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# PLANNING COMMISSION

## Regular Meeting Agenda

Council Chambers- Mercer Island City Hall  
9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



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## Wednesday, April 3, 2019

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### Planning Commissioners

Carolyn Boatsman

Tiffin Goodman, Vice Chair

Daniel Hubbell, Chair

Jennifer Mechem

Lucia Pirzio-Biroli

Craig Reynolds

Ted Weinberg

### CALL TO ORDER & ROLL CALL

6:00 PM

### APPROVAL OF MINUTES

March 20, 2019

### REGULAR BUSINESS

6:15 PM

#### Agenda Item #3: ZTR18-002 Critical Areas and Shoreline Master Program Code Amendments

Continue deliberation on the proposed code amendments.

### OTHER BUSINESS

Directors Report

Planned Absences for Future Meetings

Next Regularly Scheduled Meeting: April 17, 2019

### ADJOURN

10:00 PM

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# PLANNING COMMISSION

## MEETING MINUTES



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Wednesday, March 20, 2019

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### CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:13pm in the City Hall Council Chambers at 9611 SE 36<sup>th</sup> Street, Mercer Island, Washington.

### ROLL CALL

Chair Daniel Hubbell, Vice Chair Tiffin Goodman, Commissioners, Carolyn Boatsman, Lucia Pirzio-Biroli, Craig Reynolds, and Ted Weinberg were present. Commissioner Jennifer Mechem was absent.

### STAFF PRESENT

Evan Maxim, CPD Director, Andrea Larson, Senior Administrative Assistant, Robin Proebsting, Senior Planner, Andrew Leon, Planner, Lauren Anderson, Planner, and Bio Park, Assistant City Attorney were present.

### MEETING MINUTES APPROVAL

It was moved by Boatsman; seconded by Remyolds to:

**Approved the 2/25, 2019 minutes**

Passed 7-0

It was moved by Erinberg; seconded by Boatsman to:

**Approved the 3/6, 2019 minutes as amended**

Passed 7-0

### PUBLIC HEARING

#### **Agenda Item #1: ZTR18-006 Code Clean Up Code Amendments**

Andrew Leon provided a brief presentation

Chair Hubbell opened the public hearing at 6:25pm.

There were no public comments.

Chair Hubbell closed the public hearing at 6:28pm.

### REGULAR BUSINESS

#### **Agenda Item #1: ZTR18-006 Code Clean Up Code Amendments**

It was moved by PB, seconded by Reynolds to:

**Move to recommend that the City Council approve the proposed amendments to the Mercer Island City Code (MICC) Title 19, as detailed in Attachment A**

The commission discussed the proposed code amendment.

It was moved by Boatsman, seconded by Reynolds to:  
**Page 4 line 11 to included rooftop railings and fences**  
Motion was withdrawn by Boatsman

It was moved by Boatsman; seconded by Reynolds to:  
**Amend line 9 page 4 remove “fences” from rooftop**  
Passed 7-0

The commission requested that Page 4, section D lines 15 through 27 add to docket for future PC review

Passed 7-0 as amended.

**ZTR18-006 Code Clean Up Code Amendments**

**Agenda Item #2: ZTR18-002 Critical Areas and Shoreline Master Program Code Amendments.**

Robin Proebsting, Senior Planner, provided a presentation on the Critical Areas and Shoreline Master Program code amendments.

The Planning Commission continued their discussion of the motion that was made on March 6, 2019.

Per the exhibit TB-CB recommendation for future code clean up work item to modify the definitions of “alteration” and “development” to indicate alteration does not include structures and is a subset of development. The Commission gave a thumbs up to add this to the code cleanup docket.

It was moved by Goodman; seconded by Boatsman to:

**Remove references to Code Official in the following locations, as referenced is TG-CB Amendment 1:**

**19.07.070 page 3 of 22, lines 11-12, page 3 of 22 lines 20-21**

**19.07.080 page 3 of 22 line 27, page 4 of 22 lines 3-4**

**19.07.110 page 6 of 22 line 13, page 6 of 22 lines 40-41**

**19.07.130 page 8 of 22 lines 28-31**

**19.07.170 page 10 of 22 line 2**

**19.07.200 page 14 of 22 line 30, page 15 of 22 line 4, page 15 of 22 line 21, page 15 of 22 line 29**

**19.07.210 page 17 of 22 line 19, page 17 of 22, line 28**

It was moved by Boatsman; seconded by Prizio-Biroli to:

**Amend page 8 of 22 line 29 read as follows 19.07.130 to read “The activities in this section are expect from the developments standards in subsequent sections within this chapter, provided that additional measures to protect life and property or protect environmentally quality may be required.**

Passed 7-0

It was moved by Boatsman; Weinberg

**Page 15 of 22 line 29, to not remove the word “reduced”**

Passed 7-0

Passed as amended 7-0

It was moved by Goodman; seconded by Boatsman to:

**Modify the definition of “qualified professional” to read as stated in TG-CB amendment 2**

It was moved by Boatsman; seconded by Weinberg  
**To change "A" to read as "Qualified Arborist as defined in 19.16.010"**  
Passed 7-0

It was moved by Weingberg; seconded by Reynolds  
**To remove "determined by the Code Official" from line F**  
Passed 7-0

It was moved by Reynolds; seconded by Boatsman to:  
**Add " if neither licensees or national certification in the field exist"**  
Passed 7-0

It was moved by Reynolds; Seconded by Boatsman to:  
**Replace the word stream with watercourse**  
Passed 7-0

Passed as amended 7-0

It was moved by Prizio-Biroli; seconded by Goodman  
**Page 15 line 3 amend to read "the notice shall run with the ;and in perpetuity provided that should the critical area be eliminated, the notice may be released."**  
Motion was withdrawn.

The commission took a break till 8:02pm

It was moved by Boatsman; seconded by Prizio-Biroli to"  
**Amend 2 code sections 19.10.050 and 19.07-120 as presented in Exhibit CB1**

It was moved by Boatsman; seconded by Weinberg to:  
**Amend 19.10.050.B.4 to include "under the supervision of a qualified arborist"**  
Passed 7-0

Scriveners error Page 1 of 45 line 17, 19.10.050.B, draft should of included the word "not" associated with a development proposal.

It was moved by Boatsman; seconded by Reynolds to:  
**Strike 19.10.050.B.4 from CB1**  
Passed 7-0

Passed as amended 7-0

It was moved by Boatsman; seconded by Weinberg to:  
**Move 19.10.050.B.4 as referenced in exhibit CB1 to 19.07.130 page 9 of 22, as 17.07.130.D**

It was moved by Reynolds; Weinberg to:  
**Revise the statement to read "any pruning shall not be detrimental to tree health and shall with international society of arboriculture standards and under the supervision of a qualified arborist"**  
Passed 7-0

Passed as amended 7-0

It was moved by Boatsman; seconded by Weinberg to:  
**Amend 19.070.120 as presented in Exhibit CB2**

It was moved by Boatsman; seconded by Weinberg to:  
**Remove the reference “replacing item 4”, and remove “delete B” as referenced in Exhibit CB2**  
Passed 7-0

It was moved by Boatsman; Reynolds to:  
**Delete the second sentence in the definition of Clearing as shown in Exhibit CB2**  
Passed 7-0

Passed as amended 7-0

It was moved by Boatsman; seconded by Reynolds to:  
**Replace 19.07.120.E.a with “4 as stated in Exhibit CB2”, and retain “b” on line page 7 of 22 line 42**

Moved by PB; seconded by Weinberg to:  
**Amend 4.b as stated in Exhibit CB2 to include “regional and adaptive native plants”**  
Motion was withdrawn

Passed as amended 7-0

It was moved by Boatsman; seconded by Reynolds to:  
**Replaced 17.07.130.B 1-4 with a-c as stated on Exhibit CB2**  
Passed 7-0

It was moved by Boatsman; seconded by Weinberg to:  
**Adopt amendment as shown in Exhibit CB3**

It was moved by Boatsman; seconded by Reynolds to:  
**Keep line 36, page 11 of 22, and remove “3” from CB3**  
Pass 7-0

Passed as amended 7-0

It was moved by Boatsman; seconded by Mechem to:  
**Adopt the amendment proposed in Exhibit CB4 as presented**  
Failed 1-6

The commission took a break until 10:13pm

It was moved by Boatsman; seconded by Weinberg to:  
**Adopt the amendment as presented in Exhibit CB5**  
The motion was withdrawn by Boatsman

The Commission requests that staff work on rewriting 19.07.190 based off of Exhibit CB5.

It was moved by Reynolds; seconded by Weinberg to: table to main motion until April 3, 2019.

#### **PLANNED ABSENCES FOR FUTURE MEETINGS**

There are no planned absences.

#### **OTHER BUSINESS**

Evan Maxim, CPD Director, reminded the Commission that there is a subcommittee meeting for Community Facilities on March 21, 2019.

## **ANNOUNCEMENTS AND COMMUNICATIONS**

The next Planning Commission meeting is on April 3, 2019 at 6:00PM.

## **ADJOURNMENT**

The meeting was adjourned at 11:15pm

DRAFT



## **COMMUNITY PLANNING AND DEVELOPMENT**

9611 SE 36TH ST., MERCER ISLAND, WA 98040  
(206) 275-7605

**TO:** Planning Commission

**FROM:** Robin Proebsting, Senior Planner

**DATE:** March 28, 2019

**RE:** Critical Areas Code and Shoreline Master Program Updates (ZTR18-002): Continuation of deliberations

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### **Summary**

The Planning Commission's April 3, 2019 meeting will be the third meeting at which the Planning Commission will deliberate their recommendation on the draft Critical Areas Code and Shoreline Master Program.

### **Background**

At the April 3, 2019 meeting, staff anticipate the following topics will be discussed:

1. Amendments incorporating comments from the Dept. of Ecology
2. Amendments incorporating comments from the Snoqualmie Tribe
3. Amendment CB-5, pertaining to fish and wildlife habitat conservation areas
4. The history behind the SMP standard requiring replanting within 48 hours of disturbing bank vegetation in MICC 19.07.110(E)(6)(a) and (b) of the existing code.
5. Other amendments brought forth by the Planning Commission.

### **Next Steps**

Staff anticipate that the Planning Commission will complete their deliberations and finalize the Commission's recommendation to the City Council at its April 3, 2019 meeting, given the scope of the items above. If there are additional motions Planning Commissioners are expecting to make, staff would appreciate being notified of these in advance of the upcoming meeting.

Please do not hesitate to contact me with any questions or motions you would like to discuss. I can be reached at 206-275-7717 and [robin.proebsting@mercergov.org](mailto:robin.proebsting@mercergov.org).

Commissioner exhibits submitted during meeting

mChapter 19.07

ENVIRONMENT

Sections:

- 19.07.010 Purpose.
- 19.07.020 Applicability
- 19.07.030 Relationship to Other Regulations
- 19.07.040 Critical Areas Rules
- 19.07.050 Fees
- 19.07.060 Critical Area Maps and Inventories
- 19.07.070 Disclosure and Notice on Title
- 19.07.080 General Provisions
- 19.07.090 Critical Area Reviews
- 19.07.100 Mitigation Sequencing
- 19.07.110 Critical Area Studies
- 19.07.120 Exemptions
- 19.07.130 Modifications
- 19.07.140 Reasonable Use Exception
- 19.07.150 Public Agency Exception
- 19.07.160 Frequently Flooded Areas
- 19.07.170 Geologically Hazardous Areas
- 19.07.180 Critical Aquifer Recharge Areas
- 19.07.190 Fish and Wildlife Habitat Conservation Areas
- 19.07.200 Watercourses
- 19.07.210 Wetlands

**19.07.010 Purpose**

These regulations are adopted for the following purposes:

- A. To implement the goals and policies for the Growth Management Act chapter 36.70A RCW;
- B. To maintain the functions and values of critical areas and enhance the quality of habitat to support the sustenance of native plants and animals;
- C. To balance property owner interests with the public interest;
- D. To promote biodiversity within critical areas and buffers by encouraging planting with mostly native and climate-resilient vegetation;
- E. To establish review criteria for land use reviews that maintain and improve the ecological health of wetlands, watercourses and Lake Washington;
- F. To establish standards for new development that avoid increasing the risk of harm to people, property, and public infrastructure from natural hazards;
- G. To protect the functions and value of fish and wildlife habitat conservation areas, including wetlands, watercourses and habitat for priority species and species of local importance, through the use of buffers;
- H. To increase the safety of development within and adjacent to geologically hazardous areas through the use of buffers;
- I. To require mitigation measures when unavoidable impacts to critical areas are proposed;

- J. To establish tools to ensure that protection and mitigation measures are applied and maintain ecological value and function consistent with the provisions of this chapter;
- K. To avoid impact to the critical areas where possible, and if avoidance is not possible, minimize impacts to critical areas and buffers to the greatest extent feasible, and mitigate any remaining impacts;
- L. To encourage the restoration of existing compromised critical areas; and
- M. To minimize negative impacts from the built environment on the functions and values of critical areas.

#### **19.07.020 Applicability**

- A. Except as specifically exempted by MICC 19.07.120 - Exemptions, these regulations apply to land uses, development activity, and all structures and facilities within the City of Mercer Island that contain any of the following critical areas and/or their buffers, as defined in 19.16 MICC:
  - 1. Geologically Hazardous Areas;
  - 2. Fish and Wildlife Habitat Conservation Areas;
  - 1-3. Watercourses; and
  - 2-4. Wetlands;
  - ~~3. Fish and Wildlife Habitat Conservation Areas (including watercourses);~~
  - ~~4. Geologically Hazardous Areas;~~
  - ~~5. Critical Aquifer Recharge Areas; and~~
  - ~~6. Frequently Flooded Areas.~~
- B. The city shall not approve any development proposal or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter or determining that this chapter is not applicable to the development.
- C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the applicant of the obligation to comply with the provisions of this chapter.

#### **19.07.030 Relationship to other regulations**

- A. If more than one regulation applies to a given property, then the regulation that provides the greatest protection to critical areas shall apply.
- B. Other Jurisdictions. Nothing in these regulations eliminates or otherwise affects the responsibility of an applicant or property owner to comply with all other applicable local, state, and federal regulations and required permits.
- C. SEPA Compliance. Nothing in these regulations or the decisions made pursuant to these regulations affects the authority of the city to review, condition, and deny projects under the State Environmental Policy Act, chapter 43.21C RCW.

#### **19.07.040 Critical Areas Rules**

The city is authorized to adopt administrative rules and regulations as necessary and appropriate to implement this chapter and to prepare and require the use of forms to facilitate its administration.

#### **19.07.050 Fees**

- A. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessments, studies, plans, reconnaissances, or other work prepared in support of or necessary to review the application.

- B. The applicant shall be responsible for all applicable fees as established in the city's fee schedule, consultant review fees, and peer review fees.

#### **19.07.060 Critical Area Maps and Inventories**

Approximate locations of critical areas in the City of Mercer Island are depicted on citywide maps displayed in the city's GIS database, as amended. Field verification and, if appropriate, evaluation and mapping by a qualified professional of the location of critical areas will be required to determine the location and type of critical area on a given site.

#### **19.07.070 Disclosure and notice on title**

- A. The applicant shall disclose to the city the presence of critical areas on the development proposal site and any mapped or identifiable critical areas within the distance equal to the largest potential required buffer applicable to the development proposal on the development proposal site.
- B. The owner of any property containing critical areas and/or buffers on which a development proposal is submitted, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the city with the records and elections division of King County. The required contents and form of the notice shall be determined by the code official. The notice shall inform the public of the presence of critical areas, buffers and/or mitigation sites on the property, of the application of the city's critical areas code to the property and that limitations on actions in or affecting such critical areas and/or buffers may exist. The notice shall run with the land in perpetuity.
- C. The applicant shall submit proof to the city that the notice has been recorded prior to approval of a development proposal for the property or, in the case of subdivisions, short subdivisions, and binding site plans, at or before recording of the final subdivision, short subdivision, or binding site plan.
- D. Notices on title may be removed at a property owner's request if documented to the code official that the information contained in an existing notice is no longer accurate, because a critical area has changed, for example in its type or location, or if the notice is proposed to be replaced with a notice containing updated information.

#### **19.07.080 General provisions**

- A. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees, Performance Bonds, Insurance. An applicant for a permit within a critical area shall comply with the requirements of MICC 19.01.060, if required by the code official.
- B. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and occupancy of a project.
- C. Maintenance and Monitoring.
  - 1. Maintenance and monitoring shall be required for at least 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. A bond or assignment of funds pursuant to MICC 19.01.060(C) may be required to guarantee that approved mitigation plans will be undertaken and completed to the city's satisfaction.
  - 3. When monitoring is required, site visits and reporting shall be required two times per year for each of the first two years and once every 12 months for the subsequent years of the monitoring period.

4. Where monitoring reveals a significant difference 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.
- D. Compliance with Mitigation Requirements. In cases where mitigation has been completed, but no monitoring reports have been submitted to the city, the applicant shall submit as-built drawings and yearly monitoring reports to the city until at least two consecutive annual reports document to the code official's satisfaction that all performance standards from the approved mitigation plan have been met.
- E. Seasonal Limitations. Land clearing, grading, filling, and foundation work may be limited to only certain times of year, pursuant to MICC 19.07.170(F)(2).
- F. 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. Compliance with all requirements of this chapter is required pursuant to MICC 19.15.210.
- G. A critical area study completed over five years prior to application submittal date shall be field verified by a qualified professional to determine whether the study is still accurate, and if not, the study shall be completed according to the current best available science.

#### **19.07.090 Critical Area Reviews**

This subsection describes the purpose and procedures by which the city will review and authorize development and verify consistency with this chapter.

##### **A. Critical Area Review 1**

1. The purpose of a Critical Area Review 1 is to review:
  - a. Activities listed as Modifications in MICC 19.07.130 - Modifications;
  - b. Verification of the presence or absence of a critical area; or
  - c. Verification of the delineation and/or type of wetland or watercourse.
2. Review timing and sequence
  - a. If a building permit is required for the proposed scope of work associated with the Critical Area Review 1, then the substance of the review shall take place concurrently with the building permit review, and no separate land use review application is required.
  - b. If no building permit is required for the proposed scope of work associated with the Critical Area Review 1, then the review shall take place according to the procedures required for a Type 1 land use review.
3. Requirements for a complete application
  - a. Completed Development Application Coversheet
  - b. Project narrative, describing the proposed scope of work.
  - c. Scaled site plan showing the proposed work
  - d. Any additional information required by the city to confirm compliance with this Title.

##### **B. Critical Area Review 2**

1. The purpose of a Critical Area Review 2 is to review:
  - a. Critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.

- b. Critical area studies submitted when a use listed in MICC 19.07.180(B)(1) is proposed within a critical aquifer recharge area.
- 2. Review timing and sequence
  - a. When development and/or activity within a wetland, watercourse, Fish and Wildlife Habitat Conservation Area or buffer associated with these critical area types is proposed, a Critical Area Review 2 is required to be reviewed and approved prior to construction authorization.
  - b. When development and/or activity is proposed on a site containing only geologically hazardous areas, an applicant has the option of either:
    - (1) Applying for a Critical Area Review 2 in advance of construction permits, using the procedures required for a Type 3 land use review; or
    - (2) Requesting consolidation of the review of geologically hazardous areas together with construction permit review.
  - c. When development and/or activity is proposed on a site containing geologically hazardous areas and one or more of the critical area types listed in subsection (B)(2)(a) or the associated buffer of one of those critical areas, a Critical Area Review 2 reviewing all critical areas is required to be reviewed and approved prior to construction authorization, using the procedures required for a Type 3 land use review.
- 3. Requirements for a complete application include:
  - a. A completed Development Application Coversheet;
  - b. A critical area study, meeting the requirements of MICC 19.07.110 - Critical Area Studies; and
  - c. Additional information required by the city to confirm compliance with this title.
- C. Reasonable Use Exceptions shall be reviewed using the criteria in MICC 19.07.140, using the procedures required for a Type 4 land use review.
- D. Public Agency Exceptions shall be reviewed using the criteria in MICC 19.07.150, using the procedures required for a Type 3 land use review.

#### **19.07.100 Mitigation sequencing**

Except as otherwise provided in this chapter, an applicant for a development proposal, activity, or modification shall implement the following sequential measures, listed below in order of preference, to avoid, minimize, and mitigate impacts to environmentally critical areas and associated buffers. Applicants shall document how each measure has been addressed before considering and incorporating the next measure in the sequence:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts. However, avoidance shall not be construed to mean mandatory withdrawal or denial of the development proposal or activity if the proposal or activity is an allowed, permitted, or conditional in this title. In determining the extent to which the proposal should be redesigned to avoid the impact, the code official may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified changes to the proposal. Development proposals should seek to avoid, minimize and mitigate overall impacts based on the functions and values of all of the relevant critical areas and based on the recommendations of a critical area study. If impacts cannot be avoided through

redesign, use of a setback deviation pursuant to MICC 19.06.110(C), or because of site conditions or project requirements, the applicant shall then proceed with the sequence of steps in subsections (B) through (E) of this section;

- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, using a setback deviation pursuant to MICC 19.06.110(C), using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- F. Monitoring the impact and taking appropriate corrective measures to maintain the integrity of compensating measures.

#### **19.07.110 Critical Area Study**

- A. A critical area study shall be required when a development proposal will result in an alteration to one or more critical areas or critical area buffers or when required by the code official to determine the potential impact to a critical area.
- B. The critical area study shall be in the form of a written report supported by graphic information prepared by a qualified professional using guidance based on the best available science consistent with the standards in chapter 365-195 WAC and shall contain the following items, as applicable to adequately evaluate the proposal, proposed alterations, and mitigation:
  - 1. Disclosure of the presence of critical areas, including a delineation and type or category of critical area, on the development proposal site and any mapped or identifiable critical areas on- or off-site within the distance equal to the largest potential required buffer applicable to the development proposal area on the applicant's property;
  - 2. A topographic and boundary survey;
  - 3. A statement specifying the accuracy of the report and all assumptions made and relied upon;
  - 4. A description of the methodologies used to conduct the critical area study, including references;
  - 5. A scale map of the development proposal site;
  - 6. Photographic records of the site before the proposed alteration occurs;
  - 7. An assessment of the probable effects to critical areas and associated buffers, including impacts caused by the development proposal and associated alterations to the subject property and impacts to other properties and any critical areas or buffers located on them resulting from the development of the site and the proposed development;
  - 8. A description of mitigation sequencing implementation described in MICC 19.07.100 including steps taken to avoid and minimize critical areas impacts to the greatest extent feasible;
  - 9. Detailed studies, as required by this chapter, for individual critical area types in order to ensure critical area protection;
  - 10. Assessment of potential impacts that may occur on adjacent site, such as sedimentation or erosion, where applicable; and
  - 11. A post-design memorandum prepared by a qualified professional confirming that the proposed improvements comply with the qualified professional's design recommendations.

- C. The critical area study requirement may be waived or modified if the applicant demonstrates to the code official's satisfaction that the development proposal will not have an impact on the critical area or its buffer in a manner contrary to the purposes and requirements of this chapter.

**19.07.120 Exemptions**

- A. Activities listed as exempt in this section do not require review for compliance with this chapter, provided they are otherwise consistent with the provisions of other city, state, and federal laws and requirements.
- B. An exemption does not give permission to degrade a critical area or ignore risk from natural hazards.
- C. All temporary and permanent impacts to critical areas and buffers shall be mitigated.
- D. The following activities are exempt from review and compliance with this chapter, provided, all activities shall use reasonable methods to avoid, and if avoidance is not possible, minimize impacts to critical areas and buffers to the greatest extent feasible consistent with MICC 19.07.100 – Mitigation Sequencing:
  - 1. Minor expansion of existing right of way improvements, including public streets, bike lanes, shoulders, trails, sidewalks, and open space, following consultation with the code official;
  - 2. Minor expansion of public utility structures and conveyance systems and their associated facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground, following consultation with the code official; and
  - 3. Site Investigative Work and Studies. Site investigative work and studies necessary for development proposals, including geotechnical tests, water quality studies, wildlife studies, surveys, soil logs, and critical area investigations within areas accessed by foot; provided the following criteria are met:
    - a. Impacts to critical areas and buffers shall be minimized; and
    - b. Disturbed areas shall be restored with native vegetation as soon as the investigative work is complete.
  - 4. Watercourse restoration and pipe extensions installed by a public agency, provided the steps in 19.07.100 – Mitigation Sequencing are addressed.
- E. The following activities are exempt from city review and approval:
  - 1. Repair and maintenance of existing right of way improvements. Repair, maintenance, reconstruction and replacement of existing right of way improvements, including public streets, bike lanes, shoulders, trails, sidewalks, and open space;
  - 2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and replacement of public utility structures and conveyance systems and their associated facilities, including but not limited to service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground.
  - 3. Demolition. Removal of structures in watercourse and wetland buffers and geologically hazardous areas, provided:
    - a. Site disturbance is limited to the existing access and building footprint;
    - b. There is no site disturbance within or to wetlands or watercourses;
    - c. All soils are stabilized and the area is revegetated with appropriate native vegetation; and
    - d. Necessary building permits are obtained.

4. Noxious weed removal. Removal of noxious weeds provided:
  - a. All disturbed soils are stabilized and revegetated with appropriate native vegetation; and
  - b. The area from which noxious weeds are removed is limited to 1,000 square feet.
5. Maintenance of Existing Landscaping. Landscape maintenance of legally-established lawns and gardens including mowing, pruning, weeding, and planting; provided, that such activities do not:
  - a. Expand any further into critical areas or buffers; or
  - b. Include the removal of ~~large or exceptional~~ significant trees.
6. Survey and Boundary Markers. Construction or modification of survey and boundary markers.
7. Temporary alterations in response to emergencies that threaten the public health, safety, and welfare or that pose an imminent risk of damage to private property, provided the following criteria are met:
  - a. The person undertaking such an action shall notify the code official in writing within one business day following commencement of the emergency activity;
  - b. Within 15 calendar days of the commencement of the emergency activity, the person undertaking such an action shall submit a complete application for all necessary approvals to authorize the alterations made and proposed in response to the emergency. The code official may allow additional time up to 180 calendar days for submittal of a complete application if the applicant requests an extension for a specific period of time. The code official may grant additional time extensions beyond 180 calendar days when multiple property owners or litigation is involved and when requested by the applicant;
  - c. The person undertaking such an action shall mitigate all impacts caused by the alteration and associated restoration activities, including intentional or unintentional alterations to all critical areas and buffers; and
  - d. A qualified professional shall supervise all alterations made to critical areas.
8. Passive Outdoor Activities. When it can be demonstrated that there will be no undue adverse effect, the following activities may be allowed within critical areas and their buffers: educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, and beach access including water recreation-related activities. This exemption does not authorize any construction.

#### **19.07.130 Modifications**

Activities of the following types may be authorized by the code official with approval of an application for a Critical Area Review 1. The activities in this section are exempt from the development standards in subsequent sections within this chapter, provided the code official may require measures to protect life and property or to protect environmental quality.

- A. Addition to or reconstruction of an existing legally-established structure or building within a critical area and/or buffer constructed on or before January 1, 2005 provided the following criteria are met:
  1. The seasonal limitations on land clearing, grading, filling, and foundation work described in MICC 19.07.170(F)(2) shall apply.
  2. Additions shall be allowed if all of the following criteria are met:
    - a. The structure is enlarged not more than a cumulative total of 200 square feet larger than its footprint as of January 1, 2005;

- b. If the existing, legally-established structure is located over or within a wetland or watercourse, no further expansion within the wetland or watercourse is allowed;
  - c. If the existing legally established structure is located within a wetland or watercourse buffer, the addition may be no closer to the wetland or watercourse than a distance equal to 75% of the applicable standard buffer;
  - d. A critical area study approved by the city demonstrates that impacts have been avoided or minimized and mitigated consistent with MICC 19.07.100 - Mitigation Sequencing;
  - e. If the modification or addition is proposed within a geologically hazardous area or associated buffer, a qualified professional provides a statement of risk consistent with MICC 19.07.170(B)(3);
- 3. Reconstruction of legally established non-conforming structures shall meet the standards in MICC 19.01.050. The code official may require a critical area study and mitigation plan addressing temporary impacts to critical areas and buffers.
- B. Restoration and enhancement activities involving site disturbance over 1,000 sq ft, provided the following criteria are met:
  - 1. Activities are limited to the removal of noxious weeds and planting of native and/or climate-resilient species;
  - 2. The entire area cleared of noxious weeds shall be revegetated with appropriate native and/or climate-resilient vegetation;
  - 3. Erosion control measures appropriate for the subject site shall be used; and
  - 4. Removal of noxious weeds and other restoration work shall be restricted to work by hand tools, including use of handheld gas or electric equipment.
- C. Stormwater retrofit facilities installed pursuant to the city's NPDES Phase II permit.

**19.07.140 Reasonable Use Exception**

- A. If the application of this chapter will deny all reasonable use of the owner's property, then the applicant may apply to the Community Planning and Development department for an exception from the requirements of this chapter in accordance with the provisions for Type IV reviews in chapter 19.15 MICC. The hearing examiner may approve the application for a reasonable use exception only if the development proposal meets all of the following criteria:
  - 1. The application of this chapter would deny all reasonable use of the property;
  - 2. There is no other reasonable use with less impact on the critical area;
  - 3. Any alteration to critical areas and associated buffers is the minimum necessary to allow for reasonable use of the property;
  - 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site and is consistent with the general purpose of this chapter and the public interest; and
  - 5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or prior property owner.
- B. 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.

**19.07.150 Public Agency Exception**

If the application of this chapter would prohibit a development proposal by a public agency, the agency may apply for an exception pursuant to this section:

- A. The public agency shall provide project documents such information as needed for the code official to issue a decision, including but not limited to, permit applications to other agencies, critical area studies, SEPA documents, and other materials.
- B. The code official may approve alterations to critical areas, buffers and critical area setbacks by an agency or utility when those alterations are not otherwise able to meet all of the standards in this chapter, and when the criteria in (B)(1) through (B)(3) of this section are demonstrated to be met.
  - 1. The activity or proposed development is described in an adopted city plan or project list, or has otherwise received city council approval;
  - 2. There is no other reasonable alternative to the activity or proposed development with less impact on the critical area. In determining what is a reasonable alternative to a proposed development, alteration or activity, the code official may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the alternative action or proposal. Reasonable alternatives are those that are capable of being carried out, taking into consideration the overall project purposes, needs, and objectives; and
  - 3. The activity or development proposal is designed to avoid or minimize and mitigate the impact on critical areas and associated buffers consistent with the avoidance and mitigation sequencing requirements in 19.07.100 - Mitigation Sequencing.

#### **19.07.160 Frequently Flooded Areas**

~~Frequently flooded areas are floodplains and other areas subject to flooding, including the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. There are currently no areas meeting this definition on Mercer Island; therefore, additional specific provisions for protecting frequently flooded areas are not provided within this chapter.~~

#### **19.07.170 Geologically Hazardous Areas**

- A. *Designation and Typing:* Geologically hazardous areas are lands that are susceptible to erosion, landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not be suited for development activities because they may pose a threat to public health and safety. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas: landslide hazard areas, seismic hazard areas, and erosion hazard areas.
- B. *General Review Requirements:* Alteration within geologically hazardous areas or associated buffers is required to meet the standards in this section, unless the scope of work is exempt pursuant to MICC 19.07.120 - Exemptions or a Critical Area Review 1 approval has been obtained pursuant to MICC 19.07.090(A).
  - 1. When an alteration within a landslide hazard area, seismic hazard area or buffer associated with those hazards is proposed, the applicant must submit a critical area study concluding that the proposal can effectively mitigate risks of the hazard. The study shall recommend appropriate design and development measures to mitigate such hazards. The code official may waive the requirement for a critical area study and the requirements of (B)(2) and (B)(3) of this section when he or she determines that the proposed development is minor in nature and will not

- increase the risk of landslide, erosion, or harm from seismic activity, or that the development site does not meet the definition of a geologically hazardous area.
2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur if the critical area study documents to the code official's satisfaction that the proposed alteration:
    - a. Will not adversely impact other critical areas;
    - b. Will not adversely impact the subject property or adjacent properties;
    - c. Will mitigate impacts to the geologically hazardous 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 hardscape prior to final inspection.
  3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if the conditions listed in subsection 2) are satisfied and the geotechnical professional provides a statement of risk matching one of the following:
    - a. An evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a landslide hazard area or seismic hazard area;
    - b. The landslide hazard area or seismic hazard area will be modified or the development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe;
    - c. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologically hazardous area and do not adversely impact adjacent properties; or
    - d. The development is so minor as not to pose a threat to the public health, safety and welfare.
- C. *Development Standards – Landslide Hazard Areas*: Development is allowed within landslide hazard areas and associated buffers, when the following standards are met:
1. A critical area study shall be required for any alteration of a landslide hazard area or associated buffer;
  2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest buffer shall be applied.
    - a. Steep slopes. Buffer widths shall be equal to the height of a steep slope, but shall not more than 75 feet, and applied to the top and toe of slopes;
    - b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions; and
    - c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.
- D. *Development Standards – Seismic Hazard Areas*: When development is proposed within a seismic hazard area:
1. A 50-ft minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault rupture traces as identified by the United States Geological Survey or Washington Geological Survey map databases or by site investigations by licensed geologic professionals with specialized knowledge of fault trenching studies; or

2. Mitigation sequencing shall be incorporated into the development proposal as recommended based on geotechnical analysis by a qualified professional to prevent increased risk of harm to life and/or property.

E. *Development Standards – Erosion Hazard Areas:*

1. All development proposals shall demonstrate compliance with MICC Chapter 15.09 – Storm Water Management Plan.
2. No development or activity within an Erosion Hazard Area may create a net increase in geological instability on- or off- site.

F. *Development Standards – Additional Criteria for Specific Activities:*

1. Trail building within geologically hazardous areas shall be subject to the following:
  - a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet; and
  - b. Trails shall be located to minimize the need for tree removal.
2. Land clearing, grading, filling, and foundation work within: 1) an erosion hazard area, when 2,000 sq ft or more of site disturbance is proposed, and/or 2) a landslide hazard area are not permitted between October 1 and April 1.
  - a. The code official may grant a waiver to this seasonal development limitation if the applicant provides a critical area study for the site concluding that:
    - (1) geotechnical slope stability concerns, erosion and sedimentation impacts can be effectively controlled on-site consistent with adopted storm water standards; and
    - (2) the proposed construction work will not subject people or property, including areas off-site, to an increased risk of associated impacts.
  - b. As a condition of the waiver, the code official may require erosion control measures, restoration plans, an indemnification, a release agreement and/or performance bond.
  - c. 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.
  - d. Failure to comply with the conditions of an approved waiver shall subject the applicant to code compliance pursuant to MICC Chapter 6.10 – Code Compliance, including but not limited to civil penalties and permit suspension.

**~~19.07.180 Critical Aquifer Recharge Areas~~**

~~A.—Designation and Typing: Critical aquifer recharge areas are designated as: 1) areas within the wellhead protection area of the city's emergency well(s); and 2) the sanitary control areas of Group B public water systems.~~

~~B.—Development Standards:~~

- ~~1.—The following uses and activities are prohibited within critical aquifer recharge areas unless studies are submitted pursuant to subsection (B)(2) of this section.~~
  - ~~a.—Automobile repair shops~~
  - ~~b.—Boat repair~~
  - ~~c.—Dry cleaners~~
  - ~~d.—Bus and truck terminals~~
  - ~~e.—Funeral services and taxidermy~~
  - ~~f.—Gas stations~~

- ~~g.—Graveyards/cemeteries~~
- ~~h.—Hardware and lumber stores~~
- ~~i.—Landfills~~
- ~~j.—Medical & veterinary offices~~
- ~~k.—Office and retail buildings~~
- ~~l.—Petroleum transmission lines~~
- ~~m.—Photo processors~~
- ~~n.—Sewer lines~~
- ~~o.—Wastewater treatment facilities~~
- ~~p.—Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source; and~~
- ~~q.—Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a stream.~~
- ~~2.—Approval of regulated activities within a critical aquifer recharge area shall require a critical area study that satisfies the requirements of MICC 19.07.110 — Critical Area Studies demonstrating that the potential impacts will be mitigated.~~

#### **19.07.190 Fish and Wildlife Habitat Conservation Areas**

A. Designation and Typing: Fish and wildlife habitat conservation areas include the following:

1. Areas where state or federally-listed endangered, threatened, sensitive, or candidate species, or species of concern, have a primary association;
2. Priority habitats and areas associated with priority species identified by the Washington State Department of Fish and Wildlife;
3. Areas used by bald eagles for foraging, nesting, and roosting, or within 660 feet of a bald eagle nest;
4. Watercourses and wetlands and their buffers; and
5. Biodiversity areas.

~~A.—~~

- ~~1.—Watercourses.~~
- ~~2.—Priority Habitats and areas associated with Priority Species, as listed in the Washington State Department of Fish and Wildlife’s Priority Habitats and Species list, as amended. Priority habitats and species known to be identified and mapped by the Washington State Department of Fish and Wildlife in the city include, but are not limited to, the following: band-tailed pigeon, pileated woodpecker, cavity-nesting ducks, and biodiversity areas and corridors as mapped within Mercedale Park (and hillside), Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast 53<sup>rd</sup> Open Space, Island Crest Park, and Pioneer Park Open Space.~~
- ~~3.—Areas used by bald eagles for foraging, nesting, and roosting.~~

**B. General Review Requirements:**

1. When development is proposed in the areas described in subsection A.1, 2, and 3 of this section, the applicant shall, ~~Development proposals,~~ unless the proposal is specifically exempt pursuant to MICC 19.07.120, ~~within Priority Habitats or areas used by bald eagles for foraging, nesting and/or roosting shall~~ submit a wildlife habitat assessment in the form of a critical area study prepared by a qualified professional including the following information:
  - a. Identification of the species referenced in subsection A.1, 2, and 3 of this section ~~state priority species, or state or federally listed endangered, threatened or sensitive species~~ that have a primary association with habitat on or in the vicinity of the site;
  - b. Extent of wildlife habitat areas, including acreage, and required buffers based on the species;
  - c. Vegetative, faunal, and hydrologic characteristics;
  - d. Evaluation of direct and indirect potential impacts on habitat by the project, including potential impacts to water quality; and
  - e. A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations that have been developed for the species or habitats.
  - f. A discussion of possible avoidance, minimization, and mitigation of impacts as per 19.07.100 of this chapter.

**C. Development Standards:** The development proposal shall implement wildlife and habitat protection measures identified in the critical areas study and habitat assessment, subject to the following:

- ~~2.1.~~ Development proposals within areas used by bald eagles for foraging, nesting, or roosting, or within 660 feet of a bald eagle nest as identified by a critical area study shall follow the requirements of the US Fish and Wildlife's *National Bald Eagle Management Guidelines* (2007-~~or as amended~~).
2. Protection of watercourses and wetlands and their buffers is presumed through compliance with sections 19.07.200 and 19.07.210 of this chapter, respectively; ~~Development proposals within areas meeting the definition of both 1) wetlands, watercourses or associated buffers and 2) fish and wildlife habitat conservation areas shall submit a wildlife habitat assessment and mitigation plan demonstrating that the proposal will cause no net loss of ecological function.~~
3. Fish habitat protection is presumed through compliance with MICC 19.13 Shoreline Master Program;
- ~~3.4.~~ The development proposal shall implement measures to minimize and mitigate impacts if they are if they are unavoidable, subject to mitigation sequencing in 19.07.100.

**19.07.200 Watercourses**

**A. Designation and Typing:** Watercourses shall be classified by the following types:

1. Type S (there are no known Type S watercourses on Mercer Island);
2. Type F;
3. Type Np;
4. Type Ns; and
5. Piped.

**B. General Review Requirements**

1. When a proposal for development is submitted on property that contains a watercourse or watercourse buffer, a wildlife habitat assessment shall be submitted that includes the information listed in 19.07.190.B.1 of this chapter.

1-2. Development within watercourses and/or associated buffers is prohibited unless one of the following conditions applies:

- a. The proposed activity is specifically exempt pursuant to MICC 19.07.120;
- b. A Critical Area Review 1 application is reviewed and approved for one of the modifications in MICC 19.07.130; or
- c. The proposed activity is permitted under subsection (D) Development Standards – Additional Criteria for Specific Activities, below.

**C. Development Standards – Buffers**

1. Development proposals and other alterations on sites containing streams or buffers shall comply with the following standards:
2. The following minimum buffers shall be established from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified:

Watercourse Type	Standard Buffer
F	120 feet
Np	60 feet
Ns	60 feet
Piped	No buffer

3. Neither lot coverage nor hardscape shall be permitted within a watercourse or watercourse buffer except as specifically provided in this chapter.

4. Any watercourse adjoined by a riparian wetland or other contiguous critical area shall have the buffer required for the stream type involved or the buffer that applies to the wetland or other critical area, whichever is greater.

4-5. The development proposal shall implement wildlife and habitat protection measures identified in the wildlife habitat assessment in B.1 of this section.

5-6. Buffer Averaging. Buffer width averaging shall be allowed by the code official provided the following requirements are met:

- a. The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- b. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) - Mitigation Requirements of this section and will not result in a loss of ecological function;
- c. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
- d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.

~~6.7.~~ 7. Buffer Reduction. Buffer width reduction shall be allowed by the code official provided the following requirements are met:

- a. The applicant has demonstrated that buffer averaging would not feasibly allow development;
- b. The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- c. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section and will not result in a loss of ecological function;
- d. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
- e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.

~~7.8.~~ 8. Piped watercourse setbacks

- a. The intent of applying setbacks to piped watercourses is to preserve the opportunity to daylight watercourses that were previously piped, to provide incentives to property owners to daylight and enhance previously piped watercourses, and to allow flexibility for development where daylighting piped watercourses is demonstrated to be infeasible.
- b. Setbacks shall be established 45 ft from the centerline of a piped watercourses.
- c. Piped watercourses setback widths shall be reduced by the code official to a 15-foot buffer when the portion of the piped watercourse on the applicant's property is daylighted and where the watercourse has been restored to an open channel, provided a restoration plan demonstrates:
  - (1) The watercourse channel will be stable and is not expected to cause safety risks or environmental damage; and
  - (2) No additional impact nor encumbrance by watercourse buffer or critical area setback is added to properties neighboring the applicant(s) property.
- d. Piped watercourse setback widths shall be reduced by the code official to: 1) 10 feet on lots with a lot width of 50 feet or more, and 2) 5 feet on lots with a width of less than 50 feet, when daylighting is determined by qualified professional(s) to result in one or more of the following outcomes:
  - (1) Increased risk of landslide or other potential hazard that cannot be mitigated;
  - (2) Increased risk of environmental damage (e.g., erosion, diminished water quality) that cannot be mitigated;
  - (3) The inability of a legally established existing lot to meet the vehicular access requirements of this title; or
  - (4) The inability of a legally established existing lot to meet the building pad standards in MICC 19.09.090.

~~8.9.~~ 9. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a watercourse buffer. The distance may be reduced to five feet if:

- a. The watercourse is Type Ns;
- b. The buffer does not contain habitat for WDFW priority species.
- c. A split-rail fence is installed along the perimeter of the buffer; and
- d. Survey markers are installed along the perimeter of the buffer to establish its field location.

9.10. The following may be allowed in the critical area setback, provided no structures nor building overhangs may be closer than five feet from the edge of a watercourse buffer:

- a. Landscaping;
- b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- c. Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
- d. Hardscape and driveways; provided, that such improvements may be subject to requirements in Chapter 15.09 MICC – Storm Water Master Program;
- e. Split rail fences;
- f. Trails, consistent with the requirements of this chapter; and
- g. Subgrade components of foundations, provided that any temporary impacts to building setbacks shall be restored to their previous condition or better.

*D. Development Standards – Additional Criteria for Specific Activities:*

1. New watercourse crossings, such as bridges and culverts, may be permitted provided the standards in WAC 220-660-190 have been demonstrated to be met.
2. The construction of trails within watercourse buffers is allowed, subject to the following:
  - a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
  - b. Trails shall be located to minimize the need for tree removal; and
  - c. Trails shall be located only in the outer 25 percent of the buffer area.
3. The trail width shall be added to the buffer width applied to the watercourse (e.g., if a trail is three feet wide, the watercourse buffer for the portion of the watercourse where the trail is located shall be expanded by three feet); except that the trail width shall not be added to the buffer width when trails are being created for public access and contained within a public access easement or right-of-way.

*E. Mitigation requirements:* Mitigation measures shall achieve equivalent or greater ecological function including, but not limited to:

1. Habitat complexity, connectivity, and other biological functions;
2. Seasonal hydrological dynamics, water storage capacity and water quality; and
3. Geomorphic and habitat processes and functions

**19.07.210 Wetlands**

A. *Designation and Typing:* Wetlands shall be rated in accordance with the approved federal delineation manual and applicable regional supplements described in WAC 173-22-035 and based on field investigation and a survey and using the Washington State Rating System for Western Washington: 2014 Update (Hruby, 2014), or most current update.

*B. General Review Requirements:*

1. In addition to the critical area study requirements listed in MICC 19.07.110 – Critical Area Studies, critical area studies on wetlands shall also include:
  - a. Wetland rating forms and datasheets;
  - b. Discussion of landscape setting;
  - c. A functional analysis of the project demonstrating that there will be no loss of ecological function;

~~c.d.~~ A wildlife habitat assessment that includes the information listed in 19.07.190.B.1 of this chapter; and

~~d.e.~~ A mitigation plan.

2. Wetland delineations are valid for five years.
3. Wetlands must be delineated and rated by a qualified professional.

C. *Development Standards – Buffers:*

1. The following minimum buffers shall be established from the ordinary high water mark:

Wetland Category	Standard Buffer	
	With 3-5 habitat points	With 6-7 habitat points
Category I	75 ft	110 ft
Category II	75 ft	110 ft
Category III	60 ft	110 ft
Category IV	40 ft	

2. Where a legally established and constructed street transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the street if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland.
3. Prohibited activities: The following uses are prohibited within any wetland or associated buffer: removal, excavation, grading, or dredging of material; draining flooding or disturbing the wetland, water level or water table; construction, reconstruction, demolition, or expansion of any structure.

4. Neither lot coverage nor hardscape shall be permitted within a wetland or wetland buffer except as specifically provided in this chapter.

4.5. The development proposal shall implement wildlife and habitat protection measures identified in the wildlife habitat assessment required by B.1.d.of this section.

5.6. Buffer Averaging. Buffer width averaging shall be allowed by the code official provided the following requirements are met:

- a. The applicant has demonstrated how impacts have been avoided consistent with MICC 19.07.100 – Mitigation Sequencing;
- b. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section and will not result in a loss of ecological function;
- c. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
- d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.

6.7. Buffer Reduction. Buffer width reduction shall be allowed by the code official provided the following requirements are met:

- a. The applicant has demonstrated that buffer averaging would not feasibly allow development;
- b. The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- c. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section and will not result in a loss of ecological function;
- d. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
- e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.

7.8. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a wetland buffer. The distance may be reduced to five feet if:

- a. The wetland is:
  - (1) hydrologically isolated;
  - (2) Category III or IV;
  - (3) less than 1,000 square feet
  - (4) in an area that is not associated with riparian areas or buffers;
  - (5) not part of a wetland mosaic, and
  - (6) does not contain habitat for WDFW priority species.
- b. A split-rail fence is installed along the perimeter of the buffer; and
- c. Survey markers are installed along the perimeter of the buffer to establish its field location.

8.9. The following may be allowed in the critical area setback, provided no structures nor building overhangs may be closer than five feet from the edge of a wetland buffer:

- a. Landscaping;
- b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- c. Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
- d. Hardscape and driveways; provided, that such improvements may be subject to requirements in Chapter 15.09 MICC – Storm Water Master Program;
- e. Split rail fences;
- f. Trails, consistent with the requirements of this chapter; and
- g. Subgrade components of foundations, provided that any temporary impacts to building setbacks shall be restored to their previous condition or better.

**D. Development Standards – Additional Criteria for Specific Activities:**

- 1. Alterations to wetlands are allowed when the applicant has demonstrated how mitigation sequencing has been applied pursuant to MICC 19.07.100 – Mitigation Sequencing and when the applicant has demonstrated that the wetland is:
  - a. hydrologically isolated;
  - b. Category III or IV;
  - c. less than 1,000 square feet
  - d. in an area that is not associated with riparian areas or buffers;
  - e. not part of a wetland mosaic, and
  - f. does not contain habitat for WDFW priority species.

2. The construction of trails within wetland buffers is allowed, subject to the following requirements:
  - a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
  - b. Trails shall be located to minimize the need for tree removal; and
  - c. Trails shall be located only in the outer 25 percent of the buffer area.
  - d. The trail width shall be added to the buffer width applied to the wetland (e.g., if a trail is three feet wide, the wetland buffer for the portion of the wetland where the trail is located shall be expanded by three feet); except that the trail width shall not be added to the buffer width when trails are being created for public access and contained within a public access easement or right-of-way.
3. Development proposals shall incorporate the following measures where their application would result in a net environmental benefit, and where site conditions would feasibly allow the following:

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	Direct lights away from wetland
Noise	<p>Locate activity that generates noise away from wetland</p> <p>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</p> <p>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the out wetland buffer</p>
Toxic runoff	<p>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</p> <p>Establish covenants limiting use of pesticides within 150 ft of wetland</p> <p>Apply integrated pest management</p>
Stormwater runoff	<p>Retrofit stormwater detention and treatment for roads and existing adjacent development</p> <p>Prevent channelized flow from lawns that directly enters the buffer</p> <p>Use Low Impact Development techniques</p>
Changes in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns

Pets and human disturbance	Protect wetlands and associated buffers with conservation or native growth protection easements
Dust	Use best management practices to control dust
Disruption of corridors or connections	Maintain connections to offsite areas that are undisturbed  Restore corridors or connections to offsite habitats by replanting

E. *Mitigation Requirements:* When mitigation for wetland and/or wetland buffer impacts is required, mitigation shall meet the requirements listed below:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions compared to pre-development conditions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009 as revised).
2. Mitigation for alterations to wetland(s) and/or wetland buffer(s) shall achieve equivalent or greater ecological function.
3. No Net Loss. Wetland mitigation actions shall not result in a net loss of wetland area.
4. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration except when the following apply:
  - a. There are no reasonable on-site opportunities for mitigation on-site opportunities do not have a high likelihood of success due to adjacent land uses;
  - b. On-site buffers or connectivity are inadequate;
  - c. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
  - d. Off-site locations have been identified and evaluated in the following order of preference:
    - (1) Within the same drainage sub-basin;
    - (2) Within the city limits;
    - (3) Within the Mercer Island service area for an approved mitigation bank program site within the WRIA 8 in accordance with the requirements in subsection (E)(5) below.
  - e. Where feasible, off-site mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following site disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.
5. Mitigation Ratios:

- a. The following ratios shall apply to required wetland mitigation. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.
- b. Permanent Wetland Mitigation. The following ratios of area of mitigation to area of alteration apply to mitigation measures for permanent alterations.

Wetland Category	Creation	1:1 Wetland reestablishment or wetland creation (R/C) and wetland enhancement (E) Enhancement
Category I	4:1	1:1 R/C and 16:1
Category II	3:1	1:1 R/C and 12:1
Category III	2:1	1:1 R/C and 8:1
Category IV	1.5:1	1:1 R/C and 6:1

- c. Temporary Wetland Mitigation. The following ratios of area of mitigation to area of alteration apply to mitigation measures for temporary alterations where wetlands will not be impacted by permanent fill material:

- d. 

Wetland Category	Creation	Enhancement
Category I	1.5:1	3:1
Category II	0.75:1	1.5:1
Category III	0.5:1	1:1
Category IV	Not applicable	Not applicable

Buffer Replacement Ratio. Altered wetland buffer area shall be replaced at a minimum ratio of one-to-one; provided, that the replacement ratio may be increased if needed to replace lost functions and values.

- e. Increased Mitigation Ratio. The code official may increase the ratios under the following circumstances:
  - (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
  - (2) A significant period of time will elapse between impact and replication of wetland functions; or
  - (3) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
  - (4) The impact was an unauthorized impact.
- f. Decreased Mitigation Ratio. The code official may decrease these ratios under the following circumstances:

- (1) Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success. This documentation should specifically identify how the proposed mitigation actions are similar to other known mitigation projects with similar site-specific conditions and circumstances that have been shown to be successful; or
  - (2) Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
  - (3) The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful over the course of at least one full year.
6. Wetland Banking.
  - a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
    - (1) The criteria in subsection (E)(4) are demonstrated to have been met;
    - (2) The bank is certified under chapter 173-700 WAC;
    - (3) A qualified professional has demonstrated that the wetland mitigation bank provides appropriate compensation for the authorized impacts;
    - (4) The proposed use of credits is consistent with the terms and conditions of the bank's certification; and
    - (5) The compensatory mitigation agreement occurs in advance of authorized impacts.
  - b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
  - c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.
7. Preference of Mitigation Actions. Compensatory wetland mitigation shall occur in the following order of preference:
  - a. Restoration
  - b. Creation
  - c. Enhancement
  - d. Preservation
8. Site protection: As a condition of any permit or land use approval, the code official may require permanent fencing and signage to be installed around the wetland or buffer. Fencing installed as part of a proposed activity or as required in this subsection shall be designed to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

#### 19.09.090 Building Pad

[...]

2. Building pads shall not be located within:
  - a. Required front, rear, or side yard setbacks;
  - b. Streets or rights-of-way; and
  - c. Critical areas, buffers, or critical area setbacks; provided building pads may be located within geohazard hazard areas and associated buffers and setbacks when all of the following are met:

[...]

C. New buildings shall be located within the building pad established by subsection A or B of this section. Legally established nonconforming portions of existing buildings and additions made pursuant to 19.07.130 Modifications may be located outside of building pads.

#### 19.10.050 - Tree removal – Not associated with a development proposal.

- A. Tree removal that is not associated with a development proposal located outside of wetlands, watercourses, landslide hazard areas and buffers associated with these critical area types shall provide replacement trees (MICC 19.10.070), but is exempt from tree retention (MICC 19.10.060).
- B. Tree removal that is associated with a development proposal located within wetlands, watercourses, landslide hazard areas and buffers associated with these critical area types shall be permitted subject to the following standards:
  1. One or more of the following criteria applies to the tree(s) proposed for removal:
    - a. The tree is documented to be a hazard tree by a TRAQ-qualified arborist;
    - b. The tree is documented by a qualified arborist to be diseased, in decline, or not viable for retention; or
    - c. The removal of the tree will enhance ecosystem functions and values and/or promote slope stability.
  2. A restoration plan prepared by a qualified professional consistent with International Society of Arboriculture standards is submitted that contains the following:
    - a. Analysis demonstrating how the ecological functions and values including but not limited to slope stabilization, hydrologic function, and habitat value, are being preserved by the proposed plan.
    - b. Proposed removal of all noxious weeds, as defined in Chapter 19.16 MICC.
    - c. Removed trees shown as made into snags at a safe height, where feasible.
  3. Implementation of approved restoration plans shall be completed by a certified arborist.
  4. Any pruning shall be done consistent with International Society of Arboriculture standards and completed by a certified arborist
- C. An application for tree removal that is not associated with a development proposal shall provide the application information described under MICC 19.10.090(A) – General Information.
- D. This section shall not be construed as an exemption to the tree retention and replacement requirements of Chapter 19.07 MICC.

## 19.16.010 Definitions

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

(...) Biodiversity Areas: Areas that consist of habitat that is valuable to fish or wildlife, mostly comprised of native vegetation, and protected in City parks including Mercerdale Park and Hillside, Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast 53<sup>rd</sup> Open Space, Island Crest Park, Pioneer Park Open Space, and Ellis Pond, or other large park or open space meeting the intent of this designation.

[...] Buffer: A designated area contiguous to a steep slope or landslide hazard area intended to protect slope stability, attenuation of landslide hazards, or a designated area contiguous to a habitat conservation area, stream or wetland intended to protect the ecological functions and values of the habitat, stream or wetland and be an integral part of the habitat, stream or wetland ecosystem.

[...] Critical Area Review 1: An approval allowing one or more actions listed in MICC 19.07.140 Modifications within a critical area or buffer.

[...] Critical Area Review 2: An approval allowing reduction or averaging of a wetland or watercourse buffer, or alteration of a geologically hazardous area.

[...] Dock. A structure that floats on the surface of the water, without piling supports, but that is attached to land. Typically used for boat moorage, swimming, public access, and other activities that require access to deep water. This definition of docks shall also include "piers" for the purposes of Title 19.

Fish and Wildlife Habitat Conservation Areas:

1. Areas where state or federally-listed endangered, threatened, sensitive, or candidate species, or species of concern, have a primary association;
2. Priority habitats and areas associated with priority species identified by the Washington State Department of Fish and Wildlife;
3. Areas used by bald eagles for foraging, nesting, and roosting, or within 660 feet of a bald eagle nest;
4. Watercourses and wetlands and their buffers; and
5. Biodiversity areas.

~~Areas where 1) endangered, threatened, and sensitive species have a primary association; 2) priority habitats identified by the Washington Department of Fish & Wildlife occur; 3) species identified in the Washington Department of Fish & Wildlife Priority Habitats and Species list reside and forage; 4) bald eagles forage, nest, and roost.~~

[...] Geologically Hazardous 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.

[...] Landslide Hazard Area, Shallow: Landslide hazard area with a failure depth of 15 feet or less thick.

[...] Landslide Hazard Area, Deep-seated: Landslide hazard area with a failure depth more than 15 feet thick.

[...] 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, together with the King County Noxious Weed and Weeds of Concern lists, is the officially adopted list of noxious weeds for the city.

[...]

[...] Pier. A structure that projects over and is raised above the water but is attached to land, and that is used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.

[...] Public Access Pier or Boardwalk. A structure which is constructed waterward of the ordinary high water mark and intended for public use.[...] Qualified Professional: A qualified professional for watercourses, wetlands, and wildlife habitat conservation areas must be a Professional Wetland Scientist. A qualified professional for preparing geotechnical reports and geotechnical design recommendations must have obtained a B.S. or B.A. or equivalent degree in geologic hazards studies, and must hold a current state license in geology, hydrogeology or as a professional engineer with geotechnical and/or seismic experience.

[...] Setback: The distance between a development and other feature such as a property line or critical areas buffer.

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 shall be classified according to the following types:

- A) Type S, which include all waters, within their bankfull width, as inventoried as "shorelines of the state," which are regulated by the city's Shoreline Master Program pursuant to chapter 90.58 RCW.

- B) Type F, which include segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat.
- C) Type Np, which include all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
- D) Type Ns, which include all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.
- E) Piped Watercourses, which are pipes or other conveyances through 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.

Wetland Classification System: Those categories set forth in the Washington State Wetland Rating System for Western Washington, Publication #14-06-029 dated October, 2014. 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.

Wetland Manual: Identification of wetlands and delineation of their boundaries shall be done in accordance with the most recently approved Army Corps of Engineers wetlands delineation manual and applicable regional supplements.

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