CITY CODE RELATED TO
PROCESSING OF SHORELINE PERMITS

WHEREAS the section 19.07.110.C of Mercer Island City Code (MICC) currently provides the procedural requirements for processing of shoreline permits; and

WHEREAS, MICC 19.15 provides for the procedural requirements for most other land use permits; and

WHEREAS RCW 90.58 and WAC 197-27 provides specific requirements for the processing of shoreline permits; and

WHEREAS, the City of Mercer Island desires to rectify any inconsistencies within state law and the current City Code for the processing of shoreline permits; and

WHEREAS, the City of Mercer Island, desires to consolidate the location for processing of permits within the municipal code; and

WHEREAS, the City's State Environmental Policy Act (SEPA) Responsible Official has reviewed the proposed amendments to Title 19 under the provisions of SEPA and issued a Determination of Non-Significance on March 15, 2010; and

WHEREAS, the City complied with all public notice requirements for the Planning Commission open record public hearing and the City Council public meeting; and

WHEREAS, on [February xx, 2011], the Mercer Island Planning Commission made its final recommendations on the proposed code amendments; and

WHEREAS, the Mercer Island City Council conducted a 1st reading on [March xx, 2011] and a 2nd reading on [March xx, 2011] during which the City Council considered the Planning Commission’s recommendations, held a public meeting, and adopted the code changes set forth in this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND,
WASHINGTON, DO ORDAIN AS FOLLOWS:
EXHIBIT 3


Section 2. Amendments to Chapter 19.15 MICC, Administration. MICC 19.15.020 “Permit Review Procedures” is hereby amended as follow:

19.15.020(G) Decision Criteria

6. Shoreline Permits Administration and Procedures:

a. Administrative Responsibility. Except as otherwise stated in this section, the code official is responsible for:

   i. Administering shoreline permits.

   ii. Approving, approving with conditions or denying shoreline exemption permits, substantial development permits, shoreline conditional use permits, shoreline variances and permit revisions in accordance with applicable provisions.

   iii. Determining compliance with the State Environmental Policy Act.

   iv. No development shall be undertaken within the shorelands without first obtaining a Shoreline Exemption Permit, Substantial Development Permit, Conditional Use Permit, and/or a Variance Permit in accordance with all applicable procedures unless it qualifies under a Categorical Exemption. In addition, such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shorelands. Compliance with all applicable federal and state regulations is also required.

b. Shoreline Categorical Exemption Decision Criteria and Process. Any development that qualifies as being a Shoreline Categorical Exemption, as specified in MICC 19.07.110, shall not require a shoreline permit, but must still meet all requirements of the Mercer Island Unified Land Development Code.

   i. Shoreline Exemption Permit Application Criteria. A shoreline exemption permit may be granted to the following development as long as such development is in compliance with all applicable requirements of the city of Mercer Island Unified Land Development Code and any of the following:

      (A) 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; or
(B) 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, including complete replacement of legally existing structures. Normal maintenance of single-family dwellings is categorically exempt as stated above; or

(C) 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; or

(D) 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; or

(E) Construction or modification of navigational aids such as channel markers and anchor buoys; or

(F) 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; or

(G) Any project with a certification from the governor pursuant to Chapter 80.50 RCW; or

(H) Projects for the Restoration of Ecological Functions.

ii. Shoreline Exemption Permit Application Process. The city shall issue or deny the Shoreline Exemption Permit within 10 calendar days of receiving a complete application, or 10 days after issuance of a DNS, MDNS or EIS if SEPA review is required. The city shall send the shoreline permit decisions to the applicant and all applicable local, state, or federal agencies as required by state or federal law.

d. Substantial Development Permit Application Decision Criteria and Process. A substantial development permit (SDP) is required for any development within shorelands not qualifying as being subject to a categorical exemption or shoreline exemption permit. Requirements and procedures for securing a substantial development permit are established below.
EXHIBIT 3

i. SDP Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a Shoreline Development Permit.

ii. SDP Application Process. The applicant shall attend a preapplication meeting prior to submittal of a substantial development permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

(A) Once a complete application has been submitted, public notice of an application for a substantial development permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for Administrative Actions; provided, such notice shall be given at least 30 days before the date of final action by the city. The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within thirty days from the last date the notice is published. If a hearing is to be held on an application, notices of such hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(B) 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.

An open record hearing before the code official, as set out in MICC 19.15.020(F), shall be conducted on the Shoreline Substantial Development Permits when the following factors exist:

(1) The proposed development has broad public significance; or
(2) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or
(3) At the discretion of the code official.

(C) The technical review of shoreline Substantial Development Permits must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code.

(D) The city’s action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies.
(E) The applicant shall not begin construction until after 21-days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

e. Shoreline Conditional Use Permit Application Decision Criteria and Process. The purpose of a shoreline conditional use permit is to provide a system which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the City of Mercer Island or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the applicable city regulations.

i. Shoreline Conditional Use Permit Application Decision Criteria. All requirements of the Mercer Island Unified Land Development Code shall apply to the approval of a Shoreline Conditional Use Permit. Uses that require a shoreline conditional use permit may be authorized provided that the applicant demonstrates all of the following:

(A) That the proposed use is consistent with the policies of RCW 90.58.020 and the Mercer Island Uniform Land Development Code;

(B) That the proposed use will not interfere with the normal public use of shorelands with the “Urban Park Environment” shoreline environment designation;

(C) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses allowed for the area by the Mercer Island Uniform Land Development Code;

(D) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(E) That the public interest suffers no substantial detrimental effect.

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

ii. Shoreline Conditional Use Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a Shoreline Conditional Use Permit. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA
EXHIBIT 3

checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

(A) Once a complete application has been submitted, public notice of an application for a Shoreline Conditional Use Permit shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for Discretionary Actions; provided, such notice shall be given at least 30 days before the date of decision by the city.

The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within thirty days the last date the notice is published, and any appeal rights.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(B) 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.

(C) The technical review of Shoreline Conditional Use Permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in MICC 19.15.020(F), shall be conducted on the Shoreline Conditional Use Permits when the following factors exist:

(1) The proposed development has broad public significance; or
(2) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or
(3) At the discretion of the code official.

(D) The final decision in approving, approving with conditions, or denying a Shoreline Conditional Use Permit is rendered by the Department of Ecology in accordance with WAC 173-27-200, and to all other applicable local, state, or federal agencies. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies.

(E) The applicant shall not begin construction until after 21-days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are
concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

   i. Shoreline Variance Criteria. Shoreline Variances are strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable regulations where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the regulations will impose unnecessary hardships on the applicant or thwarting of the policy enumerated in RCW 90.58.020. Shoreline variances for use regulations are prohibited. In addition, in all instances the applicant for a shoreline variance shall demonstrate strict compliance with all variance criteria set out in MICC 19.15.020(G)(4) and the following additional criteria:

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

   (B) Shoreline variance permits for development that will be located landward of the ordinary high water mark, and/or landward of any associated wetland, may be authorized; provided, the applicant can demonstrate all of the following:

   (1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes or significantly interferes with reasonable use of the property not otherwise prohibited;

   (2) That the hardship in subsection 19.15.020.G.6.b.iv(B)(1) 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 applicable regulations, and not, for example, from deed restrictions or the applicant’s own actions;

   (3) That the design of the project is compatible with other authorized uses in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

   (4) That the requested shoreline 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

   (5) That the public interest will suffer no substantial detrimental effect.
(C) Shoreline variance permits for development that will be located waterward of the ordinary high water mark, or within any associated wetland may be authorized; provided, the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable regulations precludes reasonable use of the property;

(2) That the proposal is consistent with the criteria established under subsections 19.15.020.G.6.b.iv(B)(1) through (5) of this section; and

(3) That the public rights of navigation and use of the shorelines will not be adversely affected.

ii. Shoreline Variance Permit Application Process. The applicant shall attend a preapplication meeting prior to submittal of a Shoreline Variance. Upon completion of the preapplication meeting, a complete application, filing fees and SEPA checklist, if applicable, shall be filed with the city on approved forms to ensure compliance with development codes and standards.

(A) Once a complete application has been submitted, public notice of an application for a Shoreline Variance shall be made in accordance with the procedures set forth in the Mercer Island Uniform Land Development Code for Discretionary Actions; provided, such notice shall be given at least 30 days before the date of decision by the city.

The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision, may submit the comments or request a copy of the decision(s) to the city within thirty days the last date the notice is published, and any appeal rights.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(B) 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.

(C) The technical review of Shoreline Conditional Use Permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in MICC 19.15.020(F), shall
be conducted on the Shoreline Conditional Use Permits when the following factors exist:

(1) The proposed development has broad public significance; or
(2) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or
(3) At the discretion of the code official.

(D) The final decision in approving, approving with conditions, or denying a Shoreline Conditional Use Permit is rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable local, state, or federal agencies. The city shall send the shoreline permit decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies.

(E) The applicant shall not begin construction until after 21-days from the date of receipt by the Department of Ecology and Attorney General and/or any appeals are concluded. The applicant shall also comply with all applicable federal, state and city standards for construction.

(g) Time Limits of Permits. The following time limits shall apply to all shoreline exemption, substantial development, shoreline conditional use permits and shoreline variance permits:

i. 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. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development 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.

ii. 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, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

e. Suspension of Permits. The city may suspend any shoreline exemption permit, substantial development permit, shoreline conditional use permit, or shoreline 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.

f. Revisions. When an applicant seeks to revise a substantial development permit, shoreline conditional use permit and/or shoreline variance permit the requirement of WAC 173-27-100, as amended, shall be met.
Section 2. **Amendments to Chapter 19.15.010(E) MICC.** MICC 19.15.010(E) is hereby amended as follows:

### MICC 19.15.010 General procedures

E. **Summary of Actions and Authorities.** The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

<table>
<thead>
<tr>
<th>ACTION</th>
<th>DECISION AUTHORITY</th>
<th>CRITERIA</th>
<th>APPEAL AUTHORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ministerial Actions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right-of-Way Permit</td>
<td>City engineer</td>
<td>Chapter 19.09 MICC</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Home Business Permit</td>
<td>Code official</td>
<td>MICC 19.02.010</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Special Needs Group Housing Safety Determination</td>
<td>Police chief</td>
<td>MICC 19.06.080(A)</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Lot Line Adjustment Permit</td>
<td>Code official</td>
<td>Chapter 19.08 MICC</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Design Review – Minor Exterior Modification Outside Town Center</td>
<td>Code official</td>
<td>MICC 19.15.040, Chapters 19.11 and 19.12 MICC</td>
<td>Design commission</td>
</tr>
<tr>
<td>Design Review – Minor Exterior Modification in Town Center</td>
<td>Design commission</td>
<td>MICC 19.15.040, Chapters 19.11 and 19.12 MICC</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Final Short Plat Approval</td>
<td>Code official</td>
<td>Chapter 19.08 MICC</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Seasonal Development Limitation Waiver</td>
<td>Building official or city arborist</td>
<td>MICC 19.10.030, 19.07.060(D)(4)</td>
<td>Building board of appeals</td>
</tr>
<tr>
<td>Development Code Interpretations</td>
<td>Code official</td>
<td>MICC 19.15.020(L)</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Shoreline Exemption</td>
<td>Code official</td>
<td>MICC 19.07.010 and 19.15.020(G)(6)(b)(i)</td>
<td>Hearing examiner</td>
</tr>
</tbody>
</table>

### Administrative Actions

<table>
<thead>
<tr>
<th>ACTION</th>
<th>DECISION AUTHORITY</th>
<th>CRITERIA</th>
<th>APPEAL AUTHORITY</th>
</tr>
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</table>
## EXHIBIT 3

<table>
<thead>
<tr>
<th>Unit Permit</th>
<th>Code official</th>
<th>Chapter 19.08 MICC</th>
<th>Planning commission</th>
</tr>
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<tbody>
<tr>
<td>Preliminary Short Plat</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Deviation (Except Shoreline Deviations)</td>
<td></td>
<td>MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(4) and (D)(3)</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Critical Areas Determination</td>
<td></td>
<td>Chapter 19.07 MICC</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Shoreline – Substantial Development Permit</td>
<td></td>
<td>MICC 19.07.110 and 19.15.020(G)(6)</td>
<td>Shoreline hearings board</td>
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<tr>
<td>SEPA Threshold Determination</td>
<td></td>
<td>MICC 19.07.120</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Short Plat Alteration and Vacations</td>
<td></td>
<td>MICC 19.08.010(G)</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Long Plat Alteration and Vacations</td>
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<tr>
<td>Temporary Encampment</td>
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<tr>
<td>Discretionary Actions</td>
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<tr>
<td>Conditional Use Permit</td>
<td>Planning commission</td>
<td>MICC 19.11.130(B), 19.15.020(G)</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Reclassification (Rezone)</td>
<td>City council via planning commission</td>
<td>MICC 19.15.020(G)</td>
<td>Superior court</td>
</tr>
<tr>
<td>Design Review – Major New Construction</td>
<td>Design commission</td>
<td>MICC 19.15.040, Chapters 19.11 and 19.12 MICC</td>
<td>Hearing examiner</td>
</tr>
<tr>
<td>Preliminary Long Plat Approval</td>
<td>City council via planning commission</td>
<td>Chapter 19.08 MICC</td>
<td>Superior court</td>
</tr>
<tr>
<td>Final Long Plat Approval</td>
<td>City council via code official</td>
<td>Chapter 19.08 MICC</td>
<td>Superior court</td>
</tr>
<tr>
<td>Variance</td>
<td>Hearing examiner</td>
<td>MICC 19.15.020(G), 19.01.070</td>
<td>Planning commission</td>
</tr>
<tr>
<td>Variance from Short Plat Acreage Limitation</td>
<td>Planning commission</td>
<td>MICC 19.08.020</td>
<td>City council</td>
</tr>
<tr>
<td>Critical Areas Reasonable Use Exception</td>
<td>Hearing examiner</td>
<td>MICC 19.07.030(B)</td>
<td>Superior court</td>
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### EXHIBIT 3

<table>
<thead>
<tr>
<th>Street Vacation</th>
<th>City council via planning commission** ²</th>
<th>MICC 19.09.070</th>
<th>Superior court</th>
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<tbody>
<tr>
<td>Shoreline Conditional Use Permit</td>
<td>Code Official and Department of Ecology³</td>
<td>MICC 19.15.020.G.6</td>
<td>State Shorelines Hearings Board</td>
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<tr>
<td>Shoreline Deviation</td>
<td>Planning commission</td>
<td>MICC 19.07.080</td>
<td>City Council</td>
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<tr>
<td>Shoreline Variance</td>
<td>Planning commission Code Official and Department of Ecology³</td>
<td>MICC 19.15.020(G)(6)</td>
<td>State Shorelines Hearings Board</td>
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<td>Impervious Surface Variance</td>
<td>Hearing examiner</td>
<td>MICC 19.02.020(D)(4)</td>
<td>Superior court</td>
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<tr>
<th>Legislative Actions</th>
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<tbody>
<tr>
<td>Code Amendment</td>
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<tr>
<td>Comprehensive Plan Amendment</td>
</tr>
</tbody>
</table>

**¹**Final rulings granting or denying an exemption under MICC 19.07.110 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).

**²**The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.

¹Must be approved by the City of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10)

**Section 3:** **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

**Section 4.** **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 5:** **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the ____ day of ____________, 20___ and signed in authentication of its passage.

*Draft: 1/4/2011 AB 46XX Exhibit X Page 12*
EXHIBIT 3

CITY OF MERCER ISLAND

______________________________
Jim Pearman, Mayor

ATTEST:

______________________________
Allison Spietz, City Clerk

Approved as to Form:

______________________________
Katie Knight, City Attorney

Date of Publication: _____________

Recommended by the City of Mercer Island Planning Commission

_________________________________________________
Adam Cooper, Chair                          Date
Mercer Island Planning Commission