
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



Wednesday, March 6, 2019

	CALL TO ORDER & ROLL CALL	6:00 PM
Planning Commissioners	APPROVAL OF MINUTES No Minutes	
Carolyn Boatsman		
Tiffin Goodman, Vice Chair	PUBLIC HEARING	6:05 PM
Daniel Hubbell, Chair	Agenda Item #1: ZTR18-002 Critical Areas and Shoreline Master Program Code Amendments Joint public hearing with the Department of Ecology on the Critical Areas code and Shoreline Master Program.	
Jennifer Mechem		
Lucia Pirzio-Biroli	REGULAR BUSINESS	7:15 PM
Craig Reynolds	Agenda Item #2: ZTR18-002 Critical Areas and Shoreline Master Program Code Amendments Begin deliberation on the proposed code amendments.	
Ted Weinberg		
	OTHER BUSINESS Directors Report Planned Absences for Future Meetings Next Regularly Scheduled Meeting: March 20, 2019	
	ADJOURN	9:00 PM



COMMUNITY PLANNING AND DEVELOPMENT

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

TO: Planning Commission

FROM: Robin Proebsting, Senior Planner

DATE: February 27, 2019

RE: Critical Areas Code and Shoreline Master Program Updates (ZTR18-002): Introduction to Public Hearing Draft

Summary

This memo summarizes the Planning Commission's work on the Critical Areas Ordinance (CAO) and Shoreline Master Program (SMP) to date, which has resulted in the public hearing draft of the proposed code amendment (Attachment 1). This draft has been distributed publicly in advance of the scheduled March 6, 2019 public hearing on this topic to allow the public to review and comment on the draft, helping inform the commission's deliberations.

Background

The Planning Commission has spent roughly the past year developing the draft code, utilizing 13 public meetings to: Learn the statutory requirements for CAO and SMP updates; review the best available science for critical areas, contained in *2018 Best Available Science Report for Geologically Hazardous Areas and Critical Aquifer Recharge Areas* prepared by Aspect Consulting, dated October 2018 and *2018 Best Available Science Report for Watercourses, Wetlands, and Fish and Wildlife Habitat Conservation Areas* prepared by ESA, dated October 2018; deliberate and form a policy recommendation for the draft code and; form a 3-member subcommittee to do an in-depth review of the draft code, which itself held two meetings in addition to the Planning Commission's meetings. Additionally, staff created a project webpage early in the code update process to solicit comments from and provide information to the general public, including an FAQ, library of project documents, and educational video. Articles about the project were published in the MI Weekly newsletter November 14, 2018 and February 20, 2019.

The public hearing draft contains both an updated CAO and SMP, together with ancillary updates. Specifically, the public hearing draft includes:

1. An updated, rewritten CAO (chapter 19.07 MICC), revised to incorporate the best available science, as required by state law;
2. An updated SMP, revised to incorporate changes to state law made since the current SMP's adoption, add standards for public piers, and clarify existing language. The SMP was also moved

to a new chapter of its own, 19.13 MICC;

3. SEPA rules, moved to new chapter 19.14 MICC with no changes to content;
4. Updates to chapters 19.09, 19.10, 19.15, and 19.16 MICC to make the updates to the CAO and SMP consistent with the other chapters in Title 19.

Please note that the item 2. requires a consolidated public hearing with Department of Ecology, which will occur on March 6, 2019.

Code Amendment

The City's code requires code amendments like the CAO and SMP to meet certain review criteria (MICC 19.15.250). The proposed amendments to the City's code and review criteria for code amendments (discussed below) should be evaluated in the context of all of the material that the Planning Commission has considered to date in making their recommendation to the City Council.

The commission's review process has addressed these criteria, as summarized below:

"The city may approve or approve with modifications a proposal to amend the text of this code if:

1. *The amendment is consistent with the comprehensive plan; and*

The Planning Commission developed and recommended updates to the comprehensive plan as part of the 2018 docket. The City Council accepted the commission's recommendation. The purpose section and standards of the draft CAO has been rewritten to be in alignment with the new and existing comprehensive plan policies.

2. *The amendment bears a substantial relation to the public health, safety, or welfare; and*

The proposed code amendments contains standards pertaining to the risks posed by geologically hazardous areas to public health, safety, and welfare and contains standards based in the best available science to avoid, minimize and mitigation those risks. Additionally, the draft code contains revised standards aimed at maintaining and supporting the ecological functions and values of wetlands, watercourses, and fish and wildlife habitat conservation areas, which have direct and indirect positive impacts on human health, safety and welfare

3. *The amendment is in the best interest of the community as a whole.*

The proposed code amendment uses the latest best available science to inform a CAO and SMP that, when implemented, will protect ecosystem functions and values, benefitting the community as a whole.

Next Steps

Please review the public hearing draft and any public comment sent to you in preparation for the public hearing on March 6, 2019. Deliberations will be held on either March 6, 2019 (if time permits) or March 20, 2019.

Attachments

1. Public Hearing Draft of ZTR18-002 code update
2. Public comment received through February 27, 2019

1 Chapter 19.07

2 ENVIRONMENT

3 Sections:

4 19.07.010 Purpose.

5 19.07.020 Applicability

6 19.07.030 Relationship to Other Regulations

7 19.07.040 Critical Areas Rules

8 19.07.050 Fees

9 19.07.060 Critical Area Maps and Inventories

10 19.07.070 Disclosure and Notice on Title

11 19.07.080 General Provisions

12 19.07.090 Critical Area Reviews

13 19.07.100 Mitigation Sequencing

14 19.07.110 Critical Area Studies

15 19.07.120 Exemptions

16 19.07.130 Modifications

17 19.07.140 Reasonable Use Exception

18 19.07.150 Public Agency Exception

19 19.07.160 Frequently Flooded Areas

20 19.07.170 Geologically Hazardous Areas

21 19.07.180 Critical Aquifer Recharge Areas

22 19.07.190 Fish and Wildlife Habitat Conservation Areas

23 19.07.200 Watercourses

24 19.07.210 Wetlands

25 **19.07.010 Purpose**

26 These regulations are adopted for the following purposes:

27 A. To implement the goals and policies for the Growth Management Act chapter 36.70A RCW;

28 B. To maintain the functions and values of critical areas and enhance the quality of habitat to support
29 the sustenance of native plants and animals;

30 C. To balance property owner interests with the public interest;

31 D. To promote biodiversity within critical areas and buffers by encouraging planting with mostly native
32 and climate-resilient vegetation;33 E. To establish review criteria for land use reviews that maintain and improve the ecological health of
34 wetlands, watercourses and Lake Washington;35 F. To establish standards for new development that avoid increasing the risk of harm to people,
36 property, and public infrastructure from natural hazards;37 G. To protect the functions and value of fish and wildlife habitat conservation areas, including
38 wetlands, watercourses and habitat for priority species and species of local importance, through the
39 use of buffers;40 H. To increase the safety of development within and adjacent to geologically hazardous areas through
41 the use of buffers;

42 I. To require mitigation measures when unavoidable impacts to critical areas are proposed;

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

9 **19.07.020 Applicability**

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

24 **19.07.030 Relationship to other regulations**

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

33 **19.07.040 Critical Areas Rules**

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

36 **19.07.050 Fees**

- 37 A. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation,
38 preparation, submission, and expense of all required reports, assessments, studies, plans,
39 reconnaissances, or other work prepared in support of or necessary to review the application.
- 40 B. The applicant shall be responsible for all applicable fees as established in the city's fee schedule,
41 consultant review fees, and peer review fees.

42 **19.07.060 Critical Area Maps and Inventories**

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

5 **19.07.070 Disclosure and notice on title**

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

24 **19.07.080 General provisions**

- 25 A. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,
26 Performance Bonds, Insurance. An applicant for a permit within a critical area shall comply with the
27 requirements of MICC 19.01.060, if required by the code official.
- 28 B. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection
29 and occupancy of a project.
- 30 C. Maintenance and Monitoring.
- 31 1. Maintenance and monitoring shall be required for at least five years from the date of project
32 completion if the code official determines such condition is necessary to ensure mitigation
33 success and critical area protection.
- 34 2. A bond or assignment of funds pursuant to MICC 19.01.060(C) may be required to guarantee
35 that approved mitigation plans will be undertaken and completed to the city's satisfaction.
- 36 3. When monitoring is required, site visits and reporting shall be required two times per year for
37 each of the first two years and once every 12 months for the subsequent years of the
38 monitoring period.
- 39 4. Where monitoring reveals a significant difference from predicted impacts or a failure of
40 protection measures, the applicant shall be responsible for appropriate corrective action, which
41 may be subject to further monitoring.

- 1 D. Compliance with Mitigation Requirements. In cases where mitigation has been completed, but no
 2 monitoring reports have been submitted to the city, the applicant shall submit as-built drawings and
 3 yearly monitoring reports to the city until at least two consecutive annual reports document to the
 4 code official's satisfaction that all performance standards from the approved mitigation plan have
 5 been met.
- 6 E. Seasonal Limitations. Land clearing, grading, filling, and foundation work may be limited to only
 7 certain times of year, pursuant to MICC 19.07.170(F)(2).
- 8 F. Suspension of Work. If the alteration does not meet city standards established by permit condition
 9 or applicable codes, including controls for water quality, erosion and sedimentation, the city may
 10 suspend further work on the site until such standards are met. Compliance with all requirements of
 11 this chapter is required pursuant to MICC 19.15.210.
- 12 G. A critical area study completed over five years prior to application submittal date shall be field
 13 verified by a qualified professional to determine whether the study is still accurate, and if not, the
 14 study shall be completed according to the current best available science.

15 **19.07.090 Critical Area Reviews**

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

18 **A. Critical Area Review 1**

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

35 **B. Critical Area Review 2**

- 36 1. The purpose of a Critical Area Review 2 is to review:
- 37 a. Critical area studies and mitigation plans in support of proposed buffer averaging and
 38 reduction of wetland and watercourse buffers.
- 39 b. Critical area studies submitted when a use listed in MICC 19.07.180(B)(1) is proposed within
 40 a critical aquifer recharge area.
- 41 2. Review timing and sequence

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

24 **19.07.100 Mitigation sequencing**

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

- 30 A. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant
31 shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts.
32 However, avoidance shall not be construed to mean mandatory withdrawal or denial of the
33 development proposal or activity if the proposal or activity is an allowed, permitted, or conditional
34 in this title. In determining the extent to which the proposal should be redesigned to avoid the
35 impact, the code official may consider the purpose, effectiveness, engineering feasibility,
36 commercial availability of technology, best management practices, safety and cost of the proposal
37 and identified changes to the proposal. Development proposals should seek to avoid, minimize and
38 mitigate overall impacts based on the functions and values of all of the relevant critical areas and
39 based on the recommendations of a critical area study. If impacts cannot be avoided through
40 redesign, use of a setback deviation pursuant to MICC 19.06.110(C), or because of site conditions or
41 project requirements, the applicant shall then proceed with the sequence of steps in subsections (B)
42 through (E) of this section;

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

11 **19.07.110 Critical Area Study**

- 12 A. A critical area study shall be required when a development proposal will result in an alteration to
13 one or more critical areas or critical area buffers or when required by the code official to determine
14 the potential impact to a critical area.
- 15 B. The critical area study shall be in the form of a written report supported by graphic information
16 prepared by a qualified professional using guidance based on the best available science consistent
17 with the standards in chapter 365-195 WAC and shall contain the following items, as applicable to
18 adequately evaluate the proposal, proposed alterations, and mitigation:
- 19 1. Disclosure of the presence of critical areas, including a delineation and type or category of
20 critical area, on the development proposal site and any mapped or identifiable critical areas on-
21 or off-site within the distance equal to the largest potential required buffer applicable to the
22 development proposal area on the applicant's property;
 - 23 2. A topographic and boundary survey;
 - 24 3. A statement specifying the accuracy of the report and all assumptions made and relied upon;
 - 25 4. A description of the methodologies used to conduct the critical area study, including references;
 - 26 5. A scale map of the development proposal site;
 - 27 6. Photographic records of the site before the proposed alteration occurs;
 - 28 7. An assessment of the probable effects to critical areas and associated buffers, including impacts
29 caused by the development proposal and associated alterations to the subject property and
30 impacts to other properties and any critical areas or buffers located on them resulting from the
31 development of the site and the proposed development;
 - 32 8. A description of mitigation sequencing implementation described in MICC 19.07.100 including
33 steps taken to avoid and minimize critical areas impacts to the greatest extent feasible;
 - 34 9. Detailed studies, as required by this chapter, for individual critical area types in order to ensure
35 critical area protection;
 - 36 10. Assessment of potential impacts that may occur on adjacent site, such as sedimentation or
37 erosion, where applicable; and
 - 38 11. A post-design memorandum prepared by a qualified professional confirming that the proposed
39 improvements comply with the qualified professional's design recommendations.
- 40 C. The critical area study requirement may be waived or modified if the applicant demonstrates to the
41 code official's satisfaction that the development proposal will not have an impact on the critical area
42 or its buffer in a manner contrary to the purposes and requirements of this chapter.

19.07.120 Exemptions

- 1
2 A. Activities listed as exempt in this section do not require review for compliance with this chapter,
3 provided they are otherwise consistent with the provisions of other city, state, and federal laws and
4 requirements.
- 5 B. An exemption does not give permission to degrade a critical area or ignore risk from natural
6 hazards.
- 7 C. All temporary and permanent impacts to critical areas and buffers shall be mitigated.
- 8 D. The following activities are exempt from review and compliance with this chapter, provided, all
9 activities shall use reasonable methods to avoid, and if avoidance is not possible, minimize impacts
10 to critical areas and buffers to the greatest extent feasible consistent with MICC 19.07.100 –
11 Mitigation Sequencing:
- 12 1. Minor expansion of existing right of way improvements, including public streets, bike lanes,
13 shoulders, trails, sidewalks, and open space, following consultation with the code official;
 - 14 2. Minor expansion of public utility structures and conveyance systems and their associated
15 facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above
16 and below ground, following consultation with the code official; and
 - 17 3. Site Investigative Work and Studies. Site investigative work and studies necessary for
18 development proposals, including geotechnical tests, water quality studies, wildlife studies,
19 surveys, soil logs, and critical area investigations within areas accessed by foot; provided the
20 following criteria are met:
 - 21 a. Impacts to critical areas and buffers shall be minimized; and
 - 22 b. Disturbed areas shall be restored with native vegetation as soon as the investigative work is
23 complete.
 - 24 4. Watercourse restoration and pipe extensions installed by a public agency, provided the steps in
25 19.07.100 – Mitigation Sequencing are addressed.
- 26 E. The following activities are exempt from city review and approval:
- 27 1. Repair and maintenance of existing right of way improvements. Repair, maintenance,
28 reconstruction and replacement of existing right of way improvements, including public streets,
29 bike lanes, shoulders, trails, sidewalks, and open space;
 - 30 2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and
31 replacement of public utility structures and conveyance systems and their associated facilities,
32 including but not limited to service lines, pipes, mains, poles, equipment and appurtenances,
33 both above and below ground.
 - 34 3. Demolition. Removal of structures in watercourse and wetland buffers and geologically
35 hazardous areas, provided:
 - 36 a. Site disturbance is limited to the existing access and building footprint;
 - 37 b. There is no site disturbance within or to wetlands or watercourses;
 - 38 c. All soils are stabilized and the area is revegetated with appropriate native vegetation; and
 - 39 d. Necessary building permits are obtained.
 - 40 4. Noxious weed removal. Removal of noxious weeds provided:
 - 41 a. All disturbed soils are stabilized and revegetated with appropriate native vegetation; and
 - 42 b. The area from which noxious weeds are removed is limited to 1,000 square feet.

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

27 **19.07.130 Modifications**

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

- 32 A. Addition to or reconstruction of an existing legally-established structure or building within a critical
33 area and/or buffer constructed on or before January 1, 2005 provided the following criteria are met:
34 1. The seasonal limitations on land clearing, grading, filling, and foundation work described in
35 MICC 19.07.170(F)(2) shall apply.
36 2. Additions shall be allowed if all of the following criteria are met:
37 a. The structure is enlarged not more than a cumulative total of 200 square feet larger than its
38 footprint as of January 1, 2005;
39 b. If the existing, legally-established structure is located over or within a wetland or
40 watercourse, no further expansion within the wetland or watercourse is allowed;

- 1 c. If the existing legally established structure is located within a wetland or watercourse buffer,
 2 the addition may be no closer to the wetland or watercourse than a distance equal to 75%
 3 of the applicable standard buffer;
 4 d. A critical area study approved by the city demonstrates that impacts have been avoided or
 5 minimized and mitigated consistent with MICC 19.07.100 - Mitigation Sequencing;
 6 e. If the modification or addition is proposed within a geologically hazardous area or
 7 associated buffer, a qualified professional provides a statement of risk consistent with MICC
 8 19.07.170(B)(3);

9 3. Reconstruction of legally established non-conforming structures shall meet the standards in
 10 MICC 19.01.050. The code official may require a critical area study and mitigation plan
 11 addressing temporary impacts to critical areas and buffers.

12 B. Restoration and enhancement activities involving site disturbance over 1,000 sq ft, provided the
 13 following criteria are met:

- 14 1. Activities are limited to the removal of noxious weeds and planting of native and/or climate-
 15 resilient species;
 16 2. The entire area cleared of noxious weeds shall be revegetated with appropriate native and/or
 17 climate-resilient vegetation;
 18 3. Erosion control measures appropriate for the subject site shall be used; and
 19 4. Removal of noxious weeds and other restoration work shall be restricted to work by hand tools,
 20 including use of handheld gas or electric equipment.

21 C. Stormwater retrofit facilities installed pursuant to the city's NPDES Phase II permit.

22 **19.07.140 Reasonable Use Exception**

23 A. If the application of this chapter will deny all reasonable use of the owner's property, then the
 24 applicant may apply to the Community Planning and Development department for an exception
 25 from the requirements of this chapter in accordance with the provisions for Type IV reviews in
 26 chapter 19.15 MICC. The hearing examiner may approve the application for a reasonable use
 27 exception only if the development proposal meets all of the following criteria:

- 28 1. The application of this chapter would deny all reasonable use of the property;
 29 2. There is no other reasonable use with less impact on the critical area;
 30 3. Any alteration to critical areas and associated buffers is the minimum necessary to allow for
 31 reasonable use of the property;
 32 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or
 33 off the development proposal site and is consistent with the general purpose of this chapter and
 34 the public interest; and
 35 5. The inability of the applicant to derive reasonable use of the property is not the result of actions
 36 by the current or prior property owner.

37 B. The hearing examiner may approve, approve with conditions, or deny the request based on the
 38 proposal's ability to comply with all of the above criteria. The applicant has the burden of proof in
 39 demonstrating that the above criteria are met.

40 **19.07.150 Public Agency Exception**

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

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

19 19.07.160 Frequently Flooded Areas

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

25 19.07.170 Geologically Hazardous Areas

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

- 1 2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur
2 if the critical area study documents to the code official's satisfaction that the proposed
3 alteration:
- 4 a. Will not adversely impact other critical areas;
 - 5 b. Will not adversely impact the subject property or adjacent properties;
 - 6 c. Will mitigate impacts to the geologically hazardous area consistent with best available
7 science to the maximum extent reasonably possible such that the site is determined to be
8 safe; and
 - 9 d. Include the landscaping of all disturbed areas outside of building footprints and installation
10 of hardscape prior to final inspection.
- 11 3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if
12 the conditions listed in subsection 2) are satisfied and the geotechnical professional provides a
13 statement of risk matching one of the following:
- 14 a. An evaluation of site-specific subsurface conditions demonstrates that the proposed
15 development is not located in a landslide hazard area or seismic hazard area;
 - 16 b. The landslide hazard area or seismic hazard area will be modified or the development has
17 been designed so that the risk to the site and adjacent property is eliminated or mitigated
18 such that the site is determined to be safe;
 - 19 c. Construction practices are proposed for the alteration that would render the development
20 as safe as if it were not located in a geologically hazardous area and do not adversely impact
21 adjacent properties; or
 - 22 d. The development is so minor as not to pose a threat to the public health, safety and welfare.
- 23 C. *Development Standards – Landslide Hazard Areas:* Development is allowed within landslide hazard
24 areas and associated buffers, when the following standards are met:
- 25 1. A critical area study shall be required for any alteration of a landslide hazard area or associated
26 buffer;
 - 27 2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest
28 buffer shall be applied.
 - 29 a. Steep slopes. Buffer widths shall be equal to the height of a steep slope, but shall not more
30 than 75 feet, and applied to the top and toe of slopes;
 - 31 b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions;
32 and
 - 33 c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.
- 34 D. *Development Standards – Seismic Hazard Areas:* When development is proposed within a seismic
35 hazard area:
- 36 1. A 50-ft minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault
37 rupture traces as identified by the United States Geological Survey or Washington Geological
38 Survey map databases or by site investigations by licensed geologic professionals with
39 specialized knowledge of fault trenching studies; or
 - 40 2. Mitigation sequencing shall be incorporated into the development proposal as recommended
41 based on geotechnical analysis by a qualified professional to prevent increased risk of harm to
42 life and/or property.

1 E. *Development Standards – Erosion Hazard Areas:*

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

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

- 7 1. Trail building within geologically hazardous areas shall be subject to the following:
8 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
9 and
10 b. Trails shall be located to minimize the need for tree removal.
11 2. Land clearing, grading, filling, and foundation work within: 1) an erosion hazard area, when
12 2,000 sq ft or more of site disturbance is proposed, and/or 2) a landslide hazard area are not
13 permitted between October 1 and April 1.
14 a. The code official may grant a waiver to this seasonal development limitation if the applicant
15 provides a critical area study for the site concluding that:
16 (1) geotechnical slope stability concerns, erosion and sedimentation impacts can be
17 effectively controlled on-site consistent with adopted storm water standards; and
18 (2) the proposed construction work will not subject people or property, including areas off-
19 site, to an increased risk of associated impacts.
20 b. As a condition of the waiver, the code official may require erosion control measures,
21 restoration plans, an indemnification, a release agreement and/or performance bond.
22 c. If site activities result in erosion impacts or threaten water quality standards, the city may
23 suspend further work on the site and/or require remedial action.
24 d. Failure to comply with the conditions of an approved waiver shall subject the applicant to
25 code compliance pursuant to MICC Chapter 6.10 – Code Compliance, including but not
26 limited to civil penalties and permit suspension.

27 **19.07.180 Critical Aquifer Recharge Areas**

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

31 B. *Development Standards:*

- 32 1. The following uses and activities are prohibited within critical aquifer recharge areas unless
33 studies are submitted pursuant to subsection (B)(2) of this section.
34 a. Automobile repair shops
35 b. Boat repair
36 c. Dry cleaners
37 d. Bus and truck terminals
38 e. Funeral services and taxidermy
39 f. Gas stations
40 g. Graveyards/cemeteries
41 h. Hardware and lumber stores
42 i. Landfills

- 1 j. Medical & veterinary offices
- 2 k. Office and retail buildings
- 3 l. Petroleum transmission lines
- 4 m. Photo processors
- 5 n. Sewer lines
- 6 o. Wastewater treatment facilities
- 7 p. Activities that would significantly reduce the recharge to aquifers currently or potentially
- 8 used as a potable water source; and
- 9 q. Activities that would significantly reduce the recharge to aquifers that are a source of
- 10 significant baseflow to a stream.
- 11 2. Approval of regulated activities within a critical aquifer recharge area shall require a critical area
- 12 study that satisfies the requirements of MICC 19.07.110 – Critical Area Studies demonstrating
- 13 that the potential impacts will be mitigated.

14 **19.07.190 Fish and Wildlife Habitat Conservation Areas**

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

- 16 1. Watercourses.
- 17 2. Priority Habitats and areas associated with Priority Species, as listed in the Washington State
- 18 Department of Fish and Wildlife's Priority Habitats and Species list, as amended. Priority habitats
- 19 and species known to be identified and mapped by the Washington State Department of Fish
- 20 and Wildlife in the city include, but are not limited to, the following: band-tailed pigeon, pileated
- 21 woodpecker, cavity-nesting ducks, and biodiversity areas and corridors as mapped within
- 22 Mercedale Park (and hillside), Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast
- 23 53rd Open Space, Island Crest Park, and Pioneer Park Open Space.
- 24 3. Areas used by bald eagles for foraging, nesting, and roosting.

25 B. *General Review Requirements*:

- 26 1. Development proposals, unless specifically exempt pursuant to MICC 19.07.120, within Priority
- 27 Habitats or areas used by bald eagles for foraging, nesting and/or roosting shall submit a wildlife
- 28 habitat assessment in the form of a critical area study prepared by a qualified professional
- 29 including the following information:
 - 30 a. Identification of state priority species, or state or federally listed endangered, threatened or
 - 31 sensitive species that have a primary association with habitat on or in the vicinity of the site;
 - 32 b. Extent of wildlife habitat areas, including acreage, and required buffers based on the
 - 33 species;
 - 34 c. Vegetative, faunal, and hydrologic characteristics;
 - 35 d. Evaluation of direct and indirect potential impacts on habitat by the project, including
 - 36 potential impacts to water quality; and
 - 37 e. A discussion of any federal, state, or local special management recommendations, including
 - 38 Washington State Department of Fish and Wildlife habitat management recommendations
 - 39 that have been developed for the species or habitats.
- 40 2. Development proposals within areas used by bald eagles for foraging or within 660 feet of a bald
- 41 eagle nest as identified by a critical area study shall follow the requirements of the US Fish and
- 42 Wildlife's *National Bald Eagle Management Guidelines* (2007 or as amended).

- 1 3. Development proposals within areas meeting the definition of both 1) wetlands, watercourses
2 or associated buffers and 2) fish and wildlife habitat conservation areas shall submit a wildlife
3 habitat assessment and mitigation plan demonstrating that the proposal will cause no net loss
4 of ecological function.

5 **19.07.200 Watercourses**

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

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

12 B. *General Review Requirements*

- 13 1. Development within watercourses and/or associated buffers is prohibited unless one of the
14 following conditions applies:
15 a. The proposed activity is specifically exempt pursuant to MICC 19.07.120;
16 b. A Critical Area Review 1 application is reviewed and approved for one of the modifications in
17 MICC 19.07.130; or
18 c. The proposed activity is permitted under subsection (D) Development Standards –
19 Additional Criteria for Specific Activities, below.

20 C. *Development Standards – Buffers*

- 21 1. Development proposals and other alterations on sites containing streams or buffers shall
22 comply with the following standards:
23 2. The following minimum buffers shall be established from the ordinary high water mark or from
24 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

- 25 3. Neither lot coverage nor hardscape shall be permitted within a watercourse or watercourse
26 buffer except as specifically provided in this chapter.
27 4. Any watercourse adjoined by a riparian wetland or other contiguous critical area shall have the
28 buffer required for the stream type involved or the buffer that applies to the wetland or other
29 critical area, whichever is greater.
30 5. Buffer Averaging. Buffer width averaging shall be allowed by the code official provided the
31 following requirements are met:
32 a. The applicant has demonstrated how impacts will be minimized and that avoidance has
33 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
34 b. The applicant has demonstrated how all proposed impacts have been mitigated consistent
35 with subsection (E) - Mitigation Requirements of this section and will not result in a loss of
36 ecological function;

- 1 c. The proposed buffer width is not less than 75% of the standard buffer width at any point;
2 and
- 3 d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.
- 4 6. Buffer Reduction. Buffer width reduction shall be allowed by the code official provided the
5 following requirements are met:
- 6 a. The applicant has demonstrated that buffer averaging would not feasibly allow
7 development;
- 8 b. The applicant has demonstrated how impacts will be minimized and that avoidance has
9 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- 10 c. The applicant has demonstrated how all proposed impacts have been mitigated consistent
11 with subsection (E) of this section and will not result in a loss of ecological function;
- 12 d. The proposed buffer width is not less than 75% of the standard buffer width at any point;
13 and
- 14 e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- 15 7. Piped watercourse setbacks
- 16 a. The intent of applying setbacks to piped watercourses is to preserve the opportunity to
17 daylight watercourses that were previously piped, to provide incentives to property owners
18 to daylight and enhance previously piped watercourses, and to allow flexibility for
19 development where daylighting piped watercourses is demonstrated to be infeasible.
- 20 b. Setbacks shall be established 45 ft from the centerline of a piped watercourses.
- 21 c. Piped watercourses setback widths shall be reduced by the code official to a 15-foot buffer
22 when the portion of the piped watercourse on the applicant's property is daylighted and
23 where the watercourse has been restored to an open channel, provided a restoration plan
24 demonstrates:
- 25 (1) The watercourse channel will be stable and is not expected to cause safety risks or
26 environmental damage; and
- 27 (2) No additional impact nor encumbrance by watercourse buffer or critical area setback is
28 added to properties neighboring the applicant(s) property.
- 29 d. Piped watercourse setback widths shall be reduced by the code official to: 1) 10 feet on lots
30 with a lot width of 50 feet or more, and 2) 5 feet on lots with a width of less than 50 feet,
31 when daylighting is determined by qualified professional(s) to result in one or more of the
32 following outcomes:
- 33 (1) Increased risk of landslide or other potential hazard that cannot be mitigated;
- 34 (2) Increased risk of environmental damage (e.g., erosion, diminished water quality) that
35 cannot be mitigated;
- 36 (3) The inability of a legally established existing lot to meet the vehicular access
37 requirements of this title; or
- 38 (4) The inability of a legally established existing lot to meet the building pad standards in
39 MICC 19.09.090.
- 40 8. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a
41 watercourse buffer. The distance may be reduced to five feet if:
- 42 a. The watercourse is Type Ns;

- 1 b. The buffer does not contain habitat for WDFW priority species.
- 2 c. A split-rail fence is installed along the perimeter of the buffer; and
- 3 d. Survey markers are installed along the perimeter of the buffer to establish its field location.
- 4 9. The following may be allowed in the critical area setback, provided no structures nor building
- 5 overhangs may be closer than five feet from the edge of a watercourse buffer:
- 6 a. Landscaping;
- 7 b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- 8 c. Building overhangs if such overhangs do not extend more than 18 inches into the setback
- 9 area;
- 10 d. Hardscape and driveways; provided, that such improvements may be subject to
- 11 requirements in Chapter 15.09 MICC – Storm Water Master Program;
- 12 e. Split rail fences;
- 13 f. Trails, consistent with the requirements of this chapter; and
- 14 g. Subgrade components of foundations, provided that any temporary impacts to building
- 15 setbacks shall be restored to their previous condition or better.

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

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

28 *E. Mitigation requirements:* Mitigation measures shall achieve equivalent or greater ecological function

29 including, but not limited to:

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

33 **19.07.210 Wetlands**

34 *A. Designation and Typing:* Wetlands shall be rated in accordance with the approved federal

35 delineation manual and applicable regional supplements described in WAC 173-22-035 and based

36 on field investigation and a survey and using the Washington State Rating System for Western

37 Washington: 2014 Update (Hruby, 2014), or most current update.

38 *B. General Review Requirements:*

- 39 1. In addition to the critical area study requirements listed in MICC 19.07.110 – Critical Area
- 40 Studies, critical area studies on wetlands shall also include:
- 41 a. Wetland rating forms and datasheets;
- 42 b. Discussion of landscape setting;

- 1 c. A functional analysis of the project demonstrating that there will be no loss of ecological
2 function; and
3 d. A mitigation plan.
- 4 2. Wetland delineations are valid for five years.
- 5 3. Wetlands must be delineated and rated by a qualified professional.

6 C. *Development Standards – Buffers:*

- 7 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	

- 8
- 9 2. Where a legally established and constructed street transects a wetland buffer, the department
10 may approve a modification of the standard buffer width to the edge of the street if the isolated
11 part of the buffer does not provide additional protection of the wetland and provides
12 insignificant biological, geological or hydrological buffer functions relating to the wetland.
- 13 3. Prohibited activities: The following uses are prohibited within any wetland or associated buffer:
14 removal, excavation, grading, or dredging of material; draining flooding or disturbing the
15 wetland, water level or water table; construction, reconstruction, demolition, or expansion of
16 any structure.
- 17 4. Neither lot coverage nor hardscape shall be permitted within a wetland or wetland buffer
18 except as specifically provided in this chapter.
- 19 5. Buffer Averaging. Buffer width averaging shall be allowed by the code official provided the
20 following requirements are met:
- 21 a. The applicant has demonstrated how impacts have been avoided consistent with MICC
22 19.07.100 – Mitigation Sequencing;
- 23 b. The applicant has demonstrated how all proposed impacts have been mitigated consistent
24 with subsection (E) of this section and will not result in a loss of ecological function;
- 25 c. The proposed buffer width is not less than 75% of the standard buffer width at any point;
26 and
- 27 d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.
- 28 6. Buffer Reduction. Buffer width reduction shall be allowed by the code official provided the
29 following requirements are met:
- 30 a. The applicant has demonstrated that buffer averaging would not feasibly allow
31 development;
- 32 b. The applicant has demonstrated how impacts will be minimized and that avoidance has
33 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;

- 1 c. The applicant has demonstrated how all proposed impacts have been mitigated consistent
2 with subsection (E) of this section and will not result in a loss of ecological function;
- 3 d. The proposed buffer width is not less than 75% of the standard buffer width at any point;
4 and
- 5 e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- 6 7. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a
7 wetland buffer. The distance may be reduced to five feet if:
 - 8 a. The wetland is:
 - 9 (1) hydrologically isolated;
 - 10 (2) Category III or IV;
 - 11 (3) less than 1,000 square feet
 - 12 (4) in an area that is not associated with riparian areas or buffers;
 - 13 (5) not part of a wetland mosaic, and
 - 14 (6) does not contain habitat for WDFW priority species.
 - 15 b. A split-rail fence is installed along the perimeter of the buffer; and
 - 16 c. Survey markers are installed along the perimeter of the buffer to establish its field location.
- 17 8. The following may be allowed in the critical area setback, provided no structures nor building
18 overhangs may be closer than five feet from the edge of a wetland buffer:
 - 19 a. Landscaping;
 - 20 b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
 - 21 c. Building overhangs if such overhangs do not extend more than 18 inches into the setback
22 area;
 - 23 d. Hardscape and driveways; provided, that such improvements may be subject to
24 requirements in Chapter 15.09 MICC – Storm Water Master Program;
 - 25 e. Split rail fences;
 - 26 f. Trails, consistent with the requirements of this chapter; and
 - 27 g. Subgrade components of foundations, provided that any temporary impacts to building
28 setbacks shall be restored to their previous condition or better.
- 29 **D. Development Standards – Additional Criteria for Specific Activities:**
 - 30 1. Alterations to wetlands are allowed when the applicant has demonstrated how mitigation
31 sequencing has been applied pursuant to MICC 19.07.100 – Mitigation Sequencing and when
32 the applicant has demonstrated that the wetland is:
 - 33 a. hydrologically isolated;
 - 34 b. Category III or IV;
 - 35 c. less than 1,000 square feet
 - 36 d. in an area that is not associated with riparian areas or buffers;
 - 37 e. not part of a wetland mosaic, and
 - 38 f. does not contain habitat for WDFW priority species.
 - 39 2. The construction of trails within wetland buffers is allowed, subject to the following
40 requirements:
 - 41 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
 - 42 b. Trails shall be located to minimize the need for tree removal; and

- 1 c. Trails shall be located only in the outer 25 percent of the buffer area.
- 2 d. The trail width shall be added to the buffer width applied to the wetland (e.g., if a trail is
- 3 three feet wide, the wetland buffer for the portion of the wetland where the trail is located
- 4 shall be expanded by three feet); except that the trail width shall not be added to the buffer
- 5 width when trails are being created for public access and contained within a public access
- 6 easement or right-of-way.
- 7 3. Development proposals shall incorporate the following measures where their application would
- 8 result in a net environmental benefit, and where site conditions would feasibly allow the
- 9 following:

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source 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
Toxic runoff	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants limiting use of pesticides within 150 ft of wetland Apply integrated pest management
Stormwater runoff	Retrofit stormwater detention and treatment for roads and existing adjacent development Prevent channelized flow from lawns that directly enters the buffer Use Low Impact Development techniques
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

- 10
- 11 E. *Mitigation Requirements*: When mitigation for wetland and/or wetland buffer impacts is required,
- 12 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

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

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

- 4 d. Wetland Buffer Replacement Ratio. Altered wetland buffer area shall be replaced at a
5 minimum ratio of one-to-one; provided, that the replacement ratio may be increased if
6 needed to replace lost functions and values.
- 7 e. Increased Mitigation Ratio. The code official may increase the ratios under the following
8 circumstances:
- 9 (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
10 (2) A significant period of time will elapse between impact and replication of wetland
11 functions; or
12 (3) Proposed mitigation will result in a lower category wetland or reduced functions relative
13 to the wetland being impacted; or
14 (4) The impact was an unauthorized impact.
- 15 f. Decreased Mitigation Ratio. The code official may decrease these ratios under the following
16 circumstances:
- 17 (1) Documentation by a qualified professional demonstrates that the proposed mitigation
18 actions have a very high likelihood of success. This documentation should specifically
19 identify how the proposed mitigation actions are similar to other known mitigation
20 projects with similar site-specific conditions and circumstances that have been shown to
21 be successful; or
22 (2) Documentation by a qualified professional demonstrates that the proposed mitigation
23 actions will provide functions and values that are significantly greater than the wetland
24 being impacted; or
25 (3) The proposed mitigation actions are conducted in advance of the impact and have been
26 shown to be successful over the course of at least one full year.
- 27 6. Wetland Banking.
- 28 a. Credits from a wetland mitigation bank may be approved for use as compensation for
29 unavoidable impacts to wetlands when:
- 30 (1) The criteria in subsection (E)(4) are demonstrated to have been met;
31 (2) The bank is certified under chapter 173-700 WAC;
32 (3) A qualified professional has demonstrated that the wetland mitigation bank provides
33 appropriate compensation for the authorized impacts;
34 (4) The proposed use of credits is consistent with the terms and conditions of the bank's
35 certification; and
36 (5) The compensatory mitigation agreement occurs in advance of authorized impacts.

- 1 b. Replacement ratios for projects using bank credits shall be consistent with replacement
- 2 ratios specified in the bank's certification.
- 3 c. Credits from a certified wetland mitigation bank may be used to compensate for impacts
- 4 located within the service area specified in the bank's certification. In some cases, bank
- 5 service areas may include portions of more than one adjacent drainage basin for specific
- 6 wetland functions.
- 7 7. Preference of Mitigation Actions. Compensatory wetland mitigation shall occur in the following
- 8 order of preference:
- 9 a. Restoration
- 10 b. Creation
- 11 c. Enhancement
- 12 d. Preservation
- 13 8. Site protection: As a condition of any permit or land use approval, the code official may require
- 14 permanent fencing and signage to be installed around the wetland or buffer. Fencing installed as
- 15 part of a proposed activity or as required in this subsection shall be designed to not interfere
- 16 with species migration, including fish runs, and shall be constructed in a manner that minimizes
- 17 impacts to the wetland and associated habitat.

DRAFT

1 19.09.090 Building Pad

2 [...]

3 2. Building pads shall not be located within:

- 4 a. Required front, rear, or side yard setbacks;
- 5 b. Streets or rights-of-way; and
- 6 c. ~~Critical areas, or buffers, or critical area setbacks;~~ provided building pads may be located
7 within geohazard hazard areas and associated buffers and setbacks when all of the
8 following are met:

9 [...]

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

13 19.10.050 - Tree removal – Not associated with a development proposal.

14 A. Tree removal that is not associated with a development proposal located outside of wetlands,
15 watercourses, landslide hazard areas and buffers associated with these critical area types shall
16 provide replacement trees (MICC 19.10.070), but is exempt from tree retention (MICC 19.10.060).

17 B. Tree removal that is associated with a development proposal located within wetlands,
18 watercourses, landslide hazard areas and buffers associated with these critical area types shall be
19 permitted subject to the following standards:

20 1. One or more of the following criteria applies to the tree(s) proposed for removal:

- 21 a. The tree is documented to be a hazard tree by a TRAQ-qualified arborist;
- 22 b. The tree is documented by a qualified arborist to be diseased, in decline, or not viable for
23 retention; or
- 24 c. The removal of the tree will enhance ecosystem functions and values and/or promote slope
25 stability.

26 2. A restoration plan prepared by a qualified professional consistent with International Society of
27 Arboriculture standards is submitted that contains the following:

- 28 a. Analysis demonstrating how the ecological functions and values including but not limited to
29 slope stabilization, hydrologic function, and habitat value, are being preserved by the
30 proposed plan.
- 31 b. Proposed removal of all noxious weeds, as defined in Chapter 19.16 MICC.
- 32 c. Removed trees shown as made into snags at a safe height, where feasible.

33 3. Implementation of approved restoration plans shall be completed by a certified arborist.34 4. Any pruning shall be done consistent with International Society of Arboriculture standards and
35 completed by a certified arborist

36 ~~B.C.~~ An application for tree removal that is not associated with a development proposal shall provide the
37 application information described under MICC 19.10.090(A) – General Information.

38 ~~C.D.~~ This section shall not be construed as an exemption to the tree retention and replacement
39 requirements of Chapter 19.07 MICC.

40 19.07.11013 Shoreline master program. 

1 19.13.010A- Authority and Purpose.

- 2 A) ~~1~~-Authority. This section is adopted as part of the shoreline master program of the city. It is
 3 adopted pursuant to the authority and requirements of Chapter 90.58 RCW and Chapter 173-26
 4 WAC.
- 5 B) ~~2~~-Applicability. The requirements of this section apply to all uses, activities and development within
 6 the shorelands, unless specifically exempted by Chapter 90.58 RCW or Chapter 173-27 WAC, or as
 7 specified in subsection F), of this section. All proposed uses and development occurring within
 8 shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act.
- 9 C) ~~3~~-Purpose and Intent. It is the purpose and intent of this section to achieve the shoreline master
 10 program (SMP) mandates of the state of Washington and to adopt property development standards
 11 within the shorelands that protect the health, safety, welfare, values and property interests of the
 12 city of Mercer Island and its residents.
- 13 D) ~~4~~-Relationship with Other Mercer Island Codes and Ordinances. This section is an integrated
 14 element of the city of Mercer Island Unified Land Development Code (MICC Title 19) and other
 15 applicable development regulations contained in the Mercer Island City Code, including the storm
 16 water management regulations in MICC Title 15, and building and construction regulations in MICC
 17 Title 17. The provisions of the critical areas ordinance (MICC 19.07.010 through and including
 18 19.07.090 as in effect on January 1, 2011) are hereby incorporated as specific regulations of the
 19 shoreline master program. To the extent this section conflicts with any other section of the Mercer
 20 Island City Code, the provisions of this section shall govern within the shorelands.
- 21 E) ~~5~~-Relationship with Other Federal and State Law. The provisions of this section shall not relieve any
 22 responsibility to comply with other federal and state laws or permits. All work at or waterward of
 23 the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers,
 24 Washington Department of Fish and Wildlife, Washington Department of Natural Resources or
 25 Washington Department of Ecology.
- 26 F) The following development is not required to obtain shoreline permits or local reviews:
- 27 1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a
 28 facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D
 29 RCW, or to the department of ecology when it conducts a remedial action under chapter
 30 70.105D RCW.
- 31 2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any
 32 person installing site improvements for storm water treatment in an existing boatyard facility to
 33 meet requirements of a national pollutant discharge elimination system storm water general
 34 permit.
- 35 3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington
 36 State Department of Transportation projects and activities meeting the conditions of RCW
 37 90.58.356 are not required to obtain a substantial development permit, conditional use permit,
 38 variance, letter of exemption, or other local review.
- 39 4) Projects consistent with an environmental excellence program agreement pursuant to RCW
 40 90.58.045.
- 41 ~~4)5)Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to~~
 42 ~~chapter 80.50 RCW.~~

43 19.13.###B.020 General Regulations.

- 1 A) ~~1-~~Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and
2 uses and structures 25 feet landward from the OHWM, which were legally created may be
3 maintained, repaired, renovated, remodeled and completely replaced to the extent that
4 nonconformance with the standards and regulations of this section is not increased.
- 5 B) Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater
6 structures and structures upland 25 feet from the OHWM are permitted; provided, that the
7 expanded portion of the structure is constructed in compliance with this section and all other
8 standards and provisions of the Mercer Island development regulations, including this chapter.
- 9 ~~B)C) 2-~~No Net Loss Standard and Mitigation Sequencing. No development shall be approved unless
10 the applicant demonstrates to the code official's satisfaction that the shoreline development will
11 not create a net loss of ecological function in the shorelands.
- 12 1) ~~a-~~Standards Presumed to Meet No Net Loss. When all individual development standards that
13 apply to a development project do not explicitly require a determination of no net loss and the
14 project conforms with all such standards, there is a rebuttable presumption that the project
15 does not create a net loss of ecological function to the shorelands.
- 16 2) ~~b-~~No Net Loss Plan. Whenever an applicant seeks a variance or conditional use permit or an
17 applicable development standard explicitly requires a determination of no net loss of ecological
18 function, the applicant shall provide the city with a plan that demonstrates the proposed project
19 will not create a net loss in ecological function to the shorelands. The plan shall accomplish no
20 net loss of ecological function by avoiding adverse ecological impacts that are not reasonably
21 necessary to complete the project, minimizing adverse ecological impacts that are reasonably
22 necessary to complete the project, and mitigating or offsetting any adverse impacts to
23 ecological functions or ecosystem-wide processes caused by the project. The code official may
24 require the plan to include reports from qualified professionals with expertise in ecological
25 function. The plan's compliance with the no net loss requirement may be considered through
26 the SEPA process.
- 27 a) ~~i-~~Off-Site Mitigation Permitted. While on-site mitigation is preferred, off-site mitigation may
28 be permitted at the discretion of the code official.
- 29 b) ~~ii-~~Demonstration of No Net Loss Supported by a Qualified Professional. The code official
30 may require any applicant to provide reports by qualified professionals that demonstrate to
31 the code official's satisfaction that the applicant's proposed plan avoids a net loss in
32 ecological function.
- 33 ~~C) 3. Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater~~
34 ~~structures and structures upland 25 feet from the OHWM are permitted; provided, that the~~
35 ~~expanded structure is constructed in compliance with this section and all other standards and~~
36 ~~provisions of the Mercer Island development regulations.~~
- 37 D) 4-Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM
38 moves further landward as a result of any action required by this section, or in accordance with
39 permits involving a shoreline habitat and nature systems enhancement approved by the city, or a
40 state or federal agency, the shoreline setback shall be measured from the location of the OHWM
41 that existed immediately prior to the action or enhancement project.
- 42 E) The development of two or more dwelling units on a lot abutting the OHWM should provide joint
43 use or community dock facilities, when feasible, rather than allow individual docks for each lot.
- 44 F) New development should be located and designed to avoid the need for future shoreline
45 stabilization to the extent feasible. This future shoreline stabilization standard does not apply to

1 stabilization that occurs pursuant to subsection (B)(1) of this section. New structural stabilization
 2 measures in support of new non-water-dependent development, including single-family residences,
 3 shall only be allowed when all of the conditions below apply:

4 1) The erosion is not being caused by upland conditions, such as the loss of vegetation and
 5 drainage.

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

8 3) The need to protect primary structures from damage due to erosion is demonstrated through a
 9 geotechnical report, in compliance with subsection (B)(7) of this section. The damage must be
 10 caused by natural processes, such as currents and waves.

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

12 C.19.13.030 Shoreline Map and Designations. The shoreline environmental designations map, dated
 13 March 3, 2011, as shown in Appendix F, is adopted as the official Mercer Island shoreline environmental
 14 designations map. The digital map is available in the online version of the Mercer Island City Code at
 15 <http://www.mercergov.org>. All shorelands within the city are designated. Different areas of the city's
 16 shorelands have different natural characteristics and development patterns. As a result, two shoreline
 17 designated environments are established to regulate developments and uses consistent with the specific
 18 conditions of the designated environments and to protect resources of the Mercer Island shorelands.
 19 They are:

20 A) ~~1-~~ Urban Park Environment. This environment consists of shoreland areas designated for public
 21 access and active and passive public recreation. The areas include, but are not limited to, parks,
 22 street ends, public utilities and other publicly owned rights-of-way. The uses located in this
 23 environment should be water-dependent and designed with no net loss to the ecological functions
 24 of the shorelands. Restoration of ecological functions is planned for these areas and is strongly
 25 encouraged. The preferred and priority use in the urban park environment is public access to, and
 26 enjoyment of, Lake Washington.

27 B) ~~2-~~ Urban Residential Environment. The purpose of the urban residential environment is to provide
 28 for residential and recreational utilization of the shorelands, compatible with the existing residential
 29 character in terms of bulk, scale, type of development and no net loss of ecological functions of the
 30 shorelands. The preferred and priority use in the urban residential environment is single-family
 31 residential use.

32 19.13.###.040 ~~D-~~ Use Regulations. The following tables specify the shoreline uses and developments
 33 which may take place or be conducted within the designated environments. The uses and developments
 34 listed in the matrix are allowed only if they are not in conflict with more restrictive regulations of the
 35 Mercer Island development code and are in compliance with the standards specified in subsection E of
 36 this section.

KEY:

CE: Permitted via shoreline categorically exempt

P: Permitted use

KEY:

P-1: Uses permitted when authorized by a conditional use permit for the applicable zone shall also require a shoreline substantial development permit and a shoreline plan in compliance with MICC 19.07.110(B)(2)

SCUP: Shoreline conditional use permit

NP: Not a permitted use

- 1 The following regulations apply to all uses and development within the shorelands, whether or not that
- 2 development is exempt from the permit requirements:

Table A – Shoreland Uses Landward of the Ordinary High Water Mark

SHORELAND USE LANDWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Single-family dwelling including accessory uses and accessory structures	CE	NP
Accessory dwelling units	CE	NP
The use of a single-family dwelling as a bed and breakfast	P-1	NP
A state-licensed day care or preschool	P-1	NP
Government services, public facilities, and museums and art exhibitions	P-1	P
Public parks and open space	P	P
Private recreational areas	P	NP
Semi-private waterfront recreation areas for use by 10 or fewer families	P	NP
Semi-private waterfront recreation areas for use by more than 10 families	P-1	NP
Noncommercial recreational areas	P-1	P
Commercial recreational areas	NP	NP
Places of worship	P-1	NP

Table A – Shoreland Uses Landward of the Ordinary High Water Mark

SHORELAND USE LANDWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Retirement homes located on property used primarily for a place of worship	P-1	NP
Special needs group housing	P	NP
Social service transitional housing	P	NP
Public schools accredited or approved by the state for compulsory school attendance	NP	NP
Private schools accredited or approved by the state for compulsory school attendance	NP	NP
Streets and parking	P	P
Transit facilities including light rail transit facilities, transit stops, and associated parking lots	P	NP
Wireless communications facilities	P	P
New hard structural shoreline stabilization	SCUP	SCUP
Soft structural shoreline stabilization	P	P
Shoreland surface modification	P	P
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
Boat ramp	P	P
Agriculture, aquaculture, forest practices and mining	NP	NP

1

Table B – Shoreland Uses Waterward of the Ordinary High Water Mark

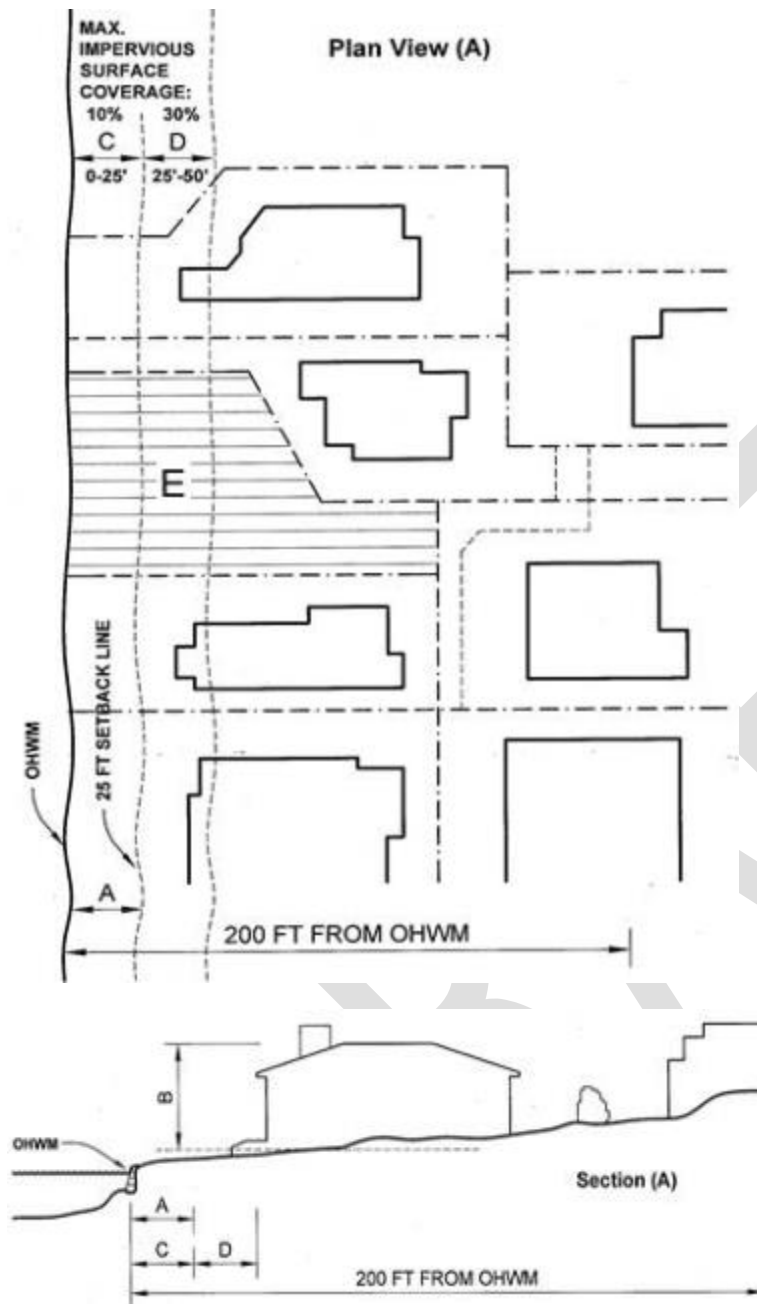
SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Moorage facilities and covered moorages 600 square feet or less	P	P
Covered moorage larger than 600 square feet	SCUP	SCUP
Floating platforms	P	P
Mooring piles, diving boards and diving platforms	P	P
Boat ramp	P	P
Boat houses	NP	NP
Floating homes	NP	NP
Public access pier, <u>dock</u> , or boardwalk	P	P
Utilities	P	P
Public transportation facilities including roads, bridges, and transit	P	P
Transit facilities including light rail transit facilities	P	NP
Dredging and dredge material disposal	P	P
Breakwaters, jetties, and groins (except those for restoration of ecological functions)	NP	NP
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
Notes: A use not listed in this table is not permitted within shorelands. A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.		

- 1 ~~19.13.###.025 E~~–Shoreland Development Standards. All development within the shoreline jurisdiction
2 shall be in compliance with all development requirements specified in this section.

- 1 A) ~~1-~~Standards Landward of the OWHM. The standards in Table C shall apply to development located
2 landward of the OHWM:

Table C. Requirements for Development Located Landward from the OHWM

Setbacks for All Structures (Including Fences over 48 Inches High) and Parking	A*	25 feet from the OHWM and all required setbacks of the development code, except <u>1) light rail transit facilities and 2) flatwork (e.g.) patios, walkways) and stairs less than 30 inches above the existing or finished grade, whichever is lower.</u> If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland's boundary
Height Limits for All Structures	B	Shall be the same as height limits specified in the development code but shall not exceed a height of 35 feet above average building elevation, except light rail transit facilities
Maximum Impervious Surface Hardscape and Lot Coverage	C D	10%: between 0 and 25 feet from OHWM 30%: between 25 and 50 feet from OHWM
Minimum Land Area Requirements	E	All semi-private, commercial and noncommercial recreational tracts and areas shall have minimum land area: 200 square feet per family, but not less than 600 square feet, exclusive of driveways or parking areas. Screening of the boundaries with abutting properties
Shoreland Surface Modification		Alterations over 250 cubic yards – outside the building footprint requires SEPA
Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor		The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges
*The letters in this column refer to the Plan View (A) and Section (A) diagrams.		



1

2

3 B) ~~2-~~ Bulkheads and Shoreline Stabilization Structures.

4 1) ~~a-~~ An existing shoreline stabilization structure may be replaced with a similar structure if there is
 5 a demonstrated need to protect principal uses or structures from erosion caused by currents or
 6 waves, and the following conditions shall apply:

7 a) ~~i-~~ The replacement structure should be designed, located, sized, and constructed to assure
 8 no net loss of ecological functions.

9 b) ~~ii-~~ Replacement walls or bulkheads shall not encroach waterward of the ordinary high water
 10 mark or existing structure unless the primary structure was occupied prior to January 1,
 11 1992, and there are overriding safety or environmental concerns. In such cases, the
 12 replacement structure shall abut the existing shoreline stabilization structure. Soft shoreline

- 1 stabilization measures that provide restoration of shoreline ecological functions may be
2 permitted waterward of the ordinary high water mark.
- 3 c) ~~iii~~–For purposes of this section standards on shoreline stabilization measures,
4 “replacement” means the construction of a new structure to perform a shoreline
5 stabilization function of an existing structure which can no longer adequately serve its
6 purpose. Additions to or increases in size of existing shoreline stabilization measures shall be
7 considered new structures.
- 8 d) ~~iv~~–Construction and maintenance of normal protective bulkhead common to single-family
9 dwellings requires only a shoreline exemption permit, unless a report is required by the
10 code official to ensure compliance with the above conditions; however, if the construction
11 of the bulkhead is undertaken wholly or in part on lands covered by water, such
12 construction shall comply with SEPA mitigation.
- 13 ~~2) b~~–New Structures for Existing Primary Structures. New or enlarged structural shoreline
14 stabilization measures for an existing primary structure, including residences, are not allowed
15 unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is
16 in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of
17 steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not
18 demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and
19 address drainage problems away from the shoreline edge before considering structural
20 shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of
21 shoreline ecological functions.
- 22 ~~3) c~~–New development should be located and designed to avoid the need for future shoreline
23 stabilization to the extent feasible. This future shoreline stabilization standard does not apply to
24 stabilization that occurs pursuant to subsection (E)(2)(a) of this section. New structural
25 stabilization measures in support of new non-water dependent development, including single-
26 family residences, shall only be allowed when all of the conditions below apply:
- 27 4) ~~i~~–The erosion is not being caused by upland conditions, such as the loss of vegetation and
28 drainage.
- 29 5) ~~ii~~–Nonstructural measures, such as placing the development further from the shoreline, planting
30 vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- 31 6) ~~iii~~–The need to protect primary structures from damage due to erosion is demonstrated through
32 a geotechnical report, in compliance with subsection (E)(2)(h) of this section. The damage must
33 be caused by natural processes, such as currents and waves.
- 34 ~~7) 2) iv~~–The erosion control structure will not result in a net loss of shoreline ecological functions.
- 35 ~~8) 3) d~~–New development on steep slopes or bluffs shall be set back sufficiently to ensure that
36 shoreline stabilization is unlikely to be necessary during the life of the structure, as
37 demonstrated by a geotechnical analysis, in compliance with subsection (E)(2)(h)(B)(7) of this
38 section and building and construction codes.
- 39 ~~9) 4)~~New structural stabilization measures in support of water-dependent development shall only be
40 allowed when all of the conditions below apply:
- 41 a) ~~i~~–The erosion is not being caused by upland conditions, such as the loss of vegetation and
42 drainage.
- 43 b) ~~ii~~–Nonstructural measures, planting vegetation, or installing on-site drainage improvements,
44 are not feasible or not sufficient.

- 1 c) ~~iii~~-The need to protect primary structures from damage due to erosion is demonstrated
2 through a geotechnical report, in compliance with subsection ~~(E)(2)(h)~~(B)(7) of this section
3 and building and construction codes.
- 4 d) ~~iv~~-The erosion control structure will not result in a net loss of shoreline ecological functions.
5 ~~10)5)~~ f.-New structural stabilization measures to protect projects for the restoration of
6 ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D
7 RCW shall only be allowed when all of the conditions below apply:
- 8 a) ~~i~~-Nonstructural measures, planting vegetation, or installing on-site drainage improvements,
9 are not feasible or not sufficient.
- 10 b) ~~ii~~-The erosion control structure will not result in a net loss of shoreline ecological functions.
11 ~~11)6)~~ g.-Bulkheads shall be located generally parallel to the natural shoreline. No filling may
12 be allowed waterward of the ordinary high water mark, unless there has been severe and
13 unusual erosion within two years immediately preceding the application for the bulkhead. In
14 this event the city may allow the placement of the bulkhead to recover the dry land area lost by
15 erosion.
- 16 ~~12)7)~~ h.-Geotechnical reports pursuant to this section that address the need to prevent
17 potential damage to a primary structure shall address the necessity for shoreline stabilization by
18 estimating time frames and rates of erosion and report on the urgency associated with the
19 specific situation. As a general matter, hard armoring solutions should not be authorized except
20 when a report confirms that there is a significant possibility that such a structure will be
21 damaged within three years as a result of shoreline erosion in the absence of such hard
22 armoring measures, or where waiting until the need is that immediate would foreclose the
23 opportunity to use measures that avoid impacts on ecological functions. Thus, where the
24 geotechnical report confirms a need to prevent potential damage to a primary structure, but the
25 need is not as immediate as the three years, that report may still be used to justify more
26 immediate authorization to protect against erosion using soft measures.
- 27 ~~13)8)~~ i.-When any structural shoreline stabilization measures are demonstrated to be
28 necessary, pursuant to above provisions, the following shall apply:
- 29 a) ~~i~~-Limit the size of stabilization measures to the minimum necessary. Use measures designed
30 to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless
31 demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
- 32 b) ~~ii~~-Ensure that publicly financed or subsidized shoreline erosion control measures do not
33 permanently restrict appropriate public access to the shoreline except where such access is
34 determined to be infeasible because of incompatible uses, safety, security, or harm to
35 ecological functions. See public access provisions: WAC 173-26-221(4). Where feasible,
36 incorporate ecological restoration and public access improvements into the project.
- 37 c) ~~iii~~-Mitigate new erosion control measures, including replacement structures, on feeder
38 bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not
39 possible, to minimize adverse impacts to sediment conveyance systems. Where sediment
40 conveyance systems cross jurisdictional boundaries, local governments should coordinate
41 shoreline management efforts. If beach erosion is threatening existing development, local
42 governments should adopt master program provisions for a beach management district or
43 other institutional mechanism to provide comprehensive mitigation for the adverse impacts
44 of erosion control measures.

14) j. ~~The development of two or more dwelling units on a lot abutting the OHWM should provide joint use or community dock facilities, when feasible, rather than allow individual docks for each lot.~~

C) ~~3-~~Transportation and Parking.

- 1) ~~a-~~Shoreline circulation system planning shall include safe, reasonable, and adequate systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with all regulations.
- 2) ~~b-~~Transportation and parking facilities shall be planned, located, and designed where routes will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
- 3) ~~c-~~Where other options are available and feasible, new roads or road expansions should not be built within shorelands.
- 4) ~~d-~~Parking facilities in shorelands shall be allowed only as necessary to support an authorized use.

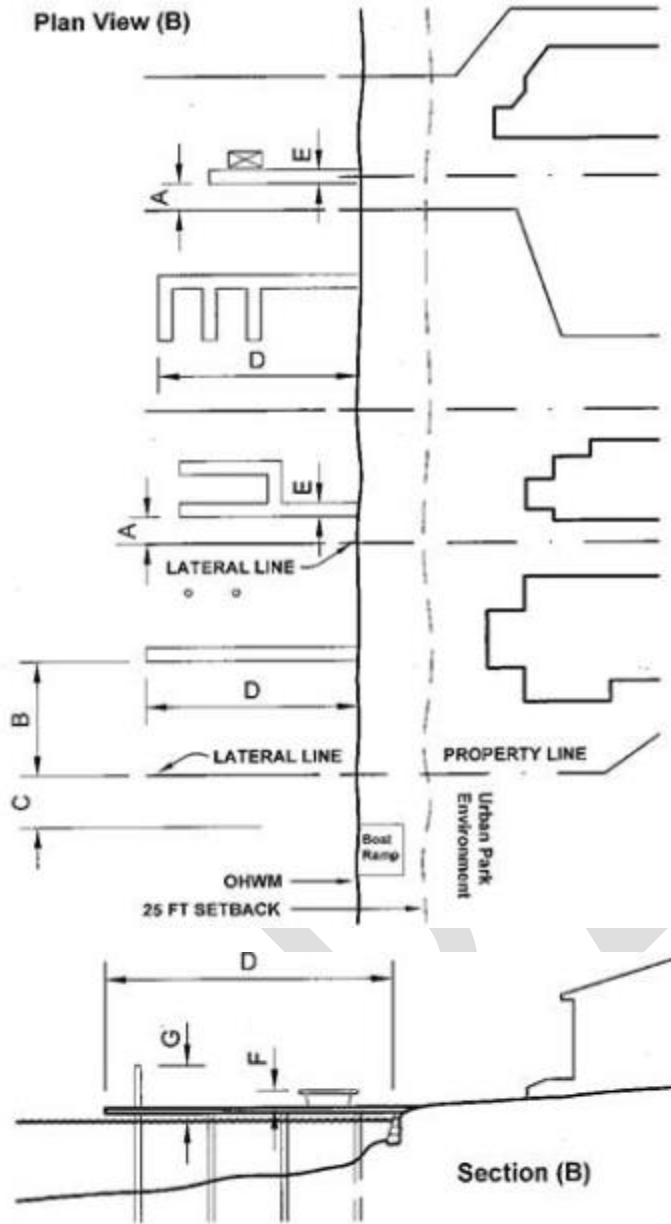
D) ~~4-~~Standards Waterward of the OHWM. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots. Only one noncommercial, residential moorage facility per upland residential waterfront lot authorized. The standards in Table D shall apply to development located waterward of the OHWM:

Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM

Setbacks for All Moorage Facilities, Docks, Covered Moorage, and Floating Platforms	A*	10 feet from the lateral line (except where moorage facility is built pursuant to the agreement between <u>adjoining the owners of adjoining lots on the shoreline</u> as shown in Figure B below).
	B	Where a property shares a common boundary with the urban park environment, the setback shall be 50 feet from the lateral line or 50% of the water frontage of the property, whichever is less.
Setbacks for Boat Ramps and Other Facilities for Launching Boats by Auto or Hand, Including Parking and Maneuvering Space	C	25 feet from any adjacent private property line.
Length or Maximum Distance Waterward from the OHWM for Moorage Facilities, Docks, Covered Moorage, Boatlifts and Floating Platforms	D	Maximum 100 feet, but in cases where water depth is less than 11.85 feet below OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.

Width of moorage facilities <u>docks</u> within 30 feet waterward from the OHWM	E	<p>Maximum 4 feet. Width may increase to 5 feet if one of the following is met:</p> <ol style="list-style-type: none"> 1) Water depth is 4.85 feet or more, as measured from the OHWM; or 2) A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements; or 3) A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5); or 4) The proposed project includes mitigation option A, B or C listed in Table E; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM, or a site-specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. <p>Moorage facility width shall not include pilings, boat ramps and lift stations<u>boatlifts</u>.</p>
Width of moorage facilities more than 30 feet waterward from the OHWM	E	Maximum 6 feet wide. Moorage facility width shall not include pilings, boat ramps and boatlifts <u>lift stations</u> .
Height Limits for Walls, Handrails and Storage Containers Located on Piers	F	<p>3.5 feet above the surface of a dock or pier.</p> <p>4 feet for ramps and gangways designed to span the area 0 feet to 30 feet from the OHWM.</p>
Height Limits for Mooring Piles, Diving Boards and Diving Platforms	G	10 feet above the elevation of the OHWM.
Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor		The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges.

*The letters in this column refer to the Plan View (B) and Section (B) diagrams.



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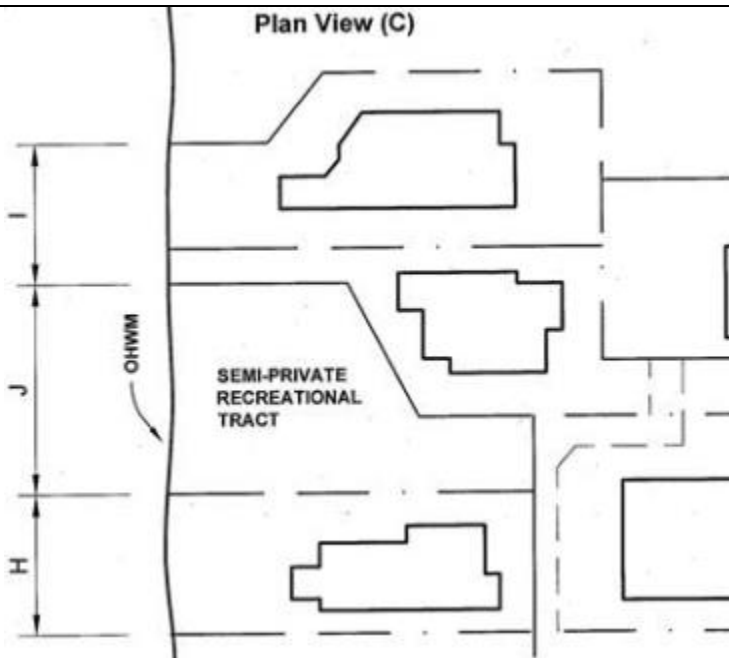
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Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM (Continued)

Minimum Water Frontage for Docks Moorage Facility	H*	Single-family lots: 40 feet.
	I	Shared – two adjoining lots <u>on the shoreline</u> : 40 feet combined.
	J	Semi-private recreational tracts: 2 families: 40 feet.

	<p>3 – 5 families: 40 feet plus 10 feet for each family more than 2.</p> <p>6 – 10 families: 70 feet plus 5 feet for each family more than 5.</p> <p>11 – 100 families: 95 feet plus 2 feet for each family more than 10.</p> <p>101+ families: 275 feet plus 1 foot for each family more than 100.</p>
<p>Covered Moorage</p>	<p>Permitted on single-family residential lots subject to the following:</p> <p>(a) Maximum height above the OHWM: 16 feet; 16 to 21 feet subject to criteria of MICC 19.07.110(E)(5)(a)(E)(1).</p> <p>(b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage.</p> <p>(c) Building area: 600 square feet; however, a covered moorage may be built larger than 600 square feet within the triangle subject to a shoreline conditional use permit.</p> <p>(d) Covered moorage shall have open sides.</p> <p>(e) Prohibited in semi-private recreational tracts and noncommercial recreational areas.</p> <p>(f) Translucent canopies coverings are required.</p>

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



1
2

Table E. Dock Width Mitigation Options

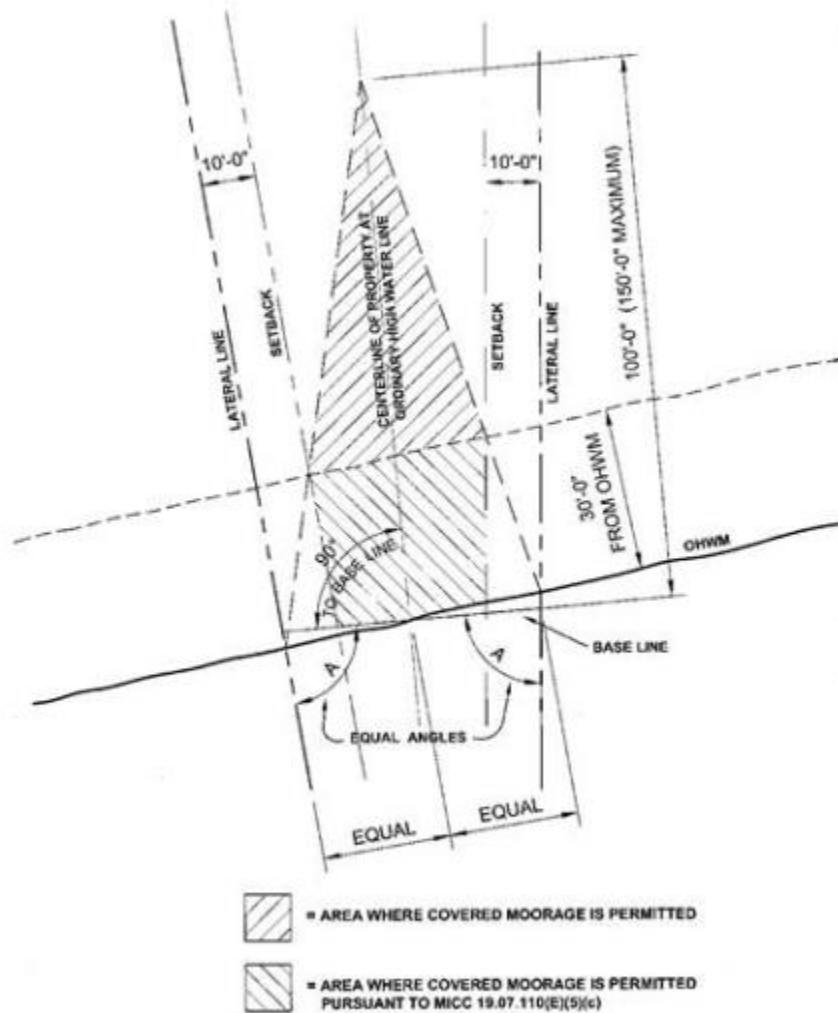
Option A	Option B	Option C
Includes at Least One of the Following:	Includes at Least Two of the Following:	Includes at Least Three of the Following:
1. Complete removal of existing bulkhead with shoreline restoration	1. Removal of 12 feet or 30% (lineal), whichever is greater, of existing bulkhead and creation of beach cove with shoreline restoration	1. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.
2. Removal of an existing legally established boat house (A "boat house" is a covered moorage that includes walls and a roof to protect the vessel.)	2. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.	2. Removal of all existing legally established piling treated with creosote or comparably toxic compounds
3. Replacement of two or more existing legally established individual moorage facilities docks with a single joint use moorage facility	3. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM	3. At least a 10% net reduction of existing legally established overwater coverage within the first 30 feet waterward from OHWM
		4. Removal of all legally established individual mooring piles within the first 30 feet waterward from the OHWM
		5. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM

1 E) ~~5-~~The covered portion of a moorage shall be restricted to the area lying within a triangle as
 2 illustrated in Figure A, except as otherwise provided in subsection ~~(E)(5)(a)~~(E)(1) of this section. The
 3 base of the triangle shall be a line drawn between the points of intersection of the property lateral
 4 lines with the ordinary high water mark. The location of the covered moorage shall not extend more
 5 than 100 feet from the center of the base line of such triangle. In cases where water depth is less
 6 than 11.85 feet from OHWM, the location of the covered moorage may extend up to 150 feet from
 7 the center of the base line or to the point where water depth is 11.85 feet at OHWM, whichever is

1 less. The required 10-foot setbacks from the side property lines shall be deducted from the triangle
 2 area.

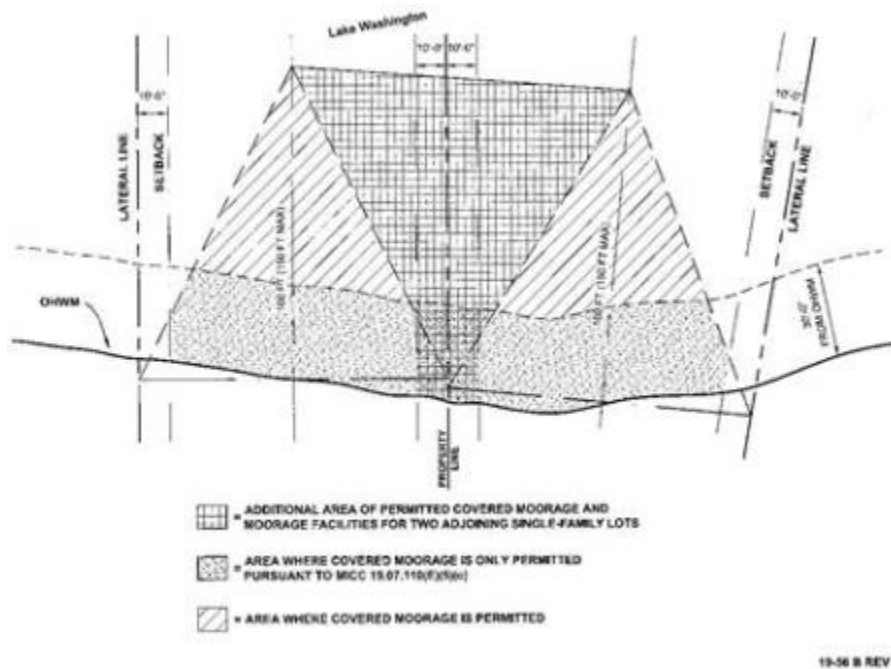
- 3 1) ~~a~~-A covered moorage is allowed outside the triangle, or a canopy up to 21 feet in height, if the
 4 covered moorage meets all other regulations and:
- 5 a) ~~i~~-Will not constitute a hazard to the public health, welfare, and safety, or be injurious to
 6 affected shoreline properties in the vicinity;
 - 7 b) ~~ii~~-Will constitute a lower impact for abutting property owners; and
 - 8 c) ~~iii~~-Is not in conflict with the general intent and purpose of the SMA, the shoreline master
 9 program and the development code.

10 Figure A: Area of Permitted Covered Moorage, Individual Lots



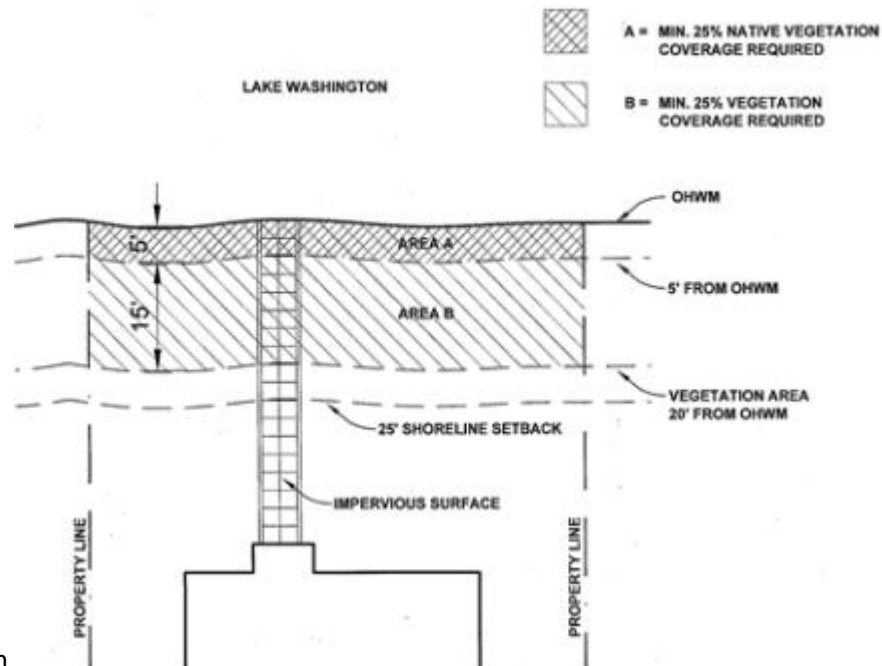
- 12 2) ~~b~~-Where a covered moorage or moorage facility is built pursuant to the agreement of adjoining
 13 owners of adjoining single-family lots located on the shoreline, the covered moorage area shall
 14 be deemed to include, subject to limitations of such joint agreement, all of the combined areas
 15 lying within the triangles extended upon each adjoining property and the inverted triangle
 16 situated between the aforesaid triangles, as illustrated in Figure B below.

1 Figure B: Area of Permitted Covered Moorage and Moorage Facilities, Two Adjoining Single-Family Lots



- 2
- 3) ~~e~~-Covered moorage is not allowed within the first 30 feet from the OHWM unless the applicant:
- 4 a) ~~i~~-Demonstrates to the code official's satisfaction that proposed project will not create a net
 - 5 loss in ecological function of the shorelands; and
 - 6 b) ~~ii~~-Provides the city with documentation of approval of the moorage facilities by both the
 - 7 U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.
- 8 F) ~~6~~-Moorage Facilities. All permits for new and expanded moorage facility, other than public access
- 9 piers or boardwalks, shall meet the following standards unless otherwise exempted. Moorage
- 10 facilities have the option of meeting either the development standards prescribed in subsections
- 11 ~~(E)(6)(a)(F)(1))~~ or ~~(2b)~~ of this section, or the "alternative development standards" in subsection
- 12 ~~(E)(6)(cF)(3)~~ of this section.
- 13 1) ~~a~~-Development Standards for New and Expanded Moorage Facilities. A proposed moorage
 - 14 facility shall be presumed to not create a net loss of ecological functions pursuant to subsection
 - 15 (B)(2) of this section if:
 - 16 a) ~~i~~-The surface coverage area of the moorage facility is:
 - 17 (1) ~~(A)~~-Four hundred eighty square feet or less for a single property owner;
 - 18 (2) ~~(B)~~-Seven hundred square feet or less for two residential property owners (residential);
 - 19 or
 - 20 (3) ~~(C)~~-One thousand square feet or less for three or more residential property owners;
 - 21 b) ~~ii~~-Piers, docks, and platform lifts must be fully grated with materials that allow a minimum
 - 22 of 40 percent light transmittance;
 - 23 c) ~~iii~~-Vegetation. The code official approves a vegetation plan that conforms to the following:
- 24 Vegetation must be planted as provided in Figure C and as follows: Within the 25-foot shoreline
- 25 setback, a 20-foot vegetation area shall be established, measured landward from the OHWM.
- 26 Twenty-five percent of the area shall contain vegetation coverage. The five feet nearest the
- 27 OHWM shall contain at least 25 percent native vegetation coverage. A shoreline vegetation plan

1 shall be submitted to the city for approval. The vegetation coverage shall consist of a variety of
 2 ground cover shrubs and trees, excluding nonnative grasses. No plants on the current King
 3 County noxious weed lists shall be planted within the shorelands.



4 Figure C: Vegetation Plan

- 5 d) ~~iv.~~ Only piers, docks, ramps, and lift stations/boatlifts may be within the first 30 feet from the
 6 OHWM. No skirting is allowed on any structure;
- 7 e) ~~v.~~ The height above the OHWM for moorage facilities/docks, except floats, shall be a
 8 minimum of one and one-half feet and a maximum of five feet;
- 9 f) ~~vi.~~ The first in-water (nearest the OHWM) set of pilings shall be steel, 10 inches in diameter
 10 or less, and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced
 11 at least 18 feet apart and shall not be greater than 12 inches in diameter. Piles shall not be
 12 treated with pentachlorophenol, creosote, CCA or comparably toxic compounds. If
 13 ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant shall meet all of
 14 the best management practices, including a post-treatment procedure, as outlined in the
 15 amended Best Management Practices of the Western Wood Preservers. All piling sizes are in
 16 nominal diameter;
- 17 g) ~~vii.~~ Any paint, stain or preservative applied to components of the overwater structure/dock
 18 must be leach resistant, completely dried or cured prior to installation. Materials shall not
 19 be treated with pentochlorophenol, creosote, CCA or comparably toxic compounds;
- 20 h) ~~viii.~~ No more than two mooring piles shall be installed per structure. Joint-use structures
 21 may have up to four mooring piles. The limits include existing mooring piles. Moorage piling
 22 shall not be installed within 30 feet of the OHWM. These piles shall be as far offshore as
 23 possible;
- 24 i) ~~ix.~~ The applicant shall abide by the work windows for listed species established by the U.S.
 25 Army Corps of Engineers and Washington Fish and Wildlife; and
- 26 j) ~~x.~~ Disturbance of bank vegetation shall be limited to the minimum amount necessary to
 27 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally

- 1 adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48
 2 hours of the completion of construction. Woody vegetation components shall be planted in
 3 the fall or early winter, whichever occurs first. The applicant shall take appropriate
 4 measures to ensure revegetation success.
- 5 2) ~~b-~~Development Standards for Replacement, Repair and Maintenance of Overwater Structures,
 6 Including Moorage Facilities. The maintenance, repair and complete replacement of legally
 7 existing overwater structures is permitted; provided, that:
- 8 a) ~~i-~~All permit requirements of federal and state agencies are met;
 9 b) ~~ii-~~The area, width, or length of the structure is not increased, but may be decreased;
 10 c) ~~iii-~~The height of any structure is not increased, but may be decreased; provided, that the
 11 height above the OHWM may be increased as provided in subsection ~~(E)(6)(b)(ix)(B)(2)(i)(2)~~
 12 of this section;
 13 d) ~~iv-~~The location of any structure is not changed unless the applicant demonstrates to the
 14 director's satisfaction that the proposed change in location results in: (A) a net gain in
 15 ecological function, and (B) a higher degree of conformity with the location standards for a
 16 new overwater structure;
 17 e) ~~v-~~Piles shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic
 18 compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant
 19 shall meet all of the best management practices, including a post-treatment procedure, as
 20 outlined in the amended Best Management Practices of the Western Wood Preservers. All
 21 piling sizes are in nominal diameter;
 22 f) ~~vi-~~Any paint, stain or preservative applied to components of the overwater structure must
 23 be leach resistant, completely dried or cured prior to installation. Materials shall not be
 24 treated with pentochlorophenol, creosote, CCA or comparably toxic compounds;
 25 g) ~~vii-~~The applicant shall abide by the work windows for listed species established by the U.S.
 26 Army Corps of Engineers and Washington Fish and Wildlife;
 27 h) ~~viii-~~Disturbance of bank vegetation shall be limited to the minimum amount necessary to
 28 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally
 29 adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48
 30 hours of the completion of construction. Woody vegetation components shall be planted in
 31 the fall or early winter, whichever occurs first. The applicant shall take appropriate
 32 measures to ensure revegetation success; and
 33 i) ~~ix-~~If the repair, replacement, or reconstruction of moorage facilities that results in the
 34 repair, replacement, or reconstruction of more than 50 percent of either the structure's
 35 exterior surface (including decking), or the structure's structural elements (including pilings)
 36 within a five year period shall comply with the following standards: are replaced or
 37 reconstructed during the five years immediately prior to any demolition for the replacement
 38 or reconstruction, the replaced or reconstructed area of the structure must also comply
 39 with the following standards:
 40 (1) ~~(A)~~Piers, docks, and platform lifts must be fully grated with materials that allow a
 41 minimum of 40 percent light transmittance;
 42 (2) ~~(B)~~The height above the OHWM for moorage facilities, except floats, shall be a
 43 minimum of one and one-half feet and a maximum of five feet; and
 44 (3) ~~(C)~~An existing moorage facility that is five feet wide or more within 30 feet waterward
 45 from the OHWM shall be replaced or repaired with a moorage facility that complies with

1 the width of moorage facilities standards specified in subsection (E)(4) of this section
 2 (Table D).

- 3 ~~3) c-~~Alternative Development Standards. The code official shall approve moorage facilities not in
 4 compliance with the development standards in subsection ~~(E)(6)(a)(1) or (b2)}~~ of this section
 5 subject to both U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife
 6 approval to an alternate project design. The following requirements and all other applicable
 7 provisions in this chapter shall be met:
- 8 a) ~~i-~~The dock must be no larger than authorized through state and federal approval;
 - 9 b) ~~ii-~~The maximum width must comply with the width of moorage facilities standards specified
 10 in subsection (E)(4) of this section (Table D);
 - 11 c) ~~iii-~~The minimum water depth must be no shallower than authorized through state and
 12 federal approval;
 - 13 d) ~~iv-~~The applicant must demonstrate to the code official's satisfaction that the proposed
 14 project will not create a net loss in ecological function of the shorelands; and
 - 15 e) ~~v-~~The applicant must provide the city with documentation of approval of the moorage
 16 facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish
 17 and Wildlife.

18 G) 7-Breakwaters, jetties, groins, and weirs. Breakwaters, jetties, groins, weirs, and similar structures
 19 are prohibited, except for those structures installed to protect or restore ecological functions, such
 20 as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to
 21 protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-
 22 26-201(2)(e).

23 H) Public Access Piers, Docks, or Boardwalk. New public access piers, docks, or boardwalks on public
 24 lands shall comply with the following:

- 25 1) Public access piers, docks, or boardwalks shall be designed and constructed using WDFW-
 26 approved methods and materials;
- 27 2) With the exception of the requirements for moorage facilities related to width and length,
 28 public access piers, docks, or boardwalks shall comply with design standards required for
 29 moorage facilities listed in Table D. Requirements for Moorage Facilities and Development
 30 Located Waterward from OHWM;
- 31 3) There is no dock length or area limit for public access piers, docks, or boardwalks; however,
 32 public access piers, docks, and boardwalks shall not interfere with navigation and shall be the
 33 minimum size necessary to meet the needs of the proposed water-dependent use;
- 34 4) Public access piers, docks, or boardwalks may have a width of up to six feet in width subject to
 35 Army Corps of Engineers and/or Washington Department of Fish and Wildlife approval;
- 36 5) Public access piers, docks, or boardwalks must be fully grated with materials that allow a
 37 minimum of 40 percent light transmittance;
- 38 6) Minimum of one and one-half feet above ordinary high water to bottom of pier stringer, except
 39 the floating section of a dock attached to a pier;
- 40 7) The first in-water (nearest the OHWM) set of pilings shall be steel, 10 inches in diameter or less,
 41 and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced at least 18
 42 feet apart and shall not be greater than 12 inches in diameter. Piles shall not be treated with
 43 pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper zinc
 44 arsenate (ACZA) pilings are proposed, the applicant shall meet all of the best management

1 practices, including a post-treatment procedure, as outlined in the amended Best Management
 2 Practices of the Western Wood Preservers. All piling sizes are in nominal diameter;

3 8) Any paint, stain or preservative applied to components of the overwater structure must be leach
 4 resistant, completely dried or cured prior to installation. Materials shall not be treated with
 5 pentochlorophenol, creosote, CCA or comparably toxic compounds;

6 9) Disturbance of bank vegetation shall be limited to the minimum amount necessary to
 7 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted
 8 herbaceous and/or woody vegetation;

9 10) Construction of public access piers, docks, or boardwalks shall abide by the work windows for
 10 listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife;
 11 and,

12 4)11) A no net loss plan shall be prepared pursuant to Section 19.13.020 MICC demonstrating
 13 that the proposed project will not create a net loss in ecological function of the shorelands.

14 G)1) Restoration of ecological functions. The code official may grant relief from shoreline master
 15 program development standards and use regulations resulting from shoreline restoration projects
 16 consistent with the criteria and procedures in WAC 173-27-215.

17 H)J)8-Dredging.

18 1) a-Dredging shall be permitted only if navigational access has been unduly restricted or other
 19 extraordinary conditions in conjunction with water-dependent use; provided, that the use
 20 meets all state and federal regulations.

21 2) b-Dredging shall be the minimum necessary to accommodate the proposed use.

22 3) c-Dredging shall utilize techniques that cause the least possible environmental and aesthetic
 23 impact.

24 4) d-Dredging is prohibited in the following locations:

25 a) i-Fish spawning areas except when the applicant conclusively demonstrated that fish
 26 habitat will be significantly improved as a result of the project.

27 b) ii-In unique environments such as lake logging of the underwater forest.

28 5) e-Dredging and the disposal of dredged material shall comply with Ecology water quality
 29 certification process and U.S. Army Corps of Engineers permit requirements. The location and
 30 manner of the disposal shall be approved by the city.

31 H)K) 9-General Requirements. The following requirements apply to the following types of activities that
 32 may be waterward and/or landward of the OHWM:

33 1) a-Critical Areas within the shorelands are regulated by MICC 19.07.010 through and including
 34 19.07.090, as adopted in the MICC on January 1, 2011, except: MICC 19.07.030(B), Reasonable
 35 Use Exception, and 19.07.040(C), Setback Deviation, and (D), Variances.

36 2) b-Utilities.

37 a) i-Utilities shall be placed underground and in common rights-of-way wherever economically
 38 and technically practical.

39 b) ii-Shoreline public access shall be encouraged on publicly owned utility rights-of-way, when
 40 such access will not unduly interfere with utility operations or endanger public health and
 41 safety. Utility easements on private property will not be used for public access, unless
 42 otherwise provided for in such easement.

43 c) iii-Restoration of the site is required upon completion of utility installation.

44 3) c-Archaeological and Historic Resources.

- 1 a) ~~i.~~ If archaeological resources are uncovered during excavation, the developer and property
2 owner shall immediately stop work and notify the city, the Office of Archaeology and
3 Historic Preservation, and affected Indian tribes.
- 4 b) ~~ii.~~ In areas documented to contain archaeological resources by the Office of Archaeology
5 and Historic Preservation, a site inspection or evaluation is required by a professional
6 archaeologist in coordination with affected Indian tribes.
- 7 4) ~~d.~~ New development adding over totaling 500 square feet or more of any combination of
8 additional gross floor area, lot coverage or hardscape or impervious surface, including the
9 primary structures and appurtenances, shall be required to provide native vegetation coverage
10 over 50 percent of the 20-foot vegetation area shown on Figure C. This ~~standard total~~ shall apply
11 ~~to the total of~~ include all new gross floor area, lot coverage, and hardscape impervious surface
12 area added in the five years immediately prior to the ~~construction of the gross floor area or~~
13 ~~impervious surface addition~~ development proposal.
- 14 a) ~~i.~~ New development over totaling 1,000 square feet or more of any combination of
15 additional gross floor area, lot coverage or hardscape or impervious surface, including the
16 primary structures and appurtenances, shall be required to provide native vegetation
17 coverage over 75 percent of the 20-foot vegetation area shown in Figure C.
- 18 b) ~~ii.~~ A shoreline vegetation plan shall be submitted to the city for approval.
- 19 c) ~~iii.~~ The vegetation coverage shall consist of a variety of ground cover shrubs and trees
20 indigenous to the central Puget Sound lowland ecoregion and suitable to the specific site
21 conditions. Existing mature trees and shrubs, but excluding noxious weeds, may be included
22 in the coverage requirement if located in the 20-foot vegetation area shown in Figure C.
- 23 d) ~~iv.~~ No plants on the current King County noxious weed lists shall be planted within the
24 shorelands. (~~Ord. 15C-02 §§ 1, 2; Ord. 13C-12 § 2~~).
- 25

1 ~~19.07.12014~~ Environmental procedures.

2 ~~A.19.14.###010~~ Authority. The city adopts the ordinance codified in this section under the State
3 Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This section
4 contains this city's SEPA procedures and policies. The SEPA rules, Chapter 197-11 WAC, must be used in
5 conjunction with this section.

6 ~~19.14.011###B~~-Purpose. The purpose of these procedures is to implement the requirements of the
7 State Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW, as amended, and the SEPA rules
8 adopted by the State Department of Ecology and the authority and function of the city as provided
9 therein. These procedures shall provide the city with principles, objectives, criteria and definitions to
10 provide an efficient overall city-wide approach for implementation of the State Environmental Policy Act
11 and Rules. These procedures shall also designate the responsible official, where applicable, and assign
12 responsibilities within the city under the National Environmental Policy Act (NEPA).

13 ~~19.14.###012~~ C- Scope and Coverage. It is the intent of the city that compliance with the requirements
14 of this section shall constitute procedural compliance with SEPA and the SEPA rules for all proposals. To
15 the fullest extent possible, the procedures required by this section shall be integrated with existing
16 planning and licensing procedures utilized by the city.

17 ~~19.14.###013~~ D-Adoption by Reference. The city adopts by reference as though fully set forth in this
18 section, the following sections and subsections of Chapter 197-11 WAC (the SEPA rules) as adopted by
19 the Department of Ecology of the state of Washington on January 26, 1984, and as the same may be
20 hereafter amended:

21 WAC

22 197-11-020 (3) Purpose

23 197-11-030 Policy

24 197-11-040 Definitions

25 197-11-050 Lead agency

26 197-11-055 Timing of the SEPA process

27 197-11-060 Content of environmental review

28 197-11-070 Limitations on actions during the SEPA process

29 197-11-080 Incomplete or unavailable information

30 197-11-090 Supporting documents

31 197-11-100 Information required of applicants

32 197-11-300 Purpose of this part (categorical exemptions and threshold determinations)

33 197-11-305 Categorical exemptions

34 197-11-310 Threshold determination required

- 1 197-11-315 Environmental checklist
- 2 197-11-330 Threshold determination process
- 3 197-11-335 Additional information
- 4 197-11-340 Determination of nonsignificance
- 5 197-11-350 Mitigated DNS
- 6 197-11-355 Optional DNS procedure
- 7 197-11-360 Determination of significance (DS)/initiation of scoping
- 8 197-11-390 Effect of threshold determination
- 9 197-11-400 Purpose of EIS
- 10 197-11-402 General requirements
- 11 197-11-405 EIS types
- 12 197-11-406 EIS timing
- 13 197-11-408 Scoping
- 14 197-11-410 Expanded scoping
- 15 197-11-420 EIS preparation
- 16 197-11-425 Style and size
- 17 197-11-430 Format
- 18 197-11-435 Cover letter or memo
- 19 197-11-440 EIS contents
- 20 197-11-442 EIS contents on nonproject proposals
- 21 197-11-443 EIS contents when prior nonproject EIS
- 22 197-11-444 Elements of the environment
- 23 197-11-448 Relationship of EIS to other considerations
- 24 197-11-450 Cost benefit analysis
- 25 197-11-455 Issuance of DEIS
- 26 197-11-460 Issuance of FEIS
- 27 197-11-500 Purpose of this part (commenting)
- 28 197-11-502 Inviting comments
- 29 197-11-504 Availability and cost of environmental documents

- 1 197-11-508 (2) SEPA register
- 2 197-11-535 Public hearings and meetings
- 3 197-11-545 Effect of no comment
- 4 197-11-550 Specificity of comments
- 5 197-11-560 FEIS response to comments
- 6 197-11-570 Consulted agency costs to assist lead agency
- 7 197-11-600 When to use existing environmental documents
- 8 197-11-610 Use of NEPA documents
- 9 197-11-620 Supplemental environmental impact statement – Procedures
- 10 197-11-625 Addenda – Procedures
- 11 197-11-630 Adoption – Procedures
- 12 197-11-635 Incorporation by reference – Procedures
- 13 197-11-640 Combining documents
- 14 197-11-650 Purpose of this part (SEPA and agency decisions)
- 15 197-11-655 Implementation
- 16 197-11-660 Substantive authority and mitigation
- 17 197-11-680 Appeals
- 18 197-11-700 Definitions
- 19 197-11-702 Act
- 20 197-11-704 Action
- 21 197-11-706 Addendum
- 22 197-11-708 Adoption
- 23 197-11-710 Affected tribe
- 24 197-11-712 Affecting
- 25 197-11-714 Agency
- 26 197-11-716 Applicant
- 27 197-11-718 Built environment
- 28 197-11-720 Categorical exemption
- 29 197-11-722 Consolidated appeal

1	197-11-724	Consulted agency
2	197-11-726	Cost benefit analysis
3	197-11-728	County/city
4	197-11-730	Decisionmaker
5	197-11-732	Department
6	197-11-734	Determination of nonsignificance (DNS)
7	197-11-736	Determination of significance (DS)
8	197-11-738	EIS
9	197-11-740	Environment
10	197-11-742	Environmental checklist
11	197-11-744	Environmental document
12	197-11-746	Environmental review
13	197-11-748	Environmentally sensitive area
14	197-11-750	Expanded scoping
15	197-11-752	Impacts
16	197-11-754	Incorporation by reference
17	197-11-756	Lands covered by water
18	197-11-758	Lead agency
19	197-11-760	License
20	197-11-762	Local agency
21	197-11-764	Major action
22	197-11-766	Mitigated DNS
23	197-11-768	Mitigation
24	197-11-770	Natural environment
25	197-11-772	NEPA
26	197-11-774	Nonproject
27	197-11-776	Phased review
28	197-11-778	Preparation
29	197-11-780	Private project

1	197-11-782	Probable
2	197-11-784	Proposal
3	197-11-786	Reasonable alternative
4	197-11-788	Responsible official
5	97-11-790	SEPA
6	197-11-792	Scope
7	197-11-793	Scoping
8	197-11-794	Significant
9	197-11-796	State agency
10	197-11-797	Threshold determination
11	197-11-799	Underlying governmental action
12	197-11-800	Categorical exemptions
13	197-11-880	Emergencies
14	197-11-890	Petitioning Department of Ecology to change exemptions
15	197-11-900	Purpose of this part (agency compliance)
16	197-11-902	Agency SEPA policies
17	197-11-904	Agency SEPA procedures
18	197-11-906	Content and consistency of agency procedures
19	197-11-910	Designation of responsible official
20	197-11-916	Application to ongoing actions
21	197-11-920	Agencies with environmental expertise
22	197-11-924	Determining the lead agency
23	197-11-926	Lead agency for governmental proposals
24	197-11-928	Lead agency for public and private proposals
25	197-11-930	Lead agency for private projects with one agency with jurisdiction
26	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one
27		of the agencies is a county/city
28	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city,
29		and one or more state agencies

- 1 197-11-936 Lead agency for private projects requiring licenses from more than one state agency
- 2 197-11-938 Lead agencies for specific proposals
- 3 197-11-942 Agreements on lead agency status
- 4 197-11-944 Agreements on division of lead agency duties
- 5 197-11-946 DOE resolution of lead agency disputes
- 6 197-11-948 Assumption of lead agency status
- 7 197-11-960 Environmental checklist
- 8 197-11-965 Adoption notice
- 9 197-11-970 Determination of nonsignificance (DNS)
- 10 197-11-980 Determination of significance and scoping notice (DS)
- 11 197-11-985 Notice of assumption of lead agency status
- 12 197-11-990 Notice of action

13 ~~19.14.###.014 E~~-Abbreviations. The following abbreviations are used in this section:

- 14 A. ~~1~~-DEIS: Draft Environmental Impact Statement.
- 15 B. ~~2~~-DNS: Determination of Nonsignificance.
- 16 C. ~~3~~-DS: Determination of Significance.
- 17 D. ~~4~~-EIS: Environmental Impact Statement.
- 18 E. ~~5~~-FEIS: Final Environmental Impact Statement.
- 19 F. ~~6~~-SEIS: Supplemental Environmental Impact Statement.

20 ~~F~~-~~19.14.###.020~~ Designation of Responsible Official. For those proposals for which the city is the lead
 21 agency, the responsible official shall be the director of the development services group or a duly
 22 authorized designee.

23 ~~19.14.###.021 G~~-Responsible Official – Duties. The responsible official shall:

- 24 A. ~~1~~-Perform all duties of the responsible official under SEPA and the SEPA rules, and this section.
- 25 B. ~~2~~-Perform all duties required to be performed by the city under NEPA, including the provision of
 26 coordination with the appropriate federal agencies.
- 27 C. ~~3~~-Make the threshold determination on all proposals for which the city is the lead agency.
- 28 D. ~~4~~-Supervise scoping and the preparation of all draft and final environmental impact statements and
 29 supplemental environmental impact statements, whether the same are prepared by the city or an
 30 applicant.
- 31 E. ~~5~~-Establish procedures as needed for the preparation of environmental documents, including
 32 environmental impact statements.
- 33 F. ~~6~~-Ensure that environmental factors are considered by city decisionmakers.
- 34 G. ~~7~~-Coordinate the response of the city when the city is a consulted agency, and prepare timely
 35 written comments, which include data from all appropriate city departments, in response to
 36 consultation requests prior to a threshold determination.

- 1 H. ~~8~~-Provide information to citizens, proposal sponsors and others concerning SEPA and this section.
 2 I. ~~9~~-Retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available
 3 in accordance with Chapter 42.17 RCW.
 4 J. ~~10~~-Perform any other function assigned to the lead agency or responsible official by those sections
 5 of the SEPA rules that were adopted by reference in subsection D of this section.

6 19.14.###.025 H.-Lead Agency Determination and Responsibilities.

- 7 A. ~~1~~-The city department receiving an application for or initiating a proposal that involves a
 8 nonexempt action shall ask the responsible official to determine the lead agency for that proposal
 9 under WAC 197-11-050 and 197-11-922 through 197-11-940 unless the lead agency has been
 10 previously determined.
 11 B. ~~2~~-When the city is the lead agency for a proposal, the responsible official shall supervise compliance
 12 with the threshold determination requirements, and if an EIS is necessary, shall supervise
 13 preparation of the EIS.
 14 C. ~~3~~-When the city is not the lead agency for a proposal, all city departments shall use and consider, as
 15 appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal.
 16 No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared
 17 by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct
 18 supplemental environmental review under WAC 197-11-600.
 19 D. ~~4~~-If the city or any city department receives a lead agency determination made by another agency
 20 that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to
 21 the determination. Any objection must be made to the agency originally making the determination
 22 and resolved within 15 days of receipt of the determination, or the city must petition the
 23 Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day
 24 time period. Any such petition on behalf of the city must be initiated by the responsible official.
 25 E. ~~5~~-City departments are authorized to make agreements as to lead agency status or shared lead
 26 agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, the responsible
 27 official and any city department that will incur responsibilities as the result of any such agreement
 28 approve the agreement.

29 19.14.030### I.-Timing of the Environmental Review Process.

- 30 A. ~~1~~-The timing of the environmental review process shall be determined based on the criteria in the
 31 SEPA rules and this part of this section.
 32 B. ~~2~~-If the city's only action on a proposal is a decision on a building permit or other license that
 33 requires detailed project plans and specifications as part of a complete application for such permit
 34 or license, the applicant may request in writing that the city conduct environmental review prior to
 35 submission of such detailed plans and specifications. A decision as to whether or not to do early
 36 environmental review, prior to receiving a complete application, shall be at the discretion of the
 37 responsible official.
 38 C. ~~3~~-The responsible official may elect to do early environmental review if adequate information is
 39 available to determine the size and scope of the proposed action, including dimensions and use of
 40 all proposed structures, project timing, and the extent of clearing and grading.
 41 D. ~~4~~-The city may initiate preliminary environmental review and have informal conferences with
 42 applicants prior to receipt of a complete application. However, this review shall not be binding on

1 the city or the applicant (see also MICC 19.07.010(A)(1), Performance Standards for All
2 Development).

- 3 E. ~~5-~~For city-initiated proposals, the initiating city department should contact the responsible official
4 as soon as a proposal is formulated to integrate environmental concerns into the decision-making
5 process as soon as possible.
- 6 F. ~~6-~~The procedural requirements of SEPA and this section shall be completed prior to the issuance of
7 a permit or final decision on a nonexempt proposal.

8 ~~J-19.14.###.032~~ -Determination of Categorical Exemption.

- 9 A. ~~1-~~Upon the receipt of an application for a proposal, the receiving city department shall, and for city
10 proposals, the initiating city department shall, determine whether the proposal is an action
11 potentially subject to SEPA and, if so, whether it is categorically exempt. This determination shall be
12 made based on the definition of action (WAC 197-11-704), and the process for determining
13 categorical exemption (WAC 197-11-305). As required, city departments shall ensure that the total
14 proposal is considered. If there is any question whether or not a proposal is exempt, then the
15 responsible official shall be consulted.
- 16 B. ~~2-~~If a proposal is exempt, none of the procedural requirements of this section apply to the proposal.
17 The city shall not require completion of an environmental checklist for an exempt proposal. The
18 determination that a proposal is exempt shall be final and not subject to administrative review.
- 19 C. ~~3-~~If the proposal is not categorically exempt, the city department making this determination (if
20 different from proponent) shall notify the proponent of the proposal that it must submit an
21 environmental checklist (or copies thereof) to the responsible official.
- 22 D. ~~4-~~If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions
23 prior to compliance with the procedural requirements of this chapter, except that:
- 24 1. ~~a-~~The city shall not give authorization for:
 - 25 a. ~~i-~~Any nonexempt action;
 - 26 b. ~~ii-~~Any action that would have an adverse environmental impact; or
 - 27 c. ~~iii-~~Any action that would limit the choice of alternatives;
 - 28 2. ~~b-~~A city department may withhold approval of an exempt action that would lead to
29 modification of the physical environment, when such modification would serve no purpose if
30 nonexempt action(s) were not approved; and
 - 31 3. ~~c-~~A city department may withhold approval of exempt actions that would lead to substantial
32 financial expenditures by a private applicant when the expenditures would serve no purpose if
33 nonexempt actions were not approved.
- 34 E. ~~5-~~The following types of construction shall be categorically exempt, except when undertaken wholly
35 or partly on lands covered by water, or a rezone or any license governing emissions to the air or
36 discharges to water is required:
- 37 1. ~~a-~~The construction or location of any residential structures of four or fewer dwelling units;
 - 38 2. ~~b-~~The construction of an office, school, commercial, recreational, service or storage building with
39 4,000 square feet or less of gross floor area and with associated parking facilities designed for 20
40 or fewer automobiles;
 - 41 3. ~~c-~~The construction of a parking lot designed for 20 or fewer automobiles;
 - 42 4. ~~d-~~Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or
43 excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW
44 76.09.050 or regulations thereunder;

1 5. Pursuant to MICC 19.07.110(B)(3), projects in a shoreline area that involve alterations under
2 250 cubic yards outside the building footprint shall be exempt from review under the State
3 Environmental Policy Act.

4 ~~19.14.###.035 K~~ Environmental Checklist.

5 1. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be
6 filed at the same time as an application for a permit, license, certificate, or other approval not
7 specifically exempted in this section; except, a checklist is not needed if the city and applicant agree an
8 EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another
9 agency.

10
11 2. For private proposals, the city will require the applicant to complete the environmental checklist,
12 providing assistance as necessary. For city proposals, the city department initiating the proposal shall
13 complete the checklist for that proposal.

14
15 3. The city may complete all or part of the environmental checklist for a private proposal, if either of the
16 following occurs:

17
18 a. The city has technical information on a question or questions that is unavailable to the private
19 applicant; or

20 b. The applicant has provided inaccurate information on previous proposals or on proposals currently
21 under consideration.

22 ~~19.14.036### L~~ Threshold Determination. The responsible official shall make the threshold
23 determination and issue a determination of nonsignificance (DNS) or significance (DS). The responsible
24 official shall make such threshold determination in accordance with the procedures of Chapter 197-11
25 WAC, Part 3, as adopted by this section. The responsible official shall notify the applicant, the lead city
26 department, and (where a permit is involved) the permit-issuing city department of the threshold
27 determination. The decision of the responsible official to issue a determination of significance shall not
28 be appealable. The decision of the responsible official to issue a determination of nonsignificance shall
29 be appealable pursuant to subsection T of this section.

30 ~~19.14.###.037 M~~ Early Notice of Threshold Determination and Mitigated DNS.

31 1. As provided in this part of this section and in WAC 197-11-350, the responsible official may issue a
32 DNS based on conditions attached to the proposal by the responsible official or on changes to, or
33 clarifications of, the proposal made by the applicant.

34 2. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The
35 request must:

36 a. Follow submission of a permit application and environmental checklist for a nonexempt proposal for
37 which the city department is lead agency; and

- 1 b. Precede the city's actual threshold determination for the proposal.
- 2 3. The responsible official should respond to the request for early notice within 10 working days. The
3 response shall:
- 4 a. Be written;
- 5 b. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or
6 specific area(s) of concern that is/are leading the city to consider a DS; and
- 7 c. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising
8 the environmental checklist and/or permit application as necessary to reflect the changes or
9 clarifications.
- 10 4. The city's written response under subsection (M)(2) of this section shall not be construed as a
11 determination of significance. In addition, preliminary discussion of clarifications or changes to a
12 proposal, as opposed to a written request for early notice, shall not bind the city to consider the
13 clarifications or changes in its threshold determination.
- 14 5. As much as possible, the city should assist the applicant with identification of impacts to the extent
15 necessary to formulate mitigation measures.
- 16 6. When an applicant submits a changed or clarified proposal, along with a revised or amended
17 environmental checklist, the city shall base its threshold determination on the changed or clarified
18 proposal and should make the determination within 15 days of receiving the changed or clarified
19 proposal:
- 20 a. If the city indicated specific mitigation measures in its response to the request for early notice, and
21 the applicant changed or clarified the proposal to include those specific mitigation measures, the city
22 shall issue and circulate a DNS under WAC 197-11-340(2).
- 23 b. If the city indicated areas of concern, but did not indicate specific mitigation measures, the city shall
24 make the threshold determination, issuing a DNS or DS as appropriate.
- 25 c. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in
26 writing and must be specific and feasible. For example, proposals to "control noise" or "prevent storm
27 water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-
28 foot storm water detention pond at Y location" are adequate.
- 29 d. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by
30 reference to agency staff reports, studies or other documents.
- 31 7. A proposal shall not be considered changed or clarified to permit the issuance of a mitigated DNS
32 under WAC 197-11-350 unless all license applications for the proposal are revised to conform to the
33 changes or other binding commitments made.
- 34 8. If a mitigated DNS is issued, the aspects of the proposal that allowed a mitigated DNS to be issued
35 shall be included in any decision or recommendation of approval of the action. Mitigation measures
36 incorporated into the mitigated DNS shall be deemed conditions of approval of the permit decision and

1 may be enforced in the same manner as any term or condition of the permit, or enforced in any manner
2 specifically prescribed by the city.

3 9. A mitigated DNS is issued under WAC 197-11-340(2), requiring a 14-day comment period and public
4 notice.

5 10. If at any time the proposal (including associated mitigating measures) is substantially changed, the
6 responsible official shall reevaluate the threshold determination and, if necessary, withdraw the
7 mitigated DNS and issue a DS. Any questions regarding whether or not a change is substantial shall be
8 resolved by the responsible official.

9 19.14.040### N. Environmental Impact Statements.

10 1A. An environmental impact statement shall be required on any proposal determined to be a major
11 action having a probable significant, adverse environmental impact. If it is determined that an
12 environmental impact statement is required, the responsible official shall notify the applicant or
13 proposal sponsor, the lead city department and (where a permit is involved) the department responsible
14 for issuing the permit. The responsible official shall arrange for a meeting with the applicant or proposal
15 sponsor to schedule necessary events and give any guidance necessary in the preparation of the EIS.

16 B2. For private proposals, an EIS shall be prepared by a private applicant or agent thereof or by the city.
17 For city proposals, the EIS shall be prepared by a consultant or by city staff. In all cases, the method of
18 preparation and the selection of the consultant shall be subject to the approval of the responsible
19 official. The responsible official shall assure that the EIS is prepared in a responsible and professional
20 manner and with appropriate methodology and consistent with SEPA rules. The responsible official shall
21 also direct the areas of research and examination to be undertaken as a result of the scoping process, as
22 well as the organization of the resulting document. The responsible official may retain the services of a
23 consultant to review all or portions of EIS prepared by an applicant, the applicant's agent, or the city, at
24 the applicant's expense. Services rendered by the responsible official and other city staff shall be subject
25 to collection of fees as described in the city's officially adopted land use and planning fee schedule.

26 C3. The responsible official will coordinate any predraft consultation procedures and scoping procedures
27 so that the consultant preparing the EIS immediately receives all substantive information submitted by
28 consulted agencies or through the scoping process. The responsible official shall also attempt to obtain
29 any information needed by the consultant preparing the EIS which is on file with another agency or
30 federal agency.

31 4D. An environmental impact statement is required to analyze those probable adverse environmental
32 impacts which are significant. Beneficial environmental impacts may be discussed. The responsible
33 official shall consult with agencies, affected tribes and the public to identify such impacts and limit the
34 scope of an environmental impact statement in accordance with the procedures set forth in subsection
35 (N)(5) of this section. The purpose of the scoping process is to narrow the scope of every EIS to the
36 probable significant adverse impacts and reasonable alternatives, including mitigation measures.

37 E5. Procedures for Scoping.

38 1a. The responsible official shall consult with agencies and the public to limit the scope of an
39 environmental impact statement by any or all of the following means. The specific method to be

1 followed shall be determined on a proposal-by-proposal basis by the responsible official, but at a
2 minimum shall include the following:

3 ai. The responsible official shall give notice that an EIS is to be prepared, which notice shall provide that
4 agencies, affected tribes and the public may submit written comments to identify significant impacts
5 and reasonable alternatives and limit the scope of the EIS. Comments must be submitted not later than
6 21 days from the date of issuance of the declaration of significance. Additionally, notice may be sent to
7 any community groups known by the responsible official to have a possible interest in the proposal.
8 Notice of the intent to prepare an EIS and the opportunity for commenting on the scope thereof may be
9 sent with other public notices concerning the project.

10 bii. Additionally, the responsible official may conduct a meeting to provide the opportunity for oral
11 comment on the scope of the EIS. Notice of such meeting shall be published in a newspaper of general
12 circulation at least five days prior to the date of the meeting. The scoping meeting may be combined
13 with other meetings or hearings concerning the proposal.

14 2b. The appendix to the EIS shall include an identification of the issues raised during the scoping process
15 and whether those issues have or have not been determined significant for analysis in the EIS. All
16 written comments regarding the scope of the EIS shall be included in the proposal file.

17 3e. The public and agency consulting process regarding the scope of the EIS shall normally occur within
18 30 days after the declaration of significance is issued, unless the responsible official and the applicant
19 agree on a later date.

20 4d. EIS preparation may begin during scoping.

21 F6. The following additional elements may, at the option of the responsible official, be considered part
22 of the environment for the purpose of EIS content, but do not add to the criteria for the threshold
23 determinations or perform any other function or purpose under these rules:

24 1a. Economy;

25 2b. Social policy analysis;

26 3e. Cost-benefit analysis.

27 7G. When a public hearing is held under WAC 197-11-535(2), such hearing shall be held before the
28 responsible official.

29 19.14.045### O-Internal Circulation of Environmental Documents. Environmental documents shall be
30 transmitted to decisionmakers and advisory bodies prior to their taking official action on proposals
31 subject to SEPA.

32 19.14.050### P-Emergencies. The responsible official shall designate when an action constitutes an
33 emergency under WAC 197-11-880.

34 19.14.###.060 Q-Public Notice.

35 1. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the city
36 shall give public notice of the DNS or DS by publishing notice in the city's permit information bulletin.

1 2. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure
2 for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

3 3. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of
4 the availability of those documents shall be given by:

5 a. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and

6 b. Publishing notice in the city's permit information bulletin.

7 4. Whenever an EIS hearing is required, the hearing shall be combined with the hearing on the
8 underlying action and notice shall be provided in the manner specified in MICC 19.15.020.

9 5. The city shall integrate the public notice required under this section with existing notice procedures
10 for the city's nonexempt permit(s) or approval(s) required for the proposal.

11 6. The responsible official may also elect to give notice by one or more of the other methods specified in
12 WAC 197-11-510.

13 7. The city may require an applicant to complete the public notice requirements for the applicant's
14 proposal at his or her expense.

15 19.14.###.065 R. Fees.

16 1. Environmental Checklist. The city shall establish a fee for review of an environmental checklist
17 performed by the city when the city is the lead agency. The fee shall be identified in the city's officially
18 adopted land use and planning fee schedule, and collected prior to undertaking a threshold
19 determination.

20 2. Environmental Impact Statements. For all proposals when the city is the lead agency and the
21 responsible official determines that an EIS is required, the applicant shall be charged a fee for the
22 administrative costs of supervision and preparation of the draft and final EISs. This fee shall be identified
23 in the city's officially adopted land use and planning fee schedule, and collected prior to the initiation of
24 work on the draft EIS.

25 3. For private proposals, the cost of retaining consultants for assistance in EIS preparation shall be borne
26 by the applicant whether the consultant is retained directly by the applicant or by the city.

27 4. Consultant Agency Fees. No fees shall be collected by the city for performing its duty as a consultant
28 agency.

29 5. Document Fees. The city may charge any person for copies of any documents prepared pursuant to
30 the requirements of this section and for mailing thereof, in a manner provided by Chapter 42.17 RCW;
31 provided, no charge shall be levied for circulation of documents as required by this section to other
32 agencies.

33 19.14.###.070 S. Authority to Condition or Deny Proposals (Substantive Authority).

34 1. The policies and goals set forth in this section are supplementary to those in the existing authorization
35 of the city.

- 1 2. The city may attach conditions to a permit or approval for a proposal so long as:
 - 2 a. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified
 - 3 in environmental documents prepared pursuant to this section; and
 - 4 b. Such conditions are in writing; and
 - 5 c. The mitigation measures included in such conditions are reasonable and capable of being
 - 6 accomplished; and
 - 7 d. The city has considered whether other local, state or federal mitigation measures applied to the
 - 8 proposal are sufficient to mitigate the identified impacts; and
 - 9 e. Such conditions are based on one or more policies in subsection (S)(4) of this section and cited in the
 - 10 license or other decision document.
- 11 3. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
 - 12 a. A finding is made that approving the proposal would result in probable significant adverse
 - 13 environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this section; and
 - 14 b. A finding is made that there are no reasonable mitigation measures capable of being accomplished
 - 15 that are sufficient to mitigate the identified impact; and
 - 16 c. The denial is based on one or more policies identified in subsection (S)(4) of this section and identified
 - 17 in writing in the decision document.
- 18 4. The city designates and adopts by reference the following policies as the basis for the city's exercise of
- 19 authority pursuant to this section:
 - 20 a. The city shall use all practicable means, consistent with other essential considerations of state policy,
 - 21 to improve and coordinate plans, functions, programs, and resources to the end that the state and its
 - 22 citizens may:
 - 23 i. Fulfill the responsibilities of each generation as trustee of the environment for succeeding
 - 24 generations;
 - 25 ii. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally
 - 26 pleasing surroundings;
 - 27 iii. Attain the widest range of beneficial uses of the environment without degradation, risk to health or
 - 28 safety, or other undesirable and unintended consequences;
 - 29 iv. Preserve important historic, cultural, and natural aspects of our national heritage;
 - 30 v. Maintain, wherever possible, an environment which supports diversity and a variety of individual
 - 31 choice;
 - 32 vi. Achieve a balance between population and resource use which will permit high standards of living
 - 33 and a wide sharing of life's amenities;

- 1 vii. Enhance the quality of renewable resources and approach the maximum attainable recycling of
2 depletable resources.
- 3 b. The city recognizes that each person has a fundamental and inalienable right to a healthful
4 environment and that each person has a responsibility to contribute to the preservation and
5 enhancement of the environment.
- 6 c. The city adopts by reference the policies in the following city codes, ordinances, resolutions, and
7 plans, as presently adopted or hereafter amended:
- 8 i. The comprehensive plan of the city;
- 9 ii. The development code of the city;
- 10 iii. The policies of the Mercer Island environmental procedures code, including the policies and
11 objectives of SEPA (Chapter 43.21C RCW) as adopted by the city;
- 12 iv. The parks and open space plan of the city;
- 13 v. The community facilities plan of the city;
- 14 vi. The design commission, Ordinance No. 297, and the design guidelines, Ordinance No. 491, of the city;
- 15 vii. The city's arterial plan, Ordinance No. 404;
- 16 viii. The six-year comprehensive street improvement program;
- 17 ix. 1976 memorandum agreement regarding I-90, signed by the cities of Mercer Island, Bellevue and
18 Seattle, and the Washington State Department of Transportation;
- 19 x. Model Traffic Ordinance, Chapter 10.98 MICC;
- 20 xi. Street improvement and maintenance guidelines, approved September 13, 1982;
- 21 xii. Sewer rates and regulations, Chapter 15.06 MICC;
- 22 xiii. Water system, Chapter 15.12 MICC;
- 23 xiv. Minimum fire flow requirements, Resolution No. 778;
- 24 xv. Comprehensive city water plan.
- 25 5. The responsibility for enforcing conditions under SEPA rests with the city department or official
26 responsible for enforcing the decision on the underlying action.
- 27 6. This part of this section shall not be construed as a limitation on the authority of the city to approve,
28 deny or condition a proposal for reasons based upon other statutes, ordinances or regulations.
- 29 ~~19.14.###.080 T~~ Administrative Appeals.
- 30 1. Except for SEPA procedural and substantive decisions related to permits, deviations and variances
31 issued by the code official or hearing examiner under the shoreline management provisions or any
32 legislative actions taken by the city council, the following shall be appealable to the hearing examiner
33 under this section:

- 1 a. The decision to issue a determination of nonsignificance rather than to require an EIS;
- 2 b. Mitigation measures and conditions that are required as part of a determination of nonsignificance;
- 3 c. The adequacy of an FEIS or an SEIS;
- 4 d. Any conditions or denials of the proposed action under the authority of SEPA.
- 5 2. How to Appeal. The appeal must be consolidated with any appeal that is filed on the proposal or
- 6 action, and must conform to the requirements of MICC 19.15.020(J), Permit Review Procedures. The
- 7 appeal may also contain whatever supplemental information the appellant wishes to include.
- 8 3. For any appeal under this subsection, the city shall provide for a record that shall consist of the
- 9 following:
- 10 a. Findings and conclusions;
- 11 b. Testimony under oath; and
- 12 c. A taped or written transcript.
- 13 4. The procedural determination by the city's responsible official shall carry substantial weight in any
- 14 appeal proceeding.
- 15 5. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for
- 16 which a statute or ordinance establishes a time limit for commencing judicial appeal.
- 17 19.14.###.090 ~~U~~-Notice – Statute of Limitations.
- 18 1. The applicant for or proponent of an action of the city, when the action is one the city is proposing,
- 19 may publish notice of action pursuant to RCW 43.21C.080 for any action.
- 20 2. The form of the notice shall be substantially in the form and manner set forth in RCW 43.21C.080. The
- 21 notice may be published by the city for city projects or the applicant or proponent for private projects.
- 22 3. If there is a time period for appealing the underlying city action to court, the city shall give notice
- 23 stating the date and place for commencing an appeal of the underlying action and an appeal under
- 24 Chapter 43.21C RCW, the State Environmental Policy Act. Notice shall be given by mailing notice to
- 25 parties of record to the underlying action and may also be given by publication in a newspaper of
- 26 general circulation. (Ord. 17C-12 § 6; Ord. 10C-06 § 1; Ord. 08C-01 § 3; Ord. 05C-12 § 6; Ord. 03C-11 §§
- 27 1, 2, 3; Ord. 99C-13 § 1. Formerly 19.07.100).

28 [...]

29 Chapter 19.15.030 – Land Use Review Types

Table A. Land Use Review Type

- | | | | |
|-----------------|--|---|--|
| • Home business | • Modified
wireless
communication | • New and modified wireless
(non-6409) eligible facility | • Preliminary
long plat
approval |
|-----------------|--|---|--|

Table A. Land Use Review Type

<ul style="list-style-type: none"> • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption¹ • Critical areas determination (steep slope alteration) Critical Area Review 1 • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat^{2, 3} • Code official design review • Accessory dwelling unit • Parking variances (reviewed by city engineer) 	<ul style="list-style-type: none"> • SEPA threshold determination • Critical areas determination (wetland/watercourse buffer averaging/reduction) Critical Area Review 2 • Public Agency Exception • Temporary encampment⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit • Shoreline substantial development permit¹ • Shoreline revision (substantial development)¹ 	<ul style="list-style-type: none"> • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking variances (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP)⁵ • Shoreline variance⁵ • Shoreline revision (variance and SCUP)
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1 19.15.050

2 [...]

1 C. Required Preapplication Meetings. Preapplication meetings are required for Type III and Type IV land
2 use reviews and for new development within landslide hazard areas. Preapplication meetings may be
3 held for any other development proposal at the request of the applicant. This requirement may be
4 waived by the code official.

5 Chapter 19.16

6 19.15.180 Additional procedures for shoreline review.

7 A. Open Record Public Hearing. An open record public hearing before the code official shall be
8 conducted on the shoreline substantial development permits, shoreline conditional use permits, and
9 shoreline variances when, within the 30-day comment period, 10 or more interested citizens file a
10 written request for a public hearing.

11 B. Ecology Filing. The applicant shall not begin construction until after 21 days from the date of ~~receipt~~
12 filing by with the Department of Ecology and Attorney General and/or any appeals are concluded. The
13 applicant shall also comply with all applicable federal, state and city standards for construction.

14 C. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with
15 conditions, or denying any substantial development permit or shoreline exemption is final unless an
16 appeal is filed in accordance with applicable laws. The city shall send the shoreline permit and
17 documentation of final local decisions to the applicant, the Department of Ecology, the Washington
18 State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be
19 sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

20 D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving,
21 approving with conditions, or denying a shoreline conditional use permit or shoreline variance is
22 rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable
23 local, state, or federal laws. The city shall send the shoreline permit and documentation of final local
24 decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all
25 other applicable local, state, or federal agencies. The decision shall be sent to the Department of
26 Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

1 DEFINITIONS Revised 8/18

2 Sections:

3 19.16.010 Definitions

4

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

9 [...] Buffer:- A designated area contiguous to a steep slope or landslide hazard area intended to protect
 10 slope stability, attenuation of landslide hazards, or a designated area contiguous to a habitat
 11 conservation area, stream or wetland intended to protect the ecological functions and values of the
 12 habitat, stream or wetland and be an integral part of the habitat, stream or wetland ecosystem. A
 13 designated area adjoining a critical area intended to protect the critical area from degradation.

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

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

18 -[...] Dock. A structure that floats on the surface of the water, without piling supports, but that is
 19 attached to land. Typically used for boat moorage, swimming, public access, and other activities that
 20 require access to deep water. This definition of docks shall also include "piers" for the purposes of Title
 21 19.

22 Fish and Wildlife Habitat Conservation Areas: Areas where 1) endangered, threatened, and sensitive
 23 species have a primary association; 2) priority habitats identified by the Washington Department of Fish
 24 & Wildlife occur; 3) species identified in the Washington Department of Fish & Wildlife Priority Habitats
 25 and Species list reside and forage; 4) bald eagles forage, nest, and roost. Those areas the city council
 26 determines are necessary for maintaining species in suitable habitats within their natural geographic
 27 distribution so that isolated subpopulations are not created consistent with WAC Title 365.

28 [...] Geologically Hazardous Areas: Areas susceptible to erosion, sliding, earthquake, or other geological
 29 events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology,
 30 vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard
 31 areas.

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

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

35 [...] Noxious weed: Any plant which when established is highly destructive, competitive, or difficult to
 36 control by cultural or chemical practices (see Chapter 5.10 RCW). The state noxious weed list in Chapter

1 16-750 WAC, as compiled by the State Noxious Weed Control Board, together with the King County
 2 Noxious Weed and Weeds of Concern lists, is the officially adopted list of noxious weeds for the city.

3 ~~[...] Lift Station (Boat Hoist): A structure or device used to raise a watercraft above the waterline for~~
 4 ~~secure moorage purposes.~~

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

8 ~~[...] Public Access Pier or Boardwalk. A structure which is constructed waterward of the ordinary high~~
 9 ~~water mark and intended for public use.~~

10 ~~[...] Qualified Professional: A qualified professional for watercourses, wetlands, and wildlife habitat~~
 11 ~~conservation areas must be a Professional Wetland Scientist. A qualified professional for preparing~~
 12 ~~geotechnical reports and geotechnical design recommendations must have obtained a B.S. or B.A. or~~
 13 ~~equivalent degree in geologic hazards studies, and must hold a current state license in geology,~~
 14 ~~hydrogeology or as a professional engineer with geotechnical and/or seismic experience.~~

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

17
 18 Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed,
 19 banks, or sides throughout substantially all its length, along which surface waters, with some regularity
 20 (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This
 21 definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water
 22 runoff devices, or other courses unless they are used by fish or to convey waters that were naturally
 23 occurring prior to construction.

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

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

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

37 Watercourses shall be classified according to the following types:

- 1 A) Type S, which include all waters, within their bankfull width, as inventoried as "shorelines of the
 2 state," which are regulated by the city's Shoreline Master Program pursuant to chapter 90.58 RCW.
- 3 B) Type F, which include segments of natural waters other than Type S Waters, which are within the
 4 bankfull widths of defined channels and periodically inundated areas of their associated wetlands,
 5 or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low
 6 water and which in any case contain fish habitat.
- 7 C) Type Np, which include all segments of natural waters within the bankfull width of defined channels
 8 that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry
 9 any time of a year of normal rainfall and include the intermittent dry portions of the perennial
 10 channel below the uppermost point of perennial flow.
- 11 D) Type Ns, which include all segments of natural waters within the bankfull width of the defined
 12 channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which
 13 surface flow is not present for at least some portion of a year of normal rainfall and are not located
 14 downstream from any stream reach that is a Type Np Water. Ns Waters must be physically
 15 connected by an above-ground channel system to Type S, F, or Np Waters.
- 16 E) Piped Watercourses, which are pipes or other conveyances through which surface waters, with
 17 some regularity (annually in the rainy season), naturally and normally flow in draining from higher to
 18 lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales,
 19 canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters
 20 that were naturally occurring prior to construction.

21

22 Wetland Classification System: Those categories set forth in the Washington State Wetland Rating
 23 System for Western Washington, Publication #04-06-02514-06-029 dated August, 2004 October, 2014. A
 24 summary of the classification system is provided below:

25 1. Category I. Category I wetlands are those that meet the following criteria:

- 26 a. Wetlands that are identified by scientists as high quality or high function wetlands;
 27 b. Bogs larger than one-half acre;
 28 c. Mature and old-growth forested wetlands larger than one acre; or
 29 d. Wetlands that are undisturbed and contain ecological attributes that are impossible
 30 to replace within a human lifetime.

31 2. Category II. Category II wetlands are not defined as Category I wetlands and meet the
 32 following criteria:

- 33 a. Wetlands that are identified by scientists as containing "sensitive" plant species;
 34 b. Bogs between one-quarter and one-half acre in size; or
 35 c. Wetlands with a moderately high level of functions.

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

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

3

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

DRAFT

Number	Date Received	First Name	Last Name	Organization	Comment Topic	Staff Response
1	5/2/2018	Ira	Appelman		* Concerns about timing of CAO update	
2	6/1/2018	Rita	Moore		* Suggest involving Parks Dept. staff with knowledge of native plants in code update process	
3	7/18/2018	Judy	Roan		* Support comprehensive plan amendments pertaining to wildlife	
4	8/30/2018	George	Steirer	Plan to Permit	* Requested to be part of record	
5	10/4/2018	Ted	Burns	Seaborn Pile Driving Company	* Suggested change to SMP pier/dock dimensional standards	
6	12/3/2018	Gardner	Morelli	MI Beach Club	* Please add to email notification list	
7	2/15/2019	Doug	Gresham	Washington State Department of Ecology	* Comments on Wetland section of CAO	
8	2/20/2019	Donna	Bunten	Washington State Department of Ecology	* Please add to email notification list	
9	2/20/2019	Matthew	Baerwalde	Snoqualmie Indian Tribe Environmental & Natural Resources Dept.	* Recommend that the City undertake a new effort to map streams and stream types * Recommend updating definition of "fish use or used by fish" in code	

Mercer Island Planning Commission
May 2, 2018
Critical Areas Ordinance Update

Ira Appelman
9039 E. Shorewood Drive

I am aggrieved that the City continues to violate state law by not yet passing an updated Critical Areas Ordinance, and I am concerned, based on the Planning Commission minutes of last meeting that you aren't going to do the job right.

The City Attorney admitted at a City Council meeting over a year ago that the City was past the deadline for completing a Critical Areas Ordinance Update. Based on the City Council Planning Schedule, the City Council won't complete the Critical Areas Ordinance Update this year.

Both the City Attorney and the Development Services Director indicated at a previous City Council meeting that the Critical Areas Ordinance Update will be significantly stricter on development than the current ordinance.

Environmental damage is occurring or threatened all over the Island. Landslides have taken place and recently Sustainability Manager Ross Freeman sent out an Island-wide email warning of the possibility of more landslides. The bioswales on East and West Mercer Ways have been black-topped over, and further bioswales are threatened. Watercourse buffers are routinely invaded and wetlands are threatened with the official sanction of the City. In the most egregious example in recent memory, the Mercer Island Center for the Arts (MICA) has claimed you can improve a wetland by putting a building in it; the City Council majority has promoted this type of environmental damage.

It's been clear from the City Council discussions that the reason the City has been dragging its feet on getting the Update done is that the Council majority is afraid that the stricter development regulations of the Update will interfere with siting MICA in one of the most environmentally sensitive locations near the Town Center, that is, Mercerdale Park.

I am concerned that Planning Commissioners who are supporters of MICA may resist recommending a proper Update that may preclude the siting of MICA in Mercerdale Park. I call on those Planning Commissioners who have declared their support for MICA or who otherwise support MICA to recuse themselves from further consideration of the Critical Areas Ordinance.

I submit my comments in writing to staff for the record.

Date: Thu, May 31, 2018, 10:30 AM
Subject: Participation in CAO and SMP updates
To: <caoupdates@mercergov.org>

I am very interested in both of these ordinances and want to actively participate. Is there someone on the Planning Commission with knowledge of native vegetation? Will people like Paul West or Alaine Sommargren be members of the staff working on the updates.

The last time the SMP was updated there was no one on the Planning Commission with any landscaping or Native Plant knowledge. Also they presented a plan, the City Council passed but one that they knew would not be accepted by the state. They wanted to be able to say to residents that "the state made us make these additional changes, we did not want them" so residents could not blame the Planning Commission or the City Council for some of the changes. I don't want to see this happen again. They need to produce plans that save and improve our Mercer Island environment.

There should be 17 hardcover copies I gave to each member of the Planning Commission that belong to the city. This should be required reading by Planning Commission members and City Council members

Bringing Nature Home: How You Can Sustain Wildlife with Native Plants

By Douglas1 Tollemy

Please let me know how I can be part of this process.

Thank you.

Rita

Rita A. Moore
4509 Ferncroft Rd.
Mercer Island, WA 98040
cell: 206 679-3375

From: [Evan Maxim](#)
Cc: [Andrea Larson](#); jroan@fhcrc.org
Subject: FW: Habitat protection----
Date: Wednesday, July 18, 2018 3:37:40 PM

Dear Planning Commissioners,

Please see the public comment, below.

Regards,

Evan Maxim

Interim Director of Development Services
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040
p: 206.275.7732
f: 206.275.7726

If you would like a public record, please fill out a public records request at <https://mercerisland.nextrequest.com/>.

From: Judy Roan <jroan@fhcrc.org>
Sent: Wednesday, July 18, 2018 3:04 PM
To: Evan Maxim <evan.maxim@mercergov.org>
Cc: Carolyn Boatsman <c.boatsman@comcast.net>
Subject: Habitat protection----

I am writing in support of the "Habitat protection and enhancement policies for consideration by the Planning Commission" that was drafted and submitted by Carolyn Boatsman on July 12, 2018. I have reviewed this document and concur with the 20 points that she makes. I feel that implementation of these, or some of these points would make Mercer Island a better place to live. We would be encouraging the protection of native plants, and animals. Basically, it all comes down to good habitat in order to preserve flora and fauna. One thing that she does not mention is the use of pesticides and fertilizers. The city needs clear guidelines for management of lawns, open space, roadways, etc. Broad use of pesticides is inappropriate where other methods of maintenance are possible. Lots of people are concerned about the use of Roundup by the Parks and Rec. Department. It has long been known that Roundup kills amphibians.

I cheer the commission on in their task of keeping Mercer Island a safe and beautiful island.

Thank you,
Judith Roan
206-236-0511

Judith Roan
jroan@fhcrc.org

From: George Steirer
To: [Robin Proebsting](#)
Subject: CAO Update - Geologic Hazardous Area
Date: Thursday, August 30, 2018 2:32:10 PM

Good afternoon Robin:

Is the proposed CAO update anticipated to include updates to the geologic hazard requirements? If so, could you please send me a copy of the latest publicly available information for the section? I reviewed the packet that went to the Planning Commission, and did not see anything on geologic hazards.

Also, please include me as a party of record for the Critical Areas Ordinance update. Thanks Robbin.

George Steirer
Plan to Permit, LLC
206-909-2893
George@PlanToPermit.com
www.PlanToPermit.com

WATERCOURSE BUFFER

The proposal is inconsistent with federal and state goals for the ecological enhancement of the shoreline of Lake Washington to create a natural shoreline.

The federal and state goals for the shores of Lake Washington are partial to full removal of existing “hard” shorelines consisting of timbers, concrete and rocks; and construction of a native shoreline with reduced “hard” structures and increased “soft” structures consisting of spawning gravel and beaches with native shoreline vegetation planted behind.

DOCK HEIGHTS

The current code that the bottom of the dock be 18” above the high water line presents a safety issue. The Lake level is controlled by the Corps of Engineers at the locks and varies 22”. Thus, at low lake level in August the lake level is 40” below the bottom of the dock allowing a typical ski boat to slide under the dock. This creates a serious safety issue where we’ve had a dogs paws permanently damaged while placed on the boat gunnel when the boat slid under the edge of the dock in late August.

We understand Dept of Ecology recommends the bottom of the dock be 18” above the HIGH water line to be consistent with the suggested federal permit (key word is “suggested” – this is not required at the state or federal level for existing structure repair or reconfiguration).

No other local jurisdiction on Lake Washington requires dock repair and rebuild permits include changing the elevation of the docks.

INSHORE DOCK WIDTH

The perception by the homeowner is that the reduced width is a safety issue for families with adolescent children who run and play from the yard onto the dock. The preference is that dock repair and rebuild be completed without changing the width of the first 30’.

Docks on the west side of the island have historically been constructed smaller and with less length as the water becomes deep quickly. This results in a dock measuring 40' overall. The "platform" at the end of the dock starts in 7' of water and 20' – 25' from shore. Under the current code, the dock is unable to be rebuilt without removing the platform and even all other parts of the dock leaving the homeowner with only a 4' wide walkway for a dock for water recreational activities.

No other local jurisdiction on Lake Washington requires we reduce the dock width for the first 30' from shore.

TRANSLUCENT CANOPY

The current code states that all moorage covers include a "translucent canopy". This is consistent with federal and state requirements for fabric canopies. However, the code doesn't differentiate between a canvas canopy and a fixed beam structure. Both are allowed on Mercer Island.

It would be consistent and clearer to note that a fixed beam structure requires a cover consisting of "light penetrating materials", and a canopy over a boat consist of a "translucent" material.

From: Gardner Morelli
To: [CA Update](#)
Subject: Would like to be out on mailing list
Date: Thursday, December 13, 2018 3:09:39 PM

Hello,

Can you please add me to the email notification list for all meetings for the Critical Area Ordinance review.

Thank you,

Gardner Morelli

From: Gresham, Doug (ECY)
To: [Robin Proebsting](#)
Cc: [Sandercock, Maria \(ECY\)](#); [Bunten, Donna \(ECY\)](#)
Subject: RE: City of Mercer Island CAO Review
Date: Friday, February 15, 2019 2:24:08 PM
Attachments: [Ecology comments CAO - Public Hearing Draft 2-4-19.docx](#)

Robin,

Thanks for sending this draft version of the Mercer Island CAO. We have reviewed this and inserted some comments into the Word version. I look forward to talking with you next Tuesday at 3 pm.

Doug Gresham, Wetland Specialist
Washington State Department of Ecology
3190 - 160th Ave. SE
Bellevue, WA 98008
Phone: (425) 649-7199
Email: Doug.Gresham@ecy.wa.gov

From: Robin Proebsting [mailto:robin.proebsting@mercergov.org]
Sent: Thursday, February 07, 2019 2:11 PM
To: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Cc: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>; Evan Maxim <evan.maxim@mercergov.org>
Subject: RE: City of Mercer Island CAO Review

Greetings Donna,

Thank you for your email. The draft CAO is a rewrite of Mercer Island's current CAO, which was adopted in 2005. Since the changes to the code language were extensive, I did not create an underline/strikethrough document, figuring nearly everything would need to be modified or moved. I've attached the draft CAO in Word form. In case it is helpful to have as reference, I've also attached the current CAO.

Thank you also for letting me know an ETA if it ends up not being possible to grant expedited review.

Much appreciated,
Robin

Robin Proebsting, Senior Planner
City of Mercer Island Community Planning and Development Department
9611 SE 36th Street, Mercer Island, WA 98040
Direct: 206-275-7717
robin.proebsting@mercergov.org

From: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Sent: Thursday, February 7, 2019 9:24 AM

To: Robin Proebsting <robin.proebsting@mercergov.org>

Cc: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>

Subject: City of Mercer Island CAO Review

Hi, Robin,

I received your request for expedited review of your CAO from the Department of Commerce. I understand that you've already been working with Maria Sandercock on the SMP update. Doug Gresham and I will be reviewing the CAO. I'm not sure that our workload will allow us to comment in 14 days, as we are working on CAOs from other jurisdictions that have already been in our queue.

Does the CAO contain substantive changes from your last update? If you could send us a Word version of the CAO draft, preferably indicating these changes, it would speed things up for us and we can then determine whether or not we can get to it by February 20. If we have to deny the expedited review request, we'll give you our best estimate as to when we'll have comments done.

Donna J. Bunten

Critical Areas Ordinances Specialist

Shorelands and Environmental Assistance Program

Department of Ecology

PO Box 47600

Olympia, WA 98504

360-407-7172

- 1 Chapter 19.07
- 2 ENVIRONMENT
- 3 Sections:
- 4 19.07.010 Purpose.
- 5 19.07.020 Applicability
- 6 19.07.030 Relationship to Other Regulations
- 7 19.07.040 Critical Areas Rules
- 8 19.07.050 Fees
- 9 19.07.060 Critical Area Maps and Inventories
- 10 19.07.070 Disclosure and Notice on Title
- 11 19.07.080 General Provisions
- 12 19.07.090 Critical Area Reviews
- 13 19.07.100 Mitigation Sequencing
- 14 19.07.110 Critical Area Studies
- 15 19.07.120 Exemptions
- 16 19.07.130 Modifications
- 17 19.07.140 Reasonable Use Exception
- 18 19.07.150 Public Agency Exception
- 19 19.07.160 Frequently Flooded Areas
- 20 19.07.170 Geologically Hazardous Areas
- 21 19.07.180 Critical Aquifer Recharge Areas
- 22 19.07.190 Fish and Wildlife Habitat Conservation Areas
- 23 19.07.200 Watercourses
- 24 19.07.210 Wetlands

25 **19.07.010 Purpose**

26 These regulations are adopted for the following purposes:

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

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

9 **19.07.020 Applicability**

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

24 **19.07.030 Relationship to other regulations**

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

33 **19.07.040 Critical Areas Rules**

34 The city is authorized to adopt administrative rules and regulations as necessary and appropriate to

35 implement this chapter and to prepare and require the use of forms to facilitate its administration.

36 **19.07.050 Fees**

- 37 A. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation,
- 38 preparation, submission, and expense of all required reports, assessments, studies, plans,
- 39 reconnaissances, or other work prepared in support of or necessary to review the application.
- 40 B. The applicant shall be responsible for all applicable fees as established in the city's fee schedule,
- 41 consultant review fees, and peer review fees.

42 **19.07.060 Critical Area Maps and Inventories**

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

5 **19.07.070 Disclosure and notice on title**

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

24 **19.07.080 General provisions**

- 25 A. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,
 26 Performance Bonds, Insurance. An applicant for a permit within a critical area shall comply with the
 27 requirements of MICC 19.01.060, if required by the code official.
- 28 B. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection
 29 and occupancy of a project.
- 30 C. Maintenance and Monitoring.
 - 31 1. Maintenance and monitoring shall be required for at least five years from the date of project
 32 completion if the code official determines such condition is necessary to ensure mitigation
 33 success and critical area protection.
 - 34 2. A bond or assignment of funds pursuant to MICC 19.01.060(C) may be required to guarantee
 35 that approved mitigation plans will be undertaken and completed to the city’s satisfaction.
 - 36 3. When monitoring is required, site visits and reporting shall be required two times per year for
 37 each of the first two years and once every 12 months for the subsequent years of the
 38 monitoring period.
 - 39 4. Where monitoring reveals a significant difference from predicted impacts or a failure of
 40 protection measures, the applicant shall be responsible for appropriate corrective action, which
 41 may be subject to further monitoring.

- 1 D. Compliance with Mitigation Requirements. In cases where mitigation has been completed, but no
- 2 monitoring reports have been submitted to the city, the applicant shall submit as-built drawings and
- 3 yearly monitoring reports to the city until at least two consecutive annual reports document to the
- 4 code official's satisfaction that all performance standards from the approved mitigation plan have
- 5 been met.
- 6 E. Seasonal Limitations. Land clearing, grading, filling, and foundation work may be limited to only
- 7 certain times of year, pursuant to MICC 19.07.170(F)(2).
- 8 F. Suspension of Work. If the alteration does not meet city standards established by permit condition
- 9 or applicable codes, including controls for water quality, erosion and sedimentation, the city may
- 10 suspend further work on the site until such standards are met. Compliance with all requirements of
- 11 this chapter is required pursuant to MICC 19.15.210.
- 12 G. A critical area study completed over five years prior to application submittal date shall be field
- 13 verified by a qualified professional to determine whether the study is still accurate, and if not, the
- 14 study shall be completed according to the current best available science.

15 **19.07.090 Critical Area Reviews**

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

18 A. Critical Area Review 1

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

35 B. Critical Area Review 2

- 36 1. The purpose of a Critical Area Review 2 is to review:
 - 37 a. Critical area studies and mitigation plans in support of proposed buffer averaging and
 - 38 reduction of wetland and watercourse buffers.
 - 39 b. Critical area studies submitted when a use listed in MICC 19.07.180(B)(1) is proposed within
 - 40 a critical aquifer recharge area.
- 41 2. Review timing and sequence

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

24 **19.07.100 Mitigation sequencing**

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

- 30 A. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant
- 31 shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts.
- 32 However, avoidance shall not be construed to mean mandatory withdrawal or denial of the
- 33 development proposal or activity if the proposal or activity is an allowed, permitted, or conditional
- 34 in this title. In determining the extent to which the proposal should be redesigned to avoid the
- 35 impact, the code official may consider the purpose, effectiveness, engineering feasibility,
- 36 commercial availability of technology, best management practices, safety and cost of the proposal
- 37 and identified changes to the proposal. Development proposals should seek to avoid, minimize and
- 38 mitigate overall impacts based on the functions and values of all of the relevant critical areas and
- 39 based on the recommendations of a critical area study. If impacts cannot be avoided through
- 40 redesign, use of a setback deviation pursuant to MICC 19.06.110(C), or because of site conditions or
- 41 project requirements, the applicant shall then proceed with the sequence of steps in subsections (B)
- 42 through (E) of this section;

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

11 **19.07.110 Critical Area Study**

- 12 A. A critical area study shall be required when a development proposal will result in an alteration to
- 13 one or more critical areas or critical area buffers or when required by the code official to determine
- 14 the potential impact to a critical area.
- 15 B. The critical area study shall be in the form of a written report supported by graphic information
- 16 prepared by a qualified professional using guidance based on the best available science consistent
- 17 with the standards in chapter 365-195 WAC and shall contain the following items, as applicable to
- 18 adequately evaluate the proposal, proposed alterations, and mitigation:
 - 19 1. Disclosure of the presence of critical areas, including a delineation and type or category of
 - 20 critical area, on the development proposal site and any mapped or identifiable critical areas on-
 - 21 or off-site within the distance equal to the largest potential required buffer applicable to the
 - 22 development proposal area on the applicant's property;
 - 23 2. A topographic and boundary survey;
 - 24 3. A statement specifying the accuracy of the report and all assumptions made and relied upon;
 - 25 4. A description of the methodologies used to conduct the critical area study, including references;
 - 26 5. A scale map of the development proposal site;
 - 27 6. Photographic records of the site before the proposed alteration occurs;
 - 28 7. An assessment of the probable effects to critical areas and associated buffers, including impacts
 - 29 caused by the development proposal and associated alterations to the subject property and
 - 30 impacts to other properties and any critical areas or buffers located on them resulting from the
 - 31 development of the site and the proposed development;
 - 32 8. A description of mitigation sequencing implementation described in MICC 19.07.100 including
 - 33 steps taken to avoid and minimize critical areas impacts to the greatest extent feasible;
 - 34 9. Detailed studies, as required by this chapter, for individual critical area types in order to ensure
 - 35 critical area protection;
 - 36 10. Assessment of potential impacts that may occur on adjacent site, such as sedimentation or
 - 37 erosion, where applicable; and
 - 38 11. A post-design memorandum prepared by a qualified professional confirming that the proposed
 - 39 improvements comply with the qualified professional's design recommendations.
- 40 C. The critical area study requirement may be waived or modified if the applicant demonstrates to the
- 41 code official's satisfaction that the development proposal will not have an impact on the critical area
- 42 or its buffer in a manner contrary to the purposes and requirements of this chapter.

1 **19.07.120 Exemptions**

- 2 A. Activities listed as exempt in this section do not require review for compliance with this chapter,
 3 provided they are otherwise consistent with the provisions of other city, state, and federal laws and
 4 requirements.
- 5 B. An exemption does not give permission to degrade a critical area or ignore risk from natural
 6 hazards.
- 7 C. All temporary and permanent impacts to critical areas and buffers shall be mitigated.
- 8 D. The following activities are exempt from review and compliance with this chapter, provided, all
 9 activities shall use reasonable methods to avoid, and if avoidance is not possible, minimize impacts
 10 to critical areas and buffers to the greatest extent feasible consistent with MICC 19.07.100 –
 11 Mitigation Sequencing:
- 12 1. Minor expansion of existing right of way improvements, including public streets, bike lanes,
 13 shoulders, trails, sidewalks, and open space, following consultation with the code official;
 - 14 2. Minor expansion of public utility structures and conveyance systems and their associated
 15 facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above
 16 and below ground, following consultation with the code official; and
 - 17 3. Site Investigative Work and Studies. Site investigative work and studies necessary for
 18 development proposals, including geotechnical tests, water quality studies, wildlife studies,
 19 surveys, soil logs, and critical area investigations within areas accessed by foot; provided the
 20 following criteria are met:
 - 21 a. Impacts to critical areas and buffers shall be minimized; and
 - 22 b. Disturbed areas shall be restored with native vegetation as soon as the investigative work is
 23 complete.
 - 24 4. Watercourse restoration and pipe extensions installed by a public agency, provided the steps in
 25 19.07.100 – Mitigation Sequencing are addressed.
- 26 E. The following activities are exempt from city review and approval:
- 27 1. Repair and maintenance of existing right of way improvements. Repair, maintenance,
 28 reconstruction and replacement of existing right of way improvements, including public streets,
 29 bike lanes, shoulders, trails, sidewalks, and open space;
 - 30 2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and
 31 replacement of public utility structures and conveyance systems and their associated facilities,
 32 including but not limited to service lines, pipes, mains, poles, equipment and appurtenances,
 33 both above and below ground.
 - 34 3. Demolition. Removal of structures in watercourse and wetland buffers and geologically
 35 hazardous areas, provided:
 - 36 a. Site disturbance is limited to the existing access and building footprint;
 - 37 b. There is no site disturbance within or to wetlands or watercourses;
 - 38 c. All soils are stabilized and the area is revegetated with appropriate native vegetation; and
 - 39 d. Necessary building permits are obtained.
 - 40 4. Noxious weed removal. Removal of noxious weeds provided:
 - 41 a. All disturbed soils are stabilized and revegetated with appropriate native vegetation; and
 - 42 b. The area from which noxious weeds are removed is limited to 1,000 square feet.

Commented [BD(1)]: You might want to define what is a minor action in 1 and 2?

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

27 **19.07.130 Modifications**

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

- 32 A. Addition to or reconstruction of an existing legally-established structure or building within a critical
 33 area and/or buffer constructed on or before January 1, 2005 provided the following criteria are met:
 34 1. The seasonal limitations on land clearing, grading, filling, and foundation work described in
 35 MICC 19.07.170(F)(2) shall apply.
 36 2. Additions shall be allowed if all of the following criteria are met:
 37 a. The structure is enlarged not more than a cumulative total of 200 square feet larger than its
 38 footprint as of January 1, 2005;
 39 b. If the existing, legally-established structure is located over or within a wetland or
 40 watercourse, no further expansion within the wetland or watercourse is allowed;

- 1 c. If the existing legally established structure is located within a wetland or watercourse buffer,
- 2 the addition may be no closer to the wetland or watercourse than a distance equal to 75%
- 3 of the applicable standard **buffer**;
- 4 d. A critical area study approved by the city demonstrates that impacts have been avoided or
- 5 minimized and mitigated consistent with MICC 19.07.100 - Mitigation Sequencing;
- 6 e. If the modification or addition is proposed within a geologically hazardous area or
- 7 associated buffer, a qualified professional provides a statement of risk consistent with MICC
- 8 19.07.170(B)(3);

Commented [BD(2): We usually recommend that any expansion be limited to the upland side of the existing structure.

- 9 3. Reconstruction of legally established non-conforming structures shall meet the standards in
- 10 MICC 19.01.050. The code official may require a critical area study and mitigation plan
- 11 addressing temporary impacts to critical areas and buffers.

12 B. Restoration and enhancement activities involving site disturbance over 1,000 sq ft, provided the

13 following criteria are met:

- 14 1. Activities are limited to the removal of noxious weeds and planting of native and/or climate-
- 15 resilient species;
- 16 2. The entire area cleared of noxious weeds shall be revegetated with appropriate native and/or
- 17 climate-resilient vegetation;
- 18 3. Erosion control measures appropriate for the subject site shall be used; and
- 19 4. Removal of noxious weeds and other restoration work shall be restricted to work by hand tools,
- 20 including use of handheld gas or electric equipment.

21 C. Stormwater retrofit facilities installed pursuant to the city's NPDES Phase II **permit**.

Commented [BD(3): Will mitigation be required for any wetland impacts?

22 **19.07.140 Reasonable Use Exception**

- 23 A. If the application of this chapter will deny all reasonable use of the owner's property, then the
- 24 applicant may apply to the Community Planning and Development department for an exception
- 25 from the requirements of this chapter in accordance with the provisions for Type IV reviews in
- 26 chapter 19.15 MICC. The hearing examiner may approve the application for a reasonable use
- 27 exception only if the development proposal meets all of the following criteria:
- 28 1. The application of this chapter would deny all reasonable use of the property;
- 29 2. There is no other reasonable use with less impact on the critical area;
- 30 3. Any alteration to critical areas and associated buffers is the minimum necessary to allow for
- 31 reasonable use of the property;
- 32 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or
- 33 off the development proposal site and is consistent with the general purpose of this chapter and
- 34 the public interest; and
- 35 5. The inability of the applicant to derive reasonable use of the property is not the result of actions
- 36 by the current or prior property owner.
- 37 B. The hearing examiner may approve, approve with conditions, or deny the request based on the
- 38 proposal's ability to comply with all of the above criteria. The applicant has the burden of proof in
- 39 demonstrating that the above criteria are met.

40 **19.07.150 Public Agency Exception**

41 If the application of this chapter would prohibit a development proposal by a public agency, the agency

42 may apply for an exception pursuant to this section:

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

19 **19.07.160 Frequently Flooded Areas**

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

25 **19.07.170 Geologically Hazardous Areas**

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

Commented [BD(4): We recommend adding other criteria from Commerce’s CAO handbook:

- The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site
- The proposal is consistent with other applicable regulations and standards

- 1 2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur
 2 if the critical area study documents to the code official’s satisfaction that the proposed
 3 alteration:
 4 a. Will not adversely impact other critical areas;
 5 b. Will not adversely impact the subject property or adjacent properties;
 6 c. Will mitigate impacts to the geologically hazardous area consistent with best available
 7 science to the maximum extent reasonably possible such that the site is determined to be
 8 safe; and
 9 d. Include the landscaping of all disturbed areas outside of building footprints and installation
 10 of hardscape prior to final inspection.
- 11 3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if
 12 the conditions listed in subsection 2) are satisfied and the geotechnical professional provides a
 13 statement of risk matching one of the following:
 14 a. An evaluation of site-specific subsurface conditions demonstrates that the proposed
 15 development is not located in a landslide hazard area or seismic hazard area;
 16 b. The landslide hazard area or seismic hazard area will be modified or the development has
 17 been designed so that the risk to the site and adjacent property is eliminated or mitigated
 18 such that the site is determined to be safe;
 19 c. Construction practices are proposed for the alteration that would render the development
 20 as safe as if it were not located in a geologically hazardous area and do not adversely impact
 21 adjacent properties; or
 22 d. The development is so minor as not to pose a threat to the public health, safety and welfare.
- 23 C. *Development Standards – Landslide Hazard Areas:* Development is allowed within landslide hazard
 24 areas and associated buffers, when the following standards are met:
 25 1. A critical area study shall be required for any alteration of a landslide hazard area or associated
 26 buffer;
 27 2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest
 28 buffer shall be applied.
 29 a. Steep slopes. Buffer widths shall be equal to the height of a steep slope, but shall not more
 30 than 75 feet, and applied to the top and toe of slopes;
 31 b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions;
 32 and
 33 c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.
- 34 D. *Development Standards – Seismic Hazard Areas:* When development is proposed within a seismic
 35 hazard area:
 36 1. A 50-ft minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault
 37 rupture traces as identified by the United States Geological Survey or Washington Geological
 38 Survey map databases or by site investigations by licensed geologic professionals with
 39 specialized knowledge of fault trenching studies; or
 40 2. Mitigation sequencing shall be incorporated into the development proposal as recommended
 41 based on geotechnical analysis by a qualified professional to prevent increased risk of harm to
 42 life and/or property.

- 1 E. *Development Standards – Erosion Hazard Areas:*
- 2 1. All development proposals shall demonstrate compliance with MICC Chapter 15.09 – Storm
- 3 Water Management Plan.
- 4 2. No development or activity within an Erosion Hazard Area may create a net increase in
- 5 geological instability on- or off- site.
- 6 F. *Development Standards – Additional Criteria for Specific Activities:*
- 7 1. Trail building within geologically hazardous areas shall be subject to the following:
- 8 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
- 9 and
- 10 b. Trails shall be located to minimize the need for tree removal.
- 11 2. Land clearing, grading, filling, and foundation work within: 1) an erosion hazard area, when
- 12 2,000 sq ft or more of site disturbance is proposed, and/or 2) a landslide hazard area are not
- 13 permitted between October 1 and April 1.
- 14 a. The code official may grant a waiver to this seasonal development limitation if the applicant
- 15 provides a critical area study for the site concluding that:
- 16 (1) geotechnical slope stability concerns, erosion and sedimentation impacts can be
- 17 effectively controlled on-site consistent with adopted storm water standards; and
- 18 (2) the proposed construction work will not subject people or property, including areas off-
- 19 site, to an increased risk of associated impacts.
- 20 b. As a condition of the waiver, the code official may require erosion control measures,
- 21 restoration plans, an indemnification, a release agreement and/or performance bond.
- 22 c. If site activities result in erosion impacts or threaten water quality standards, the city may
- 23 suspend further work on the site and/or require remedial action.
- 24 d. Failure to comply with the conditions of an approved waiver shall subject the applicant to
- 25 code compliance pursuant to MICC Chapter 6.10 – Code Compliance, including but not
- 26 limited to civil penalties and permit suspension.
- 27 **19.07.180 Critical Aquifer Recharge Areas**
- 28 A. *Designation and Typing:* Critical aquifer recharge areas are designated as: 1) areas within the
- 29 wellhead protection area of the city’s emergency well(s); and 2) the sanitary control areas of Group
- 30 B public water systems.
- 31 B. *Development Standards:*
- 32 1. The following uses and activities are prohibited within critical aquifer recharge areas unless
- 33 studies are submitted pursuant to subsection (B)(2) of this section.
- 34 a. Automobile repair shops
- 35 b. Boat repair
- 36 c. Dry cleaners
- 37 d. Bus and truck terminals
- 38 e. Funeral services and taxidermy
- 39 f. Gas stations
- 40 g. Graveyards/cemeteries
- 41 h. Hardware and lumber stores
- 42 i. Landfills

- 1 j. Medical & veterinary offices
- 2 k. Office and retail buildings
- 3 l. Petroleum transmission lines
- 4 m. Photo processors
- 5 n. Sewer lines
- 6 o. Wastewater treatment facilities
- 7 p. Activities that would significantly reduce the recharge to aquifers currently or potentially
- 8 used as a potable water source; and
- 9 q. Activities that would significantly reduce the recharge to aquifers that are a source of
- 10 significant baseflow to a stream.
- 11 2. Approval of regulated activities within a critical aquifer recharge area shall require a critical area
- 12 study that satisfies the requirements of MICC 19.07.110 – Critical Area Studies demonstrating
- 13 that the potential impacts will be mitigated.

14 **19.07.190 Fish and Wildlife Habitat Conservation Areas**

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

- 16 1. Watercourses.
- 17 2. Priority Habitats and areas associated with Priority Species, as listed in the Washington State
- 18 Department of Fish and Wildlife’s Priority Habitats and Species list, as amended. Priority habitats
- 19 and species known to be identified and mapped by the Washington State Department of Fish
- 20 and Wildlife in the city include, but are not limited to, the following: band-tailed pigeon, pileated
- 21 woodpecker, cavity-nesting ducks, and biodiversity areas and corridors as mapped within
- 22 Mercedale Park (and hillside), Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast
- 23 53rd Open Space, Island Crest Park, and Pioneer Park Open Space.
- 24 3. Areas used by bald eagles for foraging, nesting, and roosting.

25 B. *General Review Requirements:*

- 26 1. Development proposals, unless specifically exempt pursuant to MICC 19.07.120, within Priority
- 27 Habitats or areas used by bald eagles for foraging, nesting and/or roosting shall submit a wildlife
- 28 habitat assessment in the form of a critical area study prepared by a qualified professional
- 29 including the following information:
- 30 a. Identification of state priority species, or state or federally listed endangered, threatened or
- 31 sensitive species that have a primary association with habitat on or in the vicinity of the site;
- 32 b. Extent of wildlife habitat areas, including acreage, and required buffers based on the
- 33 species;
- 34 c. Vegetative, faunal, and hydrologic characteristics;
- 35 d. Evaluation of direct and indirect potential impacts on habitat by the project, including
- 36 potential impacts to water quality; and
- 37 e. A discussion of any federal, state, or local special management recommendations, including
- 38 Washington State Department of Fish and Wildlife habitat management recommendations
- 39 that have been developed for the species or habitats.
- 40 2. Development proposals within areas used by bald eagles for foraging or within 660 feet of a bald
- 41 eagle nest as identified by a critical area study shall follow the requirements of the US Fish and
- 42 Wildlife’s *National Bald Eagle Management Guidelines* (2007 or as amended).

3. 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.

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. 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.
5. 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;

- 1 c. The proposed buffer width is not less than 75% of the standard buffer width at any point;
- 2 and
- 3 d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.
- 4 6. Buffer Reduction. Buffer width reduction shall be allowed by the code official provided the
- 5 following requirements are met:
- 6 a. The applicant has demonstrated that buffer averaging would not feasibly allow
- 7 development;
- 8 b. The applicant has demonstrated how impacts will be minimized and that avoidance has
- 9 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- 10 c. The applicant has demonstrated how all proposed impacts have been mitigated consistent
- 11 with subsection (E) of this section and will not result in a loss of ecological function;
- 12 d. The proposed buffer width is not less than 75% of the standard buffer width at any point;
- 13 and
- 14 e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- 15 7. Piped watercourse setbacks
- 16 a. The intent of applying setbacks to piped watercourses is to preserve the opportunity to
- 17 daylight watercourses that were previously piped, to provide incentives to property owners
- 18 to daylight and enhance previously piped watercourses, and to allow flexibility for
- 19 development where daylighting piped watercourses is demonstrated to be infeasible.
- 20 b. Setbacks shall be established 45 ft from the centerline of a piped watercourses.
- 21 c. Piped watercourses setback widths shall be reduced by the code official to a 15-foot buffer
- 22 when the portion of the piped watercourse on the applicant’s property is daylighted and
- 23 where the watercourse has been restored to an open channel, provided a restoration plan
- 24 demonstrates:
- 25 (1) The watercourse channel will be stable and is not expected to cause safety risks or
- 26 environmental damage; and
- 27 (2) No additional impact nor encumbrance by watercourse buffer or critical area setback is
- 28 added to properties neighboring the applicant(s) property.
- 29 d. Piped watercourse setback widths shall be reduced by the code official to: 1) 10 feet on lots
- 30 with a lot width of 50 feet or more, and 2) 5 feet on lots with a width of less than 50 feet,
- 31 when daylighting is determined by qualified professional(s) to result in one or more of the
- 32 following outcomes:
- 33 (1) Increased risk of landslide or other potential hazard that cannot be mitigated;
- 34 (2) Increased risk of environmental damage (e.g., erosion, diminished water quality) that
- 35 cannot be mitigated;
- 36 (3) The inability of a legally established existing lot to meet the vehicular access
- 37 requirements of this title; or
- 38 (4) The inability of a legally established existing lot to meet the building pad standards in
- 39 MICC 19.09.090.
- 40 8. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a
- 41 watercourse buffer. The distance may be reduced to five feet if:
- 42 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. 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 ~~identified and their boundaries delineated~~ ~~rated~~ in accordance with the approved federal delineation manual and applicable regional supplements described in WAC 173-22-035. ~~Wetlands shall be rated according to t 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, figures, and datasheets;

Commented [BD(5): We recommend clarifying the difference between delineations and ratings

- b. Discussion of landscape setting;
 - c. A functional analysis of the project demonstrating that there will be no loss of ecological function; and
 - d. 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	

Commented [GD(6): We recommend measuring the buffer width from the wetland boundary not the OHWM.

Commented [GD(7): Are there any wetlands within Mercer Island that have habitat scores higher than 7? If there are, then another column should be inserted for scores >7.

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.
5. 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 the total area is equal to the area required without averaging; and
 - d. The proposed buffer averaging is not proposed in conjunction with buffer reduction.
6. 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;

Commented [GD(8): We recommend that buffer averaging be allowed only when the wetland has significant differences in characteristics that affect its habitat functions.

Commented [GD(9): We do not believe buffer reduction is consistent with best available science such as *Update on Wetland Buffers: The State of the Science, Final Report*, October 2013. Washington State Department of Ecology Publication #13-06-11.

- 1 c. The applicant has demonstrated how all proposed impacts have been mitigated consistent
- 2 with subsection (E) of this section and will not result in a loss of ecological function;
- 3 d. The proposed buffer width is not less than 75% of the standard buffer width at any point;
- 4 and
- 5 e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- 6 7. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a
- 7 wetland buffer. The distance may be reduced to five feet if:
- 8 a. The wetland is:
- 9 (1) hydrologically isolated;
- 10 (2) Category III or IV;
- 11 (3) less than 1,000 square feet
- 12 (4) in an area that is not associated with riparian areas or buffers;
- 13 (5) not part of a wetland mosaic, and
- 14 (6) does not contain habitat for WDFW priority species.
- 15 b. A split-rail fence is installed along the perimeter of the buffer; and
- 16 c. Survey markers are installed along the perimeter of the buffer to establish its field location.
- 17 8. The following may be allowed in the critical area setback, provided no structures nor building
- 18 overhangs may be closer than five feet from the edge of a wetland buffer:
- 19 a. Landscaping;
- 20 b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- 21 c. Building overhangs if such overhangs do not extend more than 18 inches into the setback
- 22 area;
- 23 d. Hardscape and driveways; provided, that such improvements may be subject to
- 24 requirements in Chapter 15.09 MICC – Storm Water Master Program;
- 25 e. Split rail fences;
- 26 f. Trails, consistent with the requirements of this chapter; and
- 27 g. Subgrade components of foundations, provided that any temporary impacts to building
- 28 setbacks shall be restored to their previous condition or better.
- 29 D. *Development Standards – Additional Criteria for Specific Activities:*
- 30 1. Alterations to wetlands are allowed when the applicant has demonstrated how mitigation
- 31 sequencing has been applied pursuant to MICC 19.07.100 – Mitigation Sequencing and when
- 32 the applicant has demonstrated that the wetland is:
- 33 a. hydrologically isolated;
- 34 b. Category III or IV;
- 35 c. less than 1,000 square feet
- 36 d. in an area that is not associated with riparian areas or buffers;
- 37 e. not part of a wetland mosaic, and
- 38 f. does not contain habitat for WDFW priority species.
- 39 2. The construction of trails within wetland buffers is allowed, subject to the following
- 40 requirements:
- 41 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
- 42 b. Trails shall be located to minimize the need for tree removal; and

Commented [BD(10): The standard buffers the city is proposing are already the minimum width that can be justified by best available science. Allowing a 25% reduction from this standard buffer is not supported by the literature.

Commented [BD(11): This language is similar to our old small cities guidance. It's been replaced by the following from page 24
<https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>:

1. All isolated Category IV wetlands less than 4,000 square feet that:
 - a. Are not associated with riparian areas or their buffers
 - b. Are not associated with shorelines of the state or their associated buffers
 - c. Are not part of a wetland mosaic
 - d. Do not score 5 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology)
 - e. Do not contain a Priority Habitat or a Priority Area¹ for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter XX.XX.
2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

- 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:

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source 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
Toxic runoff	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants limiting use of pesticides within 150 ft of wetland Apply integrated pest management
Stormwater runoff	Retrofit stormwater detention and treatment for roads and existing adjacent development Prevent channelized flow from lawns that directly enters the buffer Use Low Impact Development techniques
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

Commented [BD(12): Ecology's buffer recommendations require the use of these minimizing measures when using a standard buffer. If the applicant chooses not to implement these mitigating measures, then the buffer width should be increased 33%. We recommend moving this table closer to the standard buffer table and clarifying the text description. You could also insert a table showing the larger buffer widths so there is an incentive to follow these mitigating measures. See example in Appendix A of *Wetland Guidance for CAO Updates, Western Washington Version* Washington State Department of Ecology Publication #16-06-001.

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

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

Commented [BD(13)]: This is not consistent with the replacement ratios in the *Wetland Mitigation in Washington State--Part 1: Agency Policies and Guidance*. Washington State Department of Ecology Publication #06-06-011a. See Table 1a where: Category I =12:1, Category II=8:1, Category III=4:1, and Category IV=2:1.

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

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

Commented [GD(14): We recommend clarifying this compensates for temporary construction impacts. We don't have any published guidance to support these replacement ratios but they seem reasonable.

- 4 d. Wetland Buffer Replacement Ratio. Altered wetland buffer area shall be replaced at a
 5 minimum ratio of one-to-one; provided, that the replacement ratio may be increased if
 6 needed to replace lost functions and values.
- 7 e. Increased Mitigation Ratio. The code official may increase the ratios under the following
 8 circumstances:
- 9 (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
 10 (2) A significant period of time will elapse between impact and replication of wetland
 11 functions; or
 12 (3) Proposed mitigation will result in a lower category wetland or reduced functions relative
 13 to the wetland being impacted; or
 14 (4) The impact was an unauthorized impact.
- 15 f. Decreased Mitigation Ratio. The code official may decrease these ratios under the following
 16 circumstances:
- 17 (1) Documentation by a qualified professional demonstrates that the proposed mitigation
 18 actions have a very high likelihood of success. This documentation should specifically
 19 identify how the proposed mitigation actions are similar to other known mitigation
 20 projects with similar site-specific conditions and circumstances that have been shown to
 21 be successful; or
 22 (2) Documentation by a qualified professional demonstrates that the proposed mitigation
 23 actions will provide functions and values that are significantly greater than the wetland
 24 being impacted; or
 25 (3) The proposed mitigation actions are conducted in advance of the impact and have been
 26 shown to be successful over the course of at least one full year.
- 27 6. Wetland Banking.
- 28 a. Credits from a wetland mitigation bank may be approved for use as compensation for
 29 unavoidable impacts to wetlands when:
- 30 (1) The criteria in subsection (E)(4) are demonstrated to have been met;
 31 (2) The bank is certified under chapter 173-700 WAC;
 32 (3) A qualified professional has demonstrated that the wetland mitigation bank provides
 33 appropriate compensation for the authorized impacts;
 34 (4) The proposed use of credits is consistent with the terms and conditions of the bank's
 35 certification; and
 36 (5) The compensatory mitigation agreement occurs in advance of authorized impacts.

- 1 b. Replacement ratios for projects using bank credits shall be consistent with replacement
- 2 ratios specified in the bank's certification.
- 3 c. Credits from a certified wetland mitigation bank may be used to compensate for impacts
- 4 located within the service area specified in the bank's certification. In some cases, bank
- 5 service areas may include portions of more than one adjacent drainage basin for specific
- 6 wetland functions.
- 7 7. Preference of Mitigation Actions. Compensatory wetland mitigation shall occur in the following
- 8 order of preference:
- 9 a. Restoration
- 10 b. Creation
- 11 c. Enhancement
- 12 d. Preservation
- 13 8. Site protection: As a condition of any permit or land use approval, the code official may require
- 14 permanent fencing and signage to be installed around the wetland or buffer. Fencing installed as
- 15 part of a proposed activity or as required in this subsection shall be designed to not interfere
- 16 with species migration, including fish runs, and shall be constructed in a manner that minimizes
- 17 impacts to the wetland and associated habitat.

DRAFT

From: Bunten, Donna (ECY)
To: [Robin Proebsting](#)
Subject: RE: City of Mercer Island CAO Review
Date: Wednesday, February 20, 2019 9:20:25 AM

Hi, Robin,

I understand you had a phone conversation with Doug Gresham yesterday about Ecology's comments, and that you are trying to get a draft ready for your March 6 planning commission meeting. Would you be able to add me to your distribution list for future notices and/or drafts?

Thanks!

Donna J. Bunten

*Critical Areas Ordinances Specialist
Shorelands and Environmental Assistance Program
Department of Ecology
PO Box 47600
Olympia, WA 98504
360-407-7172*

From: Robin Proebsting [mailto:robin.proebsting@mercergov.org]
Sent: Thursday, February 07, 2019 2:11 PM
To: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Cc: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>; Evan Maxim <evan.maxim@mercergov.org>
Subject: RE: City of Mercer Island CAO Review

Greetings Donna,

Thank you for your email. The draft CAO is a rewrite of Mercer Island's current CAO, which was adopted in 2005. Since the changes to the code language were extensive, I did not create an underline/strikethrough document, figuring nearly everything would need to be modified or moved. I've attached the draft CAO in Word form. In case it is helpful to have as reference, I've also attached the current CAO.

Thank you also for letting me know an ETA if it ends up not being possible to grant expedited review.

Much appreciated,
Robin

Robin Proebsting, Senior Planner
City of Mercer Island Community Planning and Development Department
9611 SE 36th Street, Mercer Island, WA 98040
Direct: 206-275-7717
robin.proebsting@mercergov.org

From: Bunten, Donna (ECY) <DBUN461@ECY.WA.GOV>
Sent: Thursday, February 7, 2019 9:24 AM
To: Robin Proebsting <robin.proebsting@mercergov.org>
Cc: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Subject: City of Mercer Island CAO Review

Hi, Robin,

I received your request for expedited review of your CAO from the Department of Commerce. I understand that you've already been working with Maria Sandercock on the SMP update. Doug Gresham and I will be reviewing the CAO. I'm not sure that our workload will allow us to comment in 14 days, as we are working on CAOs from other jurisdictions that have already been in our queue.

Does the CAO contain substantive changes from your last update? If you could send us a Word version of the CAO draft, preferably indicating these changes, it would speed things up for us and we can then determine whether or not we can get to it by February 20. If we have to deny the expedited review request, we'll give you our best estimate as to when we'll have comments done.

Donna J. Bunten

*Critical Areas Ordinances Specialist
Shorelands and Environmental Assistance Program
Department of Ecology
PO Box 47600
Olympia, WA 98504
360-407-7172*



Robin Proebsting, Senior Planner
Mercer Island Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040

Via email to: Robin.Proebsting@mercergov.org

Re: City of Mercer Island Critical Areas Code update

Dear Ms. Proebsting,

Please accept the following comments from the Snoqualmie Indian Tribe (Tribe) Environmental and Natural Resources Department regarding the City of Mercer Island's (City's) 2019 Critical Areas Code update. Thank you for the opportunity to provide comments.

In the course of the Tribe's review of various development proposals and permits with potential to affect resources within the Tribe's ceded lands, on more than one occasion we have encountered confusion on the City's behalf as to the correct classification of various streams and stream segments. If the City wishes to follow up, we can provide more details on the specific instances, but through our review and request for information, it is apparent that the City needs to update its information regarding the location and presence of fish habitat and potential fish habitat. We have requested from the City, but the City has not been able to produce (due to lost or missing documents and reports), all of the foundational data upon which it bases its current map of the location of watercourses and fish habitat within those watercourses, which is extremely concerning to the Tribe.

As the City undertakes this CAO/SMP update, we urge the City to refer to the Washington Department of Commerce (Commerce) Growth Management Critical Areas guidance (<https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/critical-areas/>). In the 2018 update to Commerce's Critical Areas Handbook, on page 12 of Chapter 2 there begins a relevant section regarding stream mapping and stream typing. From page 13 within that section: "Local governments should field-verify stream presence/locations and, if the stream is shown as non-fish bearing (i.e., Type Np or Ns), this should also be field-verified. WDFW habitat biologists are able to help with stream typing (this is the preferred way to verify stream types); alternatively, a qualified biologist can apply WDNR's current stream classification methodology."



We recommend that the City undertake, perhaps in partnership with ECY, a new effort to map streams and stream types within the City using the National Hydrography Dataset along with setting up a robust internal process for field verification; this is especially critical given that due to missing documentation, the City cannot fully demonstrate that its current stream typing maps and categorizations meet standards of Best Available Science.

In the course of this review and update, we suggest that City code should clarify that “fish habitat,” per WAC 222-16-030 “means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.” Additionally, we note that while special consideration for salmonids is appropriate per the GMA, we wish to emphasize that all “fish habitat” must be protected and that this is much more extensive than only salmonid habitat, and includes “potential habitat” as cited above.

Also, please note that the City’s current definition of “Fish Use or Used by Fish” at MICC 19.16 is in conflict with the definition of “fish habitat” per WAC 222-16-030. To comply with state law, the City should update its definitions of fish habitat to include habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat. Also notable is that “potential habitat likely to be used by fish which could be recovered by restoration or management” means that stream reaches which contain fish habitat per the state rules, but which are blocked to fish passage by manmade barriers downstream, regardless of who owns the barrier, must be considered fish habitat, since barrier removal and fish passage restoration and use of the potential habitat could be achieved at such locations.

Thank you for the opportunity to comment. We look forward to continuing to work with the City to update its inventory of where fish habitat exists in the City, and to update its definition of fish habitat to comply with state law. If you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Baerwalde", with a long horizontal line extending to the right.

Matt Baerwalde
Water Quality Manager
Snoqualmie Indian Tribe
425-363-2008

Commissioner exhibits submitted during meeting

TG-CB Recommendation for a future code cleanup work item:

For the next code clean up, modify the definitions of “alteration” and “development” to indicate alteration does not include structures and is a subset of development. This can be further refined as needed during the next code clean up.

TG-CB Amendment 1

Remove references to Code Official in the following locations:

19.07.070

CAO Draft Page 3 of 22, lines 11-12

- A. 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.

CAO Draft Page 3 of 22, lines 20-21

- 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

CAO Draft Page 3 of 22, line 27

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.~~

CAO Draft Page 4 of 22, lines 3-4

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.

19.07.110 Critical Area Study

CAO Draft Page 6 of 22, line 13

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.

CAO Draft Page 6 of 22, lines 40-41

B. ~~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.

19.07.130 Modifications

CAO Draft Page 8 of 22, lines 28-31

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~~ city may require measures to protect life and property or to protect environmental quality.

19.07.170 Geologically Hazardous Areas

CAO Draft Page 10 of 22, line 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:

19.07.200 Watercourses

CAO Draft Page 14 of 22, line 30

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

CAO Draft Page 15 of 22, line 4

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

CAO Draft Page 15 of 22, line 21

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:

CAO Draft Page 15 of 22, line 29

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:

19.07.210 Wetlands

CAO Draft Page 17 of 22, line 19

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

CAO Draft Page 17 of 22, line 28

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

TG-CB Amendment 2:

Modify the definition of Qualified Professional to read as follows:

A person with experience, training and competence in the pertinent discipline. A **qualified professional** must be licensed to practice in the State of Washington in the related **professional** field, if such field is licensed. If not licensed, a **qualified professional** must have a national certification in the pertinent field. If national certification in the field does not exist, the minimum qualification should be a bachelor's degree with 10 years of related **professional** work, or master's degree in the field and three years of related **professional** work. Minimum qualifications for specific fields of practice shall include but not be limited to the following:

A. Arborists must be certified arborists and have a valid ISA Tree Risk Assessment Qualification (TRAQ).

B. **Professionals** for geologic hazard areas must be licensed and endorsed in the State of Washington as a geotechnical engineer or engineering geologist.

C. **Professionals** for streams and other fish and wildlife habitat must have a degree in biology, environmental planning, natural science, stream ecology or related field and the minimum years of experience, listed above, related to the subject habitat or species.

D. **Professionals** for vegetation restoration planning where specific expertise for wetlands, streams or other fish and wildlife habitat is not required must have a degree in botany, environmental planning, natural science, ecology, landscape architecture or a related field and the minimum years of experience, listed above, with an emphasis on restoration ecology and vegetation management associated with critical areas and buffers. **Professionals** must demonstrate a minimum of three years of experience with the type of critical area or buffer for which the critical area report is being submitted.

E. **Professionals** for wetlands must be currently certified as a **professional wetland scientist (PWS)** with the Society of Wetland Scientists or meet the minimum education and years of experience, listed above, as a wetlands **professional**.

F. Minimum qualifications of **professionals** for other disciplines shall be determined by the Code Official consistent with the minimum qualifications defined above and specific to the discipline identified.

Amendment CB1, amending 2 code sections

MICC 19.10.050 – Tree removal – Not associated with a development proposal

Page 1 of 45

Suggested change:

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) if the proposal is located outside of wetlands, watercourses, landslide hazard areas and buffers associated with these critical areas.
- 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 qualified professional ~~certified arborist~~.
 - 4. Any pruning shall be done for tree health consistent with International Society of Arboriculture standards and completed by a qualified ~~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.

MICC 19.07.120 Exemptions

Page 8 of 22, line 4

Suggested change:

Replace the term “significant trees” with “large or exceptional trees”.

Amendments CB 2, amending 4 code sections:

MICC 19.07.120 Exemptions

Page 7 of 22, line 40

Suggested change:

Replace item 4 with:

4. Noxious weed removal and restoration of vegetation provided:
 - a. Erosion control measures are implemented on disturbed soils;
 - b. Groundcover voids that result from the removal of noxious weeds shall be revegetated with regional native plants; and
 - c. Removal of noxious weeds and other restoration work shall be undertaken with hand labor, including handheld mechanical tools, unless the King County Noxious Weed Control Board Best Management Practice specifically prescribe the use of riding mowers, light mechanical cultivating equipment, or herbicide or biological control methods; herbicide use is in accordance with federal and state law.

MICC 19.07.130 Modifications

Page 9 of 22, line 12

Delete B.

Note: There is a motion on the floor (Pirzio-Biroli) to add "and seasonal clearing limits" after the word "measures" on line 18.

MICC 19.16.010 Definitions

Page 42 of 45, line 14

Amend the definition of "clearing" as follows:

Clearing: The act of destroying or removing trees or groundcover from any undeveloped or partially developed lot, public lands, or public right-of-way. Clearing may only occur on these lots with approval by the City unless the clearing is exempt in accordance with MICC 19.07.120.E.4 Noxious weed removal and restoration of vegetation.

MICC 19.07.210 Wetlands

Page 19, table located between lines 9 and 10

Suggested change:

On the Toxic runoff line "Establish covenants requiring the use of integrated pest management techniques to limiting the use of pesticide within 150 feet of wetland

Delete "Apply integrated pest management"

Amendment CB 3

MICC 19.07.170.D

Page 11 of 22, lines 34 through 39

D. Development Standards – Seismic Hazard Areas: Development is allowed within a seismic hazard area and associated buffer, when the following standards are met:

- 1. Critical area study: A critical area study shall be required and shall include an evaluation by a qualified professional for seismic engineering and design, a determination of the magnitude of seismic settling that could occur during a seismic event, and a demonstration that the risk associated with the proposed alteration is within acceptable limits or that appropriate construction methods are provided to mitigate the risk of seismic settlement such that there will be no significant impact to life, health, safety, and property.**
- 2. Identification of Seismic Hazard Areas: Seismic hazard areas shall be identified by a qualified professional who references and interprets information in the U.S. Geological Survey Active Faults Database, performs on-site evaluations, or applies other techniques according to best available science.**
- 3. Buffer: A 50' minimum buffer shall be applied from Holocene rupture traces.**

Amendment CB 4

MICC 19.07.180 Critical aquifer recharge areas

Page 12, line 27

Suggested change:

Substitute the following for this section:

Critical aquifer recharge areas have a critical recharging effect on aquifers used for potable water if the aquifer is vulnerable to contamination that would affect the potability of the water. There is an emergency well on Mercer Island and there is one known Group B Public Water System. Aquifers that are a source of water for these sources are not vulnerable to contamination that would affect the potability of the water due to zoning restrictions. Baseflow to replenish streams and wetlands is promoted by compliance with stormwater regulations that require infiltration, when feasible, and water quality treatment prior to infiltration. There are not areas meeting the definition of critical aquifer recharge area on Mercer Island and, therefore specific provisions for protecting these areas are not provided in this chapter.

Amendment CB-5

MICC 19.16 Definitions

Page 42 of 45, line 22

Suggested change to definition of Fish and Wildlife Habitat Conservation Area:

Fish and wildlife habitat conservation areas: Species of local importance have a primary association with habitat in these areas.

MICC 19.07.190

Page 13, Line 14

Suggested substitution:

1. Fish and Wildlife Habitat Conservation Areas

a. Designation

i. Habitats

1. Watercourses and wetlands and their protective buffers;
2. Habitats where species of local importance have a primary association;
3. Biodiversity areas which consist of habitat that is valuable to fish or wildlife, mostly comprised of native vegetation, and protected in parks including Mercedale Park and Hillside, Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast 53rd Open Space, Island Crest Park, Pioneer Park Open Space, and Ellis Pond; and
4. Snags and logs which include those dead or dying trees of diameter at breast height of 20" and 6.5' in height (snags) or 12" in diameter and 20' long (logs) which, when preserved in biodiversity areas, provide for cavity excavation and use by wildlife.

ii. Species of local importance

1. The following species listed in the Washington Species of Concern List
 - a. Pileated woodpecker (*Dryocopus pileatus*)
 - b. Chinook salmon (*Oncorhynchus tshawytscha*)
 - c. Bull trout (*Salvelinus confluentus*)
2. The following species listed in the Washington Priority Habitats and Species List:
 - a. Band-tailed pigeon (*Columba fasciata*)
 - b. Cavity-nesting ducks (several listed species)
 - c. Coho salmon (*Oncorhynchus kisutch*)
3. Bald eagle (*Haliaeetus leucocephalus*)

iii. Additional species of local importance may be designated by the code official pursuant to the following criteria:

1. Local populations of native species are in danger of extirpation based on existing trends;
2. Local populations are likely to become endangered;

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3. Local populations of native species are vulnerable or declining;
 4. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;
 5. Protection by other county, state, or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species in the City; and
 6. Without protection, there is likelihood that the species will be diminished over the long term.
- b. General review requirements
- i. Critical Area Review 1 – A preliminary habitat assessment prepared by a qualified professional shall determine if the site is a critical area by evaluating the potential presence or absence of species of local importance or their habitats and shall contain the following at a minimum:
 1. Description of vegetation on the site; and
 2. Identification of species of local importance that have a primary association with habitat on the site.
 - ii. Critical Area Review 2 - If the preliminary habitat assessment determines that species of local importance have a primary association with habitat on the site, then a Wildlife Management Plan shall be prepared by a qualified professional and shall include:
 1. Assessment of potential project impacts to the use of the site by the species;
 2. A discussion of wildlife management recommendations including those cited by the Washington Department of Fish and Wildlife in the Priority Habitats and Species List, the National Bald Eagle Management Guidelines, or best available science;
 3. A discussion of possible avoidance, minimization, and mitigation of impacts as per 19.07.100 of this chapter.
- c. Development standards
- i. Fish habitat protection is presumed through compliance with MICC 19.13 Shoreline Master Program;
 - ii. Protection of watercourses and wetlands and their buffers is as provided in 19.07.200 and 19.07.210 of this chapter, respectively; and
 - iii. Protection of biodiversity areas and priority snags and logs is not regulated.
 - iv. The proposal shall implement measures to minimize and mitigate impacts if they are if they are unavoidable, and implement the wildlife management plan referenced by the Washington Department of Fish and Wildlife in the Priority Habitats and Species List, the National Bald Eagle Management Guidelines, or best available science for such species.
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