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# PLANNING COMMISSION

## Regular Meeting Agenda

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



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## Wednesday, January 16, 2019

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### Planning Commissioners

Carolyn Boatsman

Tiffin Goodman, Vice Chair

Daniel Hubbell, Chair

Jennifer Mechem

Lucia Pirzio-Biroli

Craig Reynolds

Ted Weinberg

### CALL TO ORDER & ROLL CALL

6:00 PM

### APPROVAL OF MINUTES

Minutes from December 5, 2018

### APPEARANCES

6:05 PM

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

- Speak audibly into the podium microphone
- State your name and address for the record
- Limit your comments to three minutes

*The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes*

### REGULAR BUSINESS

6:15 PM

#### Agenda Item #1: ZTR18-002 Critical Areas Code Amendment

Introduction of second draft of Critical Areas code and Shoreline Master Program.

### OTHER BUSINESS

Directors Report

Planned Absences for Future Meetings

Next Scheduled Meeting: January 30, 2018

### ADJOURN



# PLANNING COMMISSION MEETING MINUTES DEEMBER 5, 2018

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## CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:08pm in the City Hall Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

## ROLL CALL

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

Evan Maxim, Community Planning & Development Director, Kelsey Salvo, Administrative Assistant, Robin Proebsting, Senior Planner, Nicole Gaudette, Senior Planner, Andrew Leon, Planner, Lauren Anderson, Assistant Planner, and Bio Park, Assistant City Attorney, were present.

## MINUTES

The Commission reviewed the minutes from the August 29, 2018 meeting.

It was moved by Pirzio-Biroli; seconded by Weinberg to:

**Approve the November 7, 2018 minutes, as amended (clerical errors).**

Passed 6-0-1 (Reynolds abstained)

## APPEARANCES

There were no public appearances

## REGULAR BUSINESS

### Agenda Item #1: ZTR18-006 Additional Code Cleanup Amendment

Andrew Leon, Planner, gave a presentation on the review of draft code cleanup amendment language originally introduced to the Planning Commission on October 17, 2018.

Nicole Gaudette, Senior Planner, gave a presentation on a proposal to amend code to correct inadvertent change made by Ord. 18C-08, Procedural Code amendments.

The Commission gave a thumbs up to change the noticing for building permits to have a footnote stating that Major Single Family building permits (which are classified as type 3 permits) will not include a Notice of Decision.

The Commission discussed the code cleanup amendment.

The Commission took a break until 7:55pm.

**Agenda Item #2: ZTR18-002 Critical Areas Code Amendment**

Robin Proebsting, Senior Planner, gave a presentation on the introduction of the first draft of the Critical Areas Code amendment and Shoreline Master Program.

The Commission discussed the amendments and the process of the subcommittee.

**Agenda Item #3: Periodic Check-in on Planning Commission Processes**

Evan Maxim, Community Planning & Development Director, spoke to the Commission and opened a dialog between the Planning Commission and City staff to discuss logistics, reviews and deliberations.

**OTHER BUSINESS**

Evan Maxim, CPD Director, provided a director’s report on the adopted Comprehensive Plan amendments, the adopted rezone of the Tully’s site, on the changes that have occurred regarding the rules around the Planning & Design Commissions appointments and terms, and about how he would like to meet with individual commissioners in the new year.

**PLANNED ABSENCES**

There are no planned absences/

**NEXT MEETING**

The next Planning Commission meeting will be on January 16, 2019 at 6:00 pm at Mercer Island City Hall.

**ADJOURNMENT**

The meeting was adjourned at 10:07 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:** January 10, 2019  
**RE:** ZTR18-002 – January 10, 2019 code draft

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### **Summary**

This memo introduces a revised draft of the Critical Areas code and Shoreline Master Program. This January 10, 2019 draft is being provided to the Planning Commission in order to give commissioners the opportunity to confirm that previous direction to staff has been followed, and to provide staff with any additional comments before the public hearing draft is developed and released.

### **Background**

The January 10, 2019 draft of the code was developed through a multi-disciplinary review of the November 28, 2018 draft of the code by City staff and the subcommittee established by the Planning Commission. Components of this review included detailed review by the Planning Commission subcommittee over the course of two meetings and review by staff from the City's Planning and Building divisions, Public Works department, Parks department, and City Attorney's Office. The City's online public outreach portal, Let's Talk Mercer Island, has also been maintained as a venue for comments from the general public.

This multilayered review has provided the opportunity for staff to verify consistency between the critical areas code and Shoreline Master Program under development with the Planning Commission's policy direction. Review by other disciplines within the City also promotes consistency with the standards, codes and planning documents used by other City departments. This review revealed topics on which the critical areas code overlaps with key services provided by other departments, and therefore where the draft code should be given extra attention in order to ensure that provision of these services can continue smoothly. Examples of such topics included:

1. *Response to emergencies:* When emergencies affecting buildings or infrastructure occur (e.g. landslides, tree strikes etc.) within critical areas, it is important to both allow a quick response to keep life and property safe while still ensuring that critical areas are protected and that any long-term improvements on the site are consistent with the City's standards for environmental protection.

2. *Vegetation removal from geologically hazardous areas:* The draft code aims to allow enhancement activities like small-scale noxious weed removal in areas prone to erosion and landslides without an extensive review process while still providing enough review to prevent potential environmental harm due to the hazards in these areas.
3. *Demolition within critical areas and buffers:* A goal of the draft code was to make actions that would reduce impact to critical areas (such as removing existing improvements) easy to accomplish while at the same time requiring mitigation of potential temporary impacts during the process of removing structures.

In addition, following discussions with the Parks Department, staff has proposed an amendment to the Shoreline Master Program to allow for the construction of new public access piers. Although the current Shoreline Master Program allows for public access piers, there are no adopted design standards. Consequently, staff has drafted proposed dimensional standards for review; staff is also coordinating internally and with the Department of Ecology. Generally, the proposed standards are intended to allow for the construction of new public docks at current public access locations (e.g. Luther Burbank park). The proposed amendments are consistent with the Shoreline Master Program and the Shoreline Management Act and are intended to allow for ongoing public access to Lake Washington.

### **Next Steps**

Please review the attached draft code and capture any comments you may have. Staff suggest using the meeting on January 16<sup>th</sup> to discuss the standards within the draft code, focusing on confirming that the Planning Commission's policy direction has been implemented in the code standards. If there are suggested edits regarding grammar, syntax, or typographical errors, kindly email those to me in advance of, or shortly after, the meeting.

I can be reached at [robin.proebsting@mercergov.org](mailto:robin.proebsting@mercergov.org) or 206-275-7717.

### **Exhibits**

1. Draft Critical Areas code, SEPA rules, and Shoreline Master Program dated Jan. 10, 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 Setbacks
- 13 19.07.100 Critical Area Reviews and Critical Area Alterations
- 14 19.07.110 Mitigation Sequencing
- 15 19.07.120 Critical Area Study
- 16 19.07.130 Exemptions
- 17 19.07.140 Modifications
- 18 19.07.150 Reasonable Use Exception
- 19 19.07.160 Public Agency Exception
- 20 19.07.170 Frequently Flooded Areas
- 21 19.07.180 Geologically Hazardous Areas
- 22 19.07.190 Critical Aquifer Recharge Areas
- 23 19.07.200 Fish and Wildlife Habitat Conservation Areas
- 24 19.07.210 Watercourses
- 25 19.07.220 Wetlands

26 **19.07.010 Purpose**

27 These regulations are adopted for the following purposes:

- 28 A) To implement the goals and policies for the Growth Management Act Chapter 36.70A RCW;
- 29 B) To maintain the functions and values of critical areas and enhance the quality of habitat to support
- 30 the sustenance of native plants and animals;
- 31 C) To promote biodiversity within vegetate critical areas and buffers by encouraging planting with
- 32 mostly native and/or climate-resilient vegetation;
- 33 ~~C) —~~
- 34 ~~D) To support and improve wildlife habitat quality~~
- 35 ~~E)D) To eEstablish review criteria for land use actions-reviews that maintain and improve the~~
- 36 ~~ecological health of watercourses and Lake Washington;-~~
- 37 ~~E) ETo establish standards for new development that avoid increasing the risk of harm to people, and~~
- 38 ~~property, and public infrastructure from natural hazards;~~
- 39 ~~F) —~~
- 40 F) To protect the functions and value of wetlands and fish and wildlife habitat conservation areas,
- 41 which include watercourses and habitat for priority species and species of local importance, critical
- 42 areas-through the use of buffers;-

- 1 G) ~~Buffers are intended to protect the ecological function and value of wetlands, watercourses, and~~  
2 ~~fish and wildlife habitat conservation areas and~~ To increase the safety of development within and  
3 adjacent to geologically hazardous areas through the use of buffers;  
4 H) To require mitigation measures when unavoidable impacts to critical areas are proposed; ~~and~~  
5 I) To establish tools to ensure that protection and mitigation measures are applied and maintain  
6 ecological value and function consistent with the provisions of this chapter; ~~and~~  
7 J) To avoid impact to the critical areas where possible, and if avoidance is not possible, minimize  
8 impacts to critical areas and buffers to the greatest extent feasible, and mitigate any remaining  
9 impacts.

#### 10 **19.07.020 Applicability**

- 11 A) Except as specifically exempted by MICC 19.07.030, these regulations apply to land uses,  
12 development activity, and all structures and facilities ~~and~~ within the City of Mercer Island that  
13 contains any of the following:  
14 1) Wetlands and associated buffers;  
15 2) Fish and Wildlife Habitat Conservation Areas (including watercourses) and associated buffers;  
16 3) Geologically Hazardous Areas and associated buffers;  
17 4) Critical Aquifer Recharge Areas;  
18 5) Frequently Flooded Areas; and prescribed buffers for each of the above.  
19 ~~A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses, development~~  
20 ~~activity, and all structures and facilities within the City of Mercer Island, whether or not a permit or~~  
21 ~~authorization is required, that are within one or more of the critical area types identified above~~  
22 ~~and/or within the maximum buffer distance for each critical area type, even if the critical area is on~~  
23 ~~adjacent property.~~  
24 B) The city shall not approve any development proposal or otherwise issue any authorization to alter  
25 the condition of any land, water or vegetation or to construct or alter any structure or improvement  
26 without first assuring compliance with the requirements of this chapter, or determining that this  
27 chapter is not applicable to the development.  
28 C) Approval of a development proposal pursuant to the provisions of this chapter does not discharge  
29 the obligation of the applicant of the obligation to comply with the provisions of this chapter.

#### 30 **19.07.030 Relationship to other regulations**

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

#### 39 **19.07.040 Critical Areas Rules**

40 ~~Applicable departments within the city are~~ The city is authorized to adopt administrative rules and  
41 regulations as necessary and appropriate to implement this chapter and to prepare and require the use  
42 of forms to facilitate its administration.

1 **19.07.050 Fees**

- 2 A) Unless otherwise indicated in this title, the applicant shall be responsible for the initiation,  
3 preparation, submission, and expense of all required reports, assessments, studies, plans,  
4 reconnaissances, or other work prepared in support of or necessary to review the application.  
5 B) The applicant shall be responsible for all applicable fees as established in the cCity’s fee schedule,  
6 consultant review fees, and peer review fees.

7 **19.07.060 Critical Area Maps and Inventories**

8 Not all of the critical areas in the City of Sammamish/Mercer Island are fully mapped. The distribution of  
9 many critical areas in the City of Sammamish/Mercer Island is displayed in the cCity’s GIS database, as  
10 amended. Field verification and, if appropriate, evaluation and mapping by a qualified professional of  
11 the location of critical areas will be required to determine the location and type of critical area on a  
12 given site.

13 **19.07.070 Disclosure and notice on title**

- 14 A) The applicant shall disclose to the cCity the presence of critical areas on the development proposal  
15 site and any mapped or identifiable critical areas within the distance equal to the largest potential  
16 required buffer applicable to the development proposal ~~area on the on the development proposal~~  
17 site applicant’s property.  
18 B) The owner of any property containing critical areas or buffers on which a development proposal is  
19 submitted ~~or any property on which mitigation is established as a result of development~~, except a  
20 public right-of-way or the site of a permanent public facility, shall file a notice approved by the cCity  
21 with the records and elections division of King County. The required contents and form of the notice  
22 shall be determined by the ~~director~~ code official. The notice shall inform the public of the presence  
23 of critical areas, buffers or mitigation sites on the property, of the application of ~~this chapter~~ the  
24 city’s critical areas code to the property and that limitations on actions in or affecting such critical  
25 areas or buffers may exist. The notice shall run with the land in perpetuity.  
26 C) The applicant shall submit proof to the city that the notice has been recorded prior to approval of a  
27 development proposal for the property or, in the case of subdivisions, short subdivisions, and  
28 binding site plans, at or before recording of the final subdivision, short subdivision, or binding site  
29 plan.

30 **19.07.080 ~~Review and construction requirements~~ General provisions**

- 31 ~~A) Development Standards. The applicant shall comply with the general development standards set~~  
32 ~~forth in Chapter 19.09 MICC.~~  
33 ~~B)A) Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,~~  
34 ~~Performance Bonds, Insurance. An applicant for a permit within a critical area shall comply with the~~  
35 ~~requirements of MICC 19.01.060, if required by the code official.~~  
36 ~~C)B) Timing. All alterations or mitigation to critical areas shall be completed prior to the final~~  
37 ~~inspection and occupancy of a project.~~  
38 ~~D)C) Maintenance and Monitoring.~~  
39 1) Maintenance and monitoring may be required for up to five years from the date of project  
40 completion if the code official determines such condition is necessary to ensure mitigation  
41 success and critical area protection.



- 2) A bond or assignment of funds pursuant to MICC 19.01.060(C) may be required to guarantee that approved mitigation plans will be undertaken and completed to the city's satisfaction.
- 3) Where monitoring reveals a significant difference from predicted impacts or a failure of protection measures, the applicant shall be responsible for appropriate corrective action, which may be subject to further monitoring.

~~E)D)~~ Compliance with Mitigation Requirements. ~~When~~In cases where mitigation has been completed, but no monitoring reports have been submitted to the ~~c~~City, the applicant shall submit as-built drawings and yearly monitoring reports to the ~~c~~City until at least two consecutive reports document to the code official's satisfaction that all performance standards from the approved mitigation plan have been met.

E) Suspension of Work. If the alteration does not meet city standards established by permit condition or applicable codes, including controls for water quality, erosion and sedimentation, the city may suspend further work on the site until such standards are met. Compliance with all requirements of this chapter is required, pursuant to MICC 19.15.210.

F) A critical area study completed over five years ago shall be field verified by a qualified professional to determine whether the study is still accurate, and if not, the study shall be completed according to the current best available science.

#### 19.07.090 Critical Area Setbacks

A) ~~Unless otherwise provided,~~ Buildings and other structures shall be set back a minimum distance of 10 feet from the edges of a critical area watercourse or wetland buffer. The distance may be reduced to five feet if:

1) The watercourse is -Type Ns or the wetland is:

- a) hydrologically isolated;
- b) Category III or IV;
- c) less than 1,000 square feet
- d) in an area that is not associated with riparian areas or buffers;
- e) not part of a wetland mosaic, and
- f) does not contain habitat for WDFW priority species.

2) a split-rail fence is installed along the perimeter of the wetland or watercourse buffer; and

3) survey markers are installed along the perimeter of the wetland or watercourse buffer.

~~A)B)~~ The following may be allowed in the building setback area, provided no structures nor building overhangs may be closer than five feet from the edge of a wetland or watercourse buffer:

- 1) Landscaping;
- 2) Uncovered decks, less than ~~18~~ 30 inches above grade;
- 3) Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
- 4) ~~Non-structural h~~Hardscape and driveways; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; ~~and~~
- 5) Trails, consistent with the requirements of this chapter; and-
- ~~5)6)~~Subgrade components of foundations, provided that any temporary impacts to critical areas or buffers are mitigated.

#### 19.07.100 Critical Areas Reviews and Critical Area Alterations~~Buffer Modifications~~

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

3 A) Critical Area Review

4 1) The purpose of a Critical Area Review land use review is to review:

- 5 a) Activities listed as Critical Area Modifications in MICC 19.07.140;
- 6 b) Verify presence of a critical area; or
- 7 c) Verify the delineation or type of wetland or watercourse.

8 2) Review timing and sequence

- 9 a) If a building permit is required for the proposed scope of work associated with the Critical  
10 Area Review, then the review shall take place concurrently with the building permit review.
- 11 b) If no building permit is required for the proposed scope of work associated with the Critical  
12 Area Review, then the review shall take place according to the procedures required for a  
13 Type 1 land use review.

14 B) Critical Areas ~~Buffer Modification~~Alterations

15 1) The purpose of a Critical Areas Alteration land use review is to review activities proposed to take  
16 place within critical areas or associated buffer that are not exempt pursuant to MICC 19.07.130  
17 nor authorized through approval of a Critical Area Review.

18 2) Review timing and sequence

- 19 a) When development and/or activity within a wetland, watercourse, Fish and Wildlife Habitat  
20 Conservation Area or buffer associated with these critical area types is proposed, a Critical  
21 Areas Alteration is required to be reviewed and approved prior to construction  
22 authorization.
- 23 b) When development and/or activity is proposed on a site containing only geologically  
24 hazardous areas, an applicant has the option of either:
  - 25 (1) Applying for a Critical Areas Alteration in advance of construction permits; or
  - 26 (2) Requesting consolidation of the review of geologically hazardous areas together with  
27 construction permit review.
- 28 c) When development and/or activity is proposed on a site containing geologically hazard  
29 areas and one or more of the critical area types listed in subsection (B)(2)(a) or associated  
30 buffer of one of those critical areas, a Critical Areas Alteration reviewing all critical areas is  
31 required to be reviewed and approved prior to construction authorization.

32 C) Reasonable Use and Public Agency Exceptions

- 33 1) Reasonable Use Exceptions shall be reviewed using the criteria in MICC 19.07.150
- 34 2) Public Agency Exceptions shall be reviewed using the criteria in MICC 19.07.160

35 **19.07.110 Avoiding impacts to critical areasMitigation sequencing**

36 Except as otherwise provided in MICC 19.07, an applicant for a development proposal, activity, or  
37 ~~alteration-modification~~ shall document the consideration of and subsequently shall implement the  
38 following sequential measures, ~~which appear~~ listed below in order of preference, to avoid, minimize, and  
39 mitigate impacts to environmentally critical areas and associated buffers. Applicants shall document  
40 how each measure has been implemented before considering and implementing the next measure in  
41 the sequence:

- 1 A) Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant  
2 shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts.  
3 However, avoidance shall not be construed to mean mandatory withdrawal or denial of the  
4 development proposal or activity if the proposal or activity is an allowed, permitted, conditional, or  
5 special use in the SMC. In determining the extent to which the proposal should be redesigned to  
6 avoid the impact, the code official may consider the purpose, effectiveness, engineering feasibility,  
7 commercial availability of technology, best management practices, safety and cost of the proposal  
8 and identified modifications to the proposal. Development proposals should seek to avoid, minimize  
9 and mitigate overall impacts based on the functions and values of all of the relevant critical areas  
10 and based on the recommendations of a critical areas study. If impacts cannot be avoided through  
11 redesign, or because of site conditions or project requirements, the applicant shall then proceed  
12 with the sequence of steps in subsections (B) through (E) of this section;
- 13 B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by  
14 using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- 15 C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- 16 D) Reducing or eliminating the impact over time by preservation and maintenance operations during  
17 the life of the action;
- 18 E) Compensating for the impact by replacing, enhancing, or providing substitute resources or  
19 environments; and/or
- 20 F) Monitoring the impact and taking appropriate corrective measures to maintain the integrity of  
21 compensating measures.-

22 **19.07.120 Critical Area Study**

- 23 A) A critical areas study shall be required when a development proposal will result in an alteration to  
24 one or more critical areas or critical area buffers or when required by the code official to determine  
25 the potential impact to a critical area. The critical area study shall contain ~~An applicant for a~~  
26 ~~development proposal where impacts to or alteration of a critical area or modification or reduction~~  
27 ~~of a buffer associated with a critical area is proposed or may occur as a consequence of proposed~~  
28 ~~actions shall submit a critical areas study containing sufficient information, as determined by the~~  
29 ~~code official, to adequately evaluate the proposal, proposed alterations, and mitigation. and~~  
30 ~~probable impacts.~~
- 31 B) The critical areas study shall be in the form of a written report supported by graphic information in a  
32 format determined by the code official prepared by a qualified professional using guidance based on  
33 best available science per Chapter 36.70A RCW and shall contain the following, as determined to be  
34 applicable by the code official:
- 35 1) Disclosure of the presence of critical areas, including a delineation and type or category of  
36 critical area, on the development proposal site and any mapped or identifiable critical areas  
37 within the distance equal to the largest potential required buffer applicable to the development  
38 proposal area on the applicant's property;
  - 39 2) A statement specifying the accuracy of the report and all assumptions made and relied upon;
  - 40 3) A description of the methodologies used to conduct the critical areas study, including  
41 references;
  - 42 4) A scale map of the development proposal site;

- 5) Photographic records of the site before the proposed alteration occurs;
- 6) An assessment of the probable cumulative effects to critical areas, including impacts caused by the development proposal and associated alterations to the subject property and impacts to other properties and any critical areas or buffers located on them resulting from the development of the site and the proposed development
- 7) A description of mitigation sequencing implementation described in MICC 19.07.060 including steps taken to avoid and minimize critical areas impacts to the greatest extents feasible;
- 8) Detailed studies, as required by this chapter, for individual critical areas types or as otherwise deemed necessary for critical areas protection by the code official;
- 9) Assessment of potential impacts that may occur on adjacent site, such as sedimentation or erosion, where applicable; and
- 9)10) A post-design memorandum prepared by a qualified professional confirming that the proposed improvements comply with the qualified professional's design recommendations.

~~C) A wetland delineation completed over five years ago shall be field verified by a qualified professional to determine whether the delineation is still accurate or whether it needs to be redone based on existing conditions.~~

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

~~**All maps are deemed advisory with the exception of the flood insurance study for King County. If there is a conflict among the advisory maps, inventory and/or site specific features, the Code Official shall verify the actual presence or absence of the features defined in this title as critical areas.**~~

### **19.07.130 Exemptions**

A) Activities listed as exempt in this section do not require review for compliance with this chapter, provided they are otherwise consistent with the provisions of other city, state, and federal laws and requirements.

B) An exemption does not give permission to degrade a critical area or ignore risk from natural hazards.

C) All temporary and permanent impacts to critical areas and buffers shall be mitigated.

D) The following activities are exempt from review and compliance with this chapter, All exempt activities provided, all activities shall use reasonable methods to avoid, and if avoidance is not possible, minimize impacts to critical areas and buffers to the greatest extent feasible consistent with MICC 19.07.110 – Mitigation Sequencing:-

1) Minor expansion of existing right of way improvements, including public streets, bike lanes, shoulders, trails, sidewalks, and open space;

1)2) Minor expansion of utility structures and conveyance systems and their associated facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above and below ground.

3) Site Investigative Work and Studies – Site investigative work and studies necessary for development permits, including geotechnical tests, water quality studies, wildlife studies, and critical area investigations within areas accessed by foot; provided, that any disturbance of the critical area or its buffer shall be the minimum necessary to carry out the work or studies, work

1 must be done with hand tools, and the area must be restored with native vegetation after the  
2 investigative work is done. Site investigative work requiring mechanized equipment may be  
3 authorized under 19.07.040(B).

4 ~~A) An exemption does not give permission to degrade a critical area or ignore risk from natural~~  
5 ~~hazards.~~

6 E) All necessary temporary and permanent impacts to critical areas and buffers shall be mitigated  
7 consistent with mitigation sequencing. The following activities are exempt from city review and  
8 approval:-

- 9 1) Repair and maintenance of existing right of way improvements— Repair, maintenance,  
10 reconstruction and replacement of existing right of way improvements, including public streets,  
11 bike lanes, shoulders, trails, sidewalks, and open space;  
12 2) Repair and maintenance of existing utility facilities— Repair, maintenance, reconstruction and  
13 replacement of utility structures and conveyance systems and their associated facilities  
14 including service lines, pipes, mains, poles, equipment and appurtenances, both above and  
15 below ground.

16 ~~The following developments, activities, and associated uses shall be exempt from the requirements of~~  
17 ~~this chapter, provided that they are otherwise consistent with the provisions of other local, state, and~~  
18 ~~federal laws and requirements:~~

19 ~~2) Repair and maintenance of existing public streets right of way improvements— Repair,~~  
20 ~~maintenance, reconstruction and minor expansion of existing right of way improvements,~~  
21 ~~including public streets, including associated appurtenances, bike lanes, shoulders, trails, and~~  
22 ~~sidewalks, and open space;~~

23 —  
24 ~~3) Repair and maintenance of existing utility facilities— Repair, maintenance, reconstruction and~~  
25 ~~minor expansion of utility structures and conveyance systems and their associated facilities~~  
26 ~~including service lines, pipes, mains, poles, equipment and appurtenances, — both above and~~  
27 ~~below ground. Replacement, installation, or construction of new utility structures and~~  
28 ~~conveyance systems and their associated facilities within existing improved rights of way,~~  
29 ~~existing legally improved private roadways, utility corridors~~

30 —  
31 ~~3) Demolition – Removal of structures in critical area watercourse and wetland buffers and~~  
32 ~~geologically hazardous areas, provided;~~

- 33 ~~a) that disturbance to the area is limited to the existing access and building footprint;~~  
34 ~~b) there is no disturbance within or to wetlands or watercourses;~~  
35 ~~c) all soils are that all disturbed soils are stabilized and the area is revegetated with~~  
36 ~~appropriate native vegetation; and~~  
37 ~~d) necessary building permits are obtained.~~

38 4) Noxious weed removal—Removal of noxious weeds provided:

- 39 a) all disturbed soils are stabilized and appropriately revegetated with appropriate native  
40 vegetation; and  
41 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  
3 not:

4 a) Expand any further into critical areas or buffers; or

5 ~~b) Include the removal of significant trees.~~ Maintenance of Existing Landscaping –  
6 Landscape maintenance of legally established lawns and gardens; including mowing,  
7 pruning, weeding, and planting; provided, that such activities do not:  
8 Expand any further into critical areas or buffers;  
9 involve the application of herbicides, pesticides or other hazardous substances; or  
10 include the removal of significant trees.

11  
12 5)6) Survey and Boundary Markers. Construction or modification of survey and boundary markers.

13 6)7) A Temporary alterations in response to emergencies that threaten the public health, safety, and  
14 welfare or that pose an imminent risk of damage to private property, provided the following  
15 criteria are met:

16 a) The person undertaking such an action shall notify the code official in writing within one  
17 business day following commencement of the emergency activity;

18 b) Within ~~30-15~~ calendar days of the commencement of the emergency activity, the person  
19 undertaking such an action shall submit a complete application for all necessary approvals  
20 to authorize the alterations made and proposed in response to the emergency. The code  
21 official may allow additional time ~~beyond 30~~ up to 180 calendar days for submittal of a  
22 complete application if the applicant requests an extension for a specific period of time.  
23 The code official may grant additional time extensions beyond 180 calendar days when  
24 multiple property owners or litigation is involved and when requested by the applicant and  
25 demonstrates that this additional time is needed to obtain the information necessary to  
26 make the application complete;

27 c) The person undertaking such an action shall mitigate all impacts caused by the alteration  
28 and associated restoration activities, including intentional or unintentional alterations to all  
29 critical areas and buffers; and-

30 e)d) A qualified professional shall supervise all alterations made to critical areas.

31 7)8) Passive Outdoor Activities. When it can be demonstrated that there will be no undue adverse  
32 effect, the following activities may be allowed within critical areas and their buffers: educational  
33 activities, scientific research, and outdoor recreational activities, including but not limited to  
34 interpretive field trips, bird watching, and beach access including water recreation-related  
35 activities. ~~Any construction shall follow all applicable codes and standards.~~ This exemption does  
36 not authorize any construction.

37 **19.07.0140 Allowed Modificationsalterations**

38 Allowed alterations ~~Alterations~~Activities -of the following types may be authorized by the code official  
39 with approval of an application for a Critical Area ~~Alteration~~Review. The activities in this section are  
40 exempt from the standards in subsequent sections within this chapter, provided the code official may  
41 require measures to protect life and property or to protect environmental quality.

- 1 A) Modification of, addition to, or replacement of an existing legally established structure within a  
 2 critical area and/or buffer, constructed on or before *[the effective date of the ordinance codified in*  
 3 *this chapter—to be inserted once known]*, subject to the following:
- 4 1) The structure is enlarged not more than a cumulative total of 200 square feet larger than its  
 5 footprint as of the effective date of the ordinance codified in this chapter until its demolition;
  - 6 2) If the existing legally established structure is located over or within a wetland-~~or~~ watercourse or  
 7 associated buffer, no further expansion within the wetland-~~or~~ watercourse or associated buffer  
 8 is allowed; and
  - 9 3) A critical areas study approved by the City demonstrates that impacts have been avoided,  
 10 minimized, and mitigated consistent with MICC 19.07.060 and that the proposal does not  
 11 increase risk to life or property.
- 12 B) Use of any mechanized equipment for site investigative work, including surveys, soil logs,  
 13 percolation tests, and other related activities, where such activities do not require construction of  
 14 new access roads or excavation activities. In every case, impacts to critical areas and buffers shall be  
 15 minimized and disturbed areas shall be immediately restored.
- 16 C) Restoration and enhancement activities involving site disturbance over 1,000 sq ft, subject to the  
 17 following:
- 18 1) Activities are limited to the removal of noxious weeds and planting of native and/or climate  
 19 resilient species;
  - 20 2) The entire area cleared of ~~invasive plants,~~ noxious weeds shall be revegetated with appropriate  
 21 native and/or climate-resilient vegetation;
  - 22 3) Erosion control measures appropriate for the subject site shall be used; and
  - 23 4) Removal of ~~invasive plant species,~~ noxious weeds and other restoration work shall be restricted  
 24 to work by hand tools, including use of handheld gas or electric equipment.;
- 25 D) Watercourse restoration and piping installed by a public agency—avoid, minimize, mitigate  
 26 ~~D)—~~
- 27 1) ~~For public restoration, citizen volunteers doing restoration must be under the direct supervision~~  
 28 ~~of City staff; and~~
  - 29 2) ~~For private restoration, removed invasive plant material shall be taken off the site; and plants~~  
 30 ~~that appear on the King County Noxious Weed List must be handled and disposed of according~~  
 31 ~~to a noxious weed control plan appropriate to that species.~~
- 32 E) ~~Maintenance of existing piped watercourses and stormwater facilities and conveyances if the piped~~  
 33 ~~watercourse, facilities and conveyances do not meet the definition of a fish and wildlife habitat~~  
 34 ~~conservation area.~~

35 **19.07.150 Reasonable Use Exception**

- 36 A) ~~If the application of this chapter will prevent deny all any reasonable economic use of the owner's~~  
 37 ~~property, then the applicant may apply to the ~~planning department~~ Community Planning and~~  
 38 ~~Development department~~ for an exception from the requirements of this chapter; may be applied  
 39 for in accordance with the provisions for Type IV reviews of in Chapter MICC 19.15.
- 40 B) A) ~~The hearing examiner may be approve the application for a reasonable use exception only if the~~  
 41 ~~applicant has documented development proposal meets the following criteria:~~
- 42 1) The application of this chapter would deny all reasonable use of the property.

1 ~~2) No other reasonable use of the property has less impact on critical areas.~~

2 ~~3)2) Any alteration to critical areas and associated buffers is the minimum necessary to allow for~~  
3 ~~reasonable use of the property; and~~

4 ~~4)3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare; and~~

5 ~~5)4) The inability of the applicant to derive reasonable use of the property is not the result of actions~~  
6 ~~by the applicant after the effective date of this chapter.~~

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

#### 10 **19.07.160 Public Agency Exception**

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

13 A) The public agency shall apply to the ~~department code official~~ and shall make available to the code  
14 official the department other related project documents such as permit applications to other  
15 agencies, special studies, ~~and~~ SEPA documents or other materials as needed for the code official to  
16 issue a decision.

17 B) The code official may approve alterations to critical areas, buffers and critical area setbacks by an  
18 agency or utility not otherwise allowed by this chapter when all of the following criteria are met:

19 1) There is no other reasonable alternative to the activity or proposed development with less  
20 impact on the critical area. In determining what is a reasonable alternative to a proposed  
21 development, alteration or activity, the code official may consider the purpose, effectiveness,  
22 engineering feasibility, commercial availability of technology, best management practices, safety  
23 and cost of the alternative action or proposal. Reasonable alternatives are those that are  
24 capable of being carried out, taking into consideration the overall project purposes, needs, and  
25 objectives; and; and

26 ~~2) The activity or development proposal is designed to avoid, minimize, and mitigate the impact on~~  
27 ~~environmentally critical areas consistent with the avoidance and mitigation sequencing~~  
28 ~~requirements in this chapter; and, if applicable.;~~

29 ~~3)2) The proposed development or activity is of a linear nature and is on an existing corridor or~~  
30 ~~connects to public lands, trails, utility corridors, rights-of-way or other public infrastructure, or is~~  
31 ~~required for functional reasons such as gravity flow.~~

#### 32 **19.07.170 Frequently Flooded Areas**

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

#### 38 **19.07.180 Geologically Hazardous Areas**

39 A) Designation and Typing: Geologically hazardous areas are lands that are susceptible to erosion,  
40 landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not  
41 be suited for development activities because they may pose a threat to public health and safety.  
42 Areas susceptible to one or more of the following types of hazards shall be designated as geologic



1 ~~hazard~~geologically hazardous areas: landslide hazard areas; seismic hazard areas; erosion hazard  
2 areas.

3 B) General Review Requirements: Development within geologically hazardous areas or associated  
4 buffers is required to meet the standards in this section, unless the scope of work is exempt  
5 pursuant to MICC 19.07.130 - Exemptions or a Critical Area Review approval has been obtained  
6 pursuant to MICC 19.07.100(A).

7 1) When development within a mapped and/or field-verified landslide hazard area, or seismic  
8 hazard area or buffer associated with those hazards is proposed, the applicant must submit a  
9 geotechnical report/critical area study concluding that the proposal can effectively mitigate risks  
10 of the hazard. Consistent with MICC 19.07.100 the report study shall suggest/recommend  
11 appropriate design and development measures to mitigate such hazards. The code official may  
12 waive the requirement for a critical area study when he or she determines that the proposed  
13 development is minor in nature and will not increase the risk of landslide, erosion, or harm from  
14 seismic activity.

15 ~~1) The code official may waive the requirement for a geotechnical report when he or she~~  
16 ~~determines that the alteration is de minimis.~~

17 2) ~~Alterations~~Development of geologic hazard/landslide hazard areas and seismic hazard  
18 areas and associated buffers may occur if the critical area study applicant documents to the code official's  
19 satisfaction that such the proposed development proposal alterations:

- 20 a) Will not adversely impact other critical areas;
- 21 b) Will not adversely impact (e.g., landslides, earth movement, increase surface water flows,
- 22 etc.) the subject property or adjacent properties;
- 23 c) Will mitigate impacts to the ~~geologic hazard~~geologically hazardous area consistent with best
- 24 available science to the maximum extent reasonably possible such that the site is
- 25 determined to be safe; and
- 26 d) Include the landscaping of all disturbed areas outside of building footprints and installation
- 27 of all ~~impervious surfaces~~hardscape prior to final inspection.

28 3) ~~Alteration~~Development within geologic hazard/landslide hazard areas, seismic hazard  
29 areas and associated buffers may occur if the development conditions listed above in subsection 2) are  
30 satisfied and the geotechnical professional provides provides a statement of risk matching one  
31 of the following with supporting documentation indicating that one of the following conditions  
32 can be met:

- 33 a) An evaluation of site-specific subsurface conditions demonstrates that the proposed  
34 development is not located in a landslide hazard area or seismic hazard area;
- 35 ~~a)b)The geologic hazard/landslide hazard area or seismic hazard area area will be modified, or~~  
36 ~~the development has been designed so that the risk to the lot and adjacent property is~~  
37 ~~eliminated or mitigated such that the site is determined to be safe;~~
- 38 ~~b)c)Construction practices are proposed for the alteration that would render the development~~  
39 ~~and its impacts to surrounding properties as safe as if it were not located in a geologic~~  
40 ~~hazard/geologically hazardous area; or~~
- 41 ~~e)d)The development is so minor as not to pose a threat to the public health, safety and~~  
42 ~~welfare; or~~

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

3 ~~B)C) Development Standards – Landslide Hazard Areas: A critical areas study shall be required for any~~  
4 ~~alteration of a landslide hazard area buffer. Buffers shall be applied as follows:~~

5 1) ~~Steep slopes up to 50 feet high and shallow landslide hazard areas shall have 25-foot setbacks~~  
6 ~~buffers applied to the top and toe of the slope;~~

7 2) ~~Slopes over 50 feet high and for deep seated landslide hazard areas shall have 75-foot setbacks~~  
8 ~~buffers applied from the stop and toe of the slope;~~

9 3) ~~Shallow landslide hazard areas shall have 25-foot buffers applied in all directions;~~

10 2)4) ~~Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions;~~

11 3)5) ~~Buffers may be reduced or increased upon the recommendation of a qualified professional, but~~  
12 ~~not less than 10-foot setback buffer for shallow landslide hazard areas, and 50 feet for deep~~  
13 ~~landslide hazard areas.~~

14 ~~C)D) Development Standards – Seismic Hazard Areas: When development is proposed within a~~  
15 ~~seismic hazard area:~~

16 1) ~~A 50-ft minimum setback shall be applied from Holocene active fault rupture traces, as mapped~~  
17 ~~identified by the US Geological Survey active faults database of active faults or as amended; or~~

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

21 ~~D)E) Development Standards – Erosion Hazard Areas:~~

22 1) ~~All development proposals on sites containing erosion hazard areas shall include a temporary~~  
23 ~~erosion and sediment control plan.~~

24 2)1) ~~Best Management Practices shall be used to minimize potential erosion during~~  
25 ~~construction shall demonstrate compliance with MICC Chapter 15.09 – Storm Water~~  
26 ~~Management Plan.~~

27 3)2) ~~No development or activity within an Erosion Hazard Area may create a net increase in~~  
28 ~~geological instability on- or off- site.~~

29 ~~E)F) Development Standards – Additional Criteria for Specific Activities~~

30 1) ~~Trail building within geologically hazardous areas shall be, subject to the following:~~

31 a) ~~Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;~~  
32 ~~and~~

33 b) ~~Trails shall be located to minimize the need for tree removal.~~

34 2) ~~Land clearing, grading, filling, and foundation work within an geologic hazard area erosion~~  
35 ~~hazard area, when 2,000 sq ft or more of site disturbance is proposed, and/or within a landslide~~  
36 ~~hazard area are not permitted between October 1 and April 1.~~

37 a) ~~The code official may grant a waiver to this seasonal development limitation if the applicant~~  
38 ~~provides a geotechnical report critical area study of for the site and the proposed~~  
39 ~~construction activities that concluding that:~~

40 (1) ~~esgeotechnical slope stability concerns, erosion and sedimentation impacts can be~~  
41 ~~effectively controlled on-site consistent with adopted storm water standards; and~~

1           (2) the proposed construction work will not subject people or property, including areas off-  
2           site, to an increased risk of the hazard.

3           b) As a condition of the waiver, the code official may require erosion control measures,  
4           restoration plans, and/or a an indemnification/release agreement and/or performance  
5           bond. Peer review of the geotechnical report may be required in accordance with  
6           subsection C of this section.

7           c) If site activities result in erosion impacts or threaten water quality standards, the city may  
8           suspend further work on the site and/or require remedial action.

9           e)d) Failure to comply with the conditions of an approved waiver shall subject the applicant to  
10           code compliance pursuant to MICC Chapter 6.10 – Code Compliance, including but not  
11           limited to civil penalties and permit suspension.

### 12 **19.07.190 Critical Aquifer Recharge Areas**

13 A) Designation and Typing: Critical aquifer recharge areas are designated as: 1) areas within the  
14 wellhead protection area of the cCity's emergency well; and 2) the wellhead protectionsanitary  
15 control areas of Group B wells; and 3) areas that recharge the aquifers for other private wells.

16 B) Development Standards:

17 1) Land uses and activities proposed to take place within a critical aquifer recharge area that may  
18 cause contaminants to enter the aquifer are regulated activities and are prohibited unless  
19 studies are submitted pursuant to subsection (B)(2) of this section.

20 2) Approval of regulated activities within a critical aquifer recharge area shall require a critical  
21 areas study meeting the requirements of MICC 19.07.100 together with a hydrogeologic  
22 assessment demonstrating that the potential impacts will be mitigated.

### 23 **19.07.200 Fish and Wildlife Habitat Conservation Areas**

24 A) Designation and Typing: Fish and wildlife habitat conservation areas include:

25 1) ~~Watercourses. Watercourses shall be classified as follows pursuant to WAC 222-16-030 or as~~  
26 ~~amended:~~

27 2) ~~Type S, which include all waters, within their bankfull width, as inventoried as "shorelines of the~~  
28 ~~state" which are regulated by the City's Shoreline Master Program pursuant to chapter 90.58~~  
29 ~~RCW.~~

30 3) ~~Type F, which include segments of natural waters other than Type S Waters, which are within~~  
31 ~~the bankfull widths of defined channels and periodically inundated areas of their associated~~  
32 ~~wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater~~  
33 ~~at seasonal low water and which in any case contain fish habitat.~~

34 4) ~~Type Np, which include all segments of natural waters within the bankfull width of defined~~  
35 ~~channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that~~  
36 ~~do not go dry any time of a year of normal rainfall and include the intermittent dry portions of~~  
37 ~~the perennial channel below the uppermost point of perennial flow.~~

38 5) ~~Type Ns, which include all segments of natural waters within the bankfull width of the defined~~  
39 ~~channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in~~  
40 ~~which surface flow is not present for at least some portion of a year of normal rainfall and are~~  
41 ~~not located downstream from any stream reach that is a Type Np Water. Ns Waters must be~~  
42 ~~physically connected by an above-ground channel system to Type S, F, or Np Waters.~~

1 ~~6)1) Piped Watercourses, which are pipes or other conveyances through which surface waters, with~~  
2 ~~some regularity (annually in the rainy season), naturally and normally flow in draining from~~  
3 ~~higher to lower lands. This definition does not include irrigation and drainage ditches, grass-~~  
4 ~~lined swales, canals, storm water runoff devices, or other courses unless they are used by fish or~~  
5 ~~to convey waters that were naturally occurring prior to construction.~~

6 ~~7)2) Priority Habitats and areas associated with Priority Species, as listed in the Washington State~~  
7 ~~Department of Fish and Wildlife's Priority Habitats and Species list. Priority habitats and species~~  
8 ~~known to be identified and mapped by the Department of Fish and Wildlife in the cCity include,~~  
9 ~~but are not limited to, the following: band-tailed pigeon, pileated woodpecker, cavity-nesting~~  
10 ~~ducks, and biodiversity areas and corridors as mapped within Mercerdale Park (and hillside),~~  
11 ~~Upper Luther Burbank Park, Gallagher Hill Open Space, Southeast 53<sup>rd</sup> Open Space, Island Crest~~  
12 ~~Park, and Pioneer Park Open Space.~~

13 ~~8)3) Areas used by bald eagles for nesting and foraging.~~

14 B) General Review Requirements

15 1) Development proposals within Priority Habitats or areas used by bald eagles for nesting and  
16 foraging shall submit a wildlife habitat assessment in the form of a critical area study prepared  
17 by a qualified professional including the following information:

- 18 a) Identification of state priority species, or state or federally listed endangered, threatened or  
19 sensitive species that have a primary association with habitat on or in the vicinity of the  
20 property;
- 21 b) Extent of wildlife habitat areas, including acreage, and required buffers based on the  
22 species;
- 23 c) Vegetative, faunal, and hydrologic characteristics;
- 24 d) Evaluation of direct and indirect potential impacts on habitat by the project, including  
25 potential impacts to water quality; and
- 26 e) A discussion of any federal, state, or local special management recommendations, including  
27 Washington State Department of Fish and Wildlife habitat management recommendations  
28 that have been developed for the species or habitats.

29 2) Development proposals within areas used by bald eagles for foraging or within 660 feet of a bald  
30 eagle nest as identified by a critical area study shall follow the requirements of the US Fish and  
31 Wildlife's National Bald Eagle Management Guidelines (2007 or as amended).

32 3) [Review standards for core habitats]

33 C) —

34 **19.07.210 Watercourses**

35 A) Designation and Typing: Watercourses shall be classified by the following types, pursuant to WAC  
36 222-16-030 or as amended:

- 37 1) Type S;
- 38 2) Type F;
- 39 3) Type Np;
- 40 4) Type Ns; and
- 41 5) Piped.

42 A)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.###.030
- b) A critical areas ~~review alteration modification~~ is reviewed and approved for one of the allowed alterations in MICC 19.07.###.040

2) The proposed activity is permitted under subsection (D) Development Standards – Additional Criteria for Specific Activities, below

~~B)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:

<b>Watercourse Type</b>	<b>Standard Buffer</b>
F	120 feet
Np	60 feet
Ns	60 feet

- 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 ~~may~~ shall be allowed by the City code official if:
  - a) The applicant has demonstrated how impacts ~~have been avoided~~ will be minimized and that avoidance has been addressed consistent with MICC 19.07.060
  - b) The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section.
  - c) The proposed buffer width is not less than 25% of the standard buffer width at any point.
  - d) The proposed buffer averaging is not proposed in conjunction with buffer reduction.
- 6) Buffer Reduction. Buffer width reduction ~~may~~ shall be allowed by the City code official if:
  - a) The applicant has demonstrated that buffer averaging would not ~~feasibility~~ feasibly allow development.
  - b) The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed ~~have been avoided~~ consistent with MICC 19.07.060
  - c) The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section.
  - d) The proposed buffer width is not less than 25% of the standard buffer width at any point.
  - e) The proposed buffer averaging is not proposed in conjunction with buffer reduction.
- 7) Piped watercourse setbacks:
  - a) Setbacks shall be established from piped watercourses of a width equal to the standard buffer of the upstream portion of the watercourse. If the entirety of the watercourse is

1 piped up to the natural headwaters, then the setback shall be equal to the standard buffer  
2 for Type Ns watercourses.

3 b) Piped watercourse setback depths may be reduced by the code official based on site-specific  
4 analysis, including the following factors:

5 (1) The suitability of the piped watercourse segment for daylighting, including  
6 considerations of grade and soil type;

7 (2) The potential ecological function and value of the watercourse if daylighted; and

8 (3) The extent and nature of existing, legally-established development within the setback

9 c) Piped watercourses that are daylighted and restore the riparian channel may have their  
10 buffers reduced up to 15 feet in width.

11 ~~D~~C) Development Standards – Additional Criteria for Specific Activities

12 1) New watercourse crossings, such as bridges and culverts, may be permitted provided the  
13 standards in WAC 220-660-190 have been demonstrated to be met.

14 2) The construction of trails within watercourse buffers is allowed, subject to the following:

15 a) Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;

16 b) Trails shall be located to minimize the need for tree removal; and

17 c) Trails shall be located only in the outer 25 percent of the buffer area.

18 1) The trail width shall be added to the buffer width applied to the watercourse (e.g., if a trail is  
19 three feet wide, the watercourse buffer for the portion of the watercourse where the trail is  
20 located shall be expanded by three feet.)

21 D) Development Standards – Additional Criteria for Specific Activities

22 ~~E~~) Mitigation requirements

23 1) Mitigation measures shall achieve equivalent or greater functions including, but not limited to:

24 a) Habitat complexity, connectivity, and other biological functions;

25 b) Seasonal hydrological dynamics, water storage capacity and water quality; and

26 c) Geomorphic and habitat processes and functions

27 2)

28 **19.07.220 Wetlands**

29 A) Designation and Typing: Wetlands shall be rated using the Washington State Rating System for  
30 Western Washington: 2014 Update.

31 B) General Review Requirements

32 1) In addition to the critical area study requirements listed in MICC 19.07.100, critical area studies  
33 on wetlands shall also include: 1) Wetland rating forms and datasheets and 2) Discussion of  
34 landscape setting

35 2) Wetland delineations are valid for five years

36 3) Wetlands must be delineated and rated by a qualified professional.

37 C) Development Standards – Buffers

38 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	

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- 2) 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.
  - 3) Neither lot coverage nor hardscape shall be permitted within a wetland or wetland buffer except as specifically provided in this chapter.
  - 4) Buffer Averaging. Buffer width averaging ~~may~~ shall be allowed by the City code official if:
    - a) The applicant has demonstrated how impacts have been avoided consistent with MICC 19.07.060.
    - b) The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section.
    - c) The proposed buffer width is not less than 25% of the standard buffer width at any point
    - d) The proposed buffer averaging is not proposed in conjunction with buffer reduction.
  - 5) Buffer Reduction. Buffer width reduction ~~may~~ shall be allowed by the City code official if:
    - a) The applicant has demonstrated that buffer averaging would not feasibility allow
    - b) The applicant has demonstrated how impacts will be minimized and that have been avoided avoidance has been addressed consistent with MICC 19.07.060.
    - c) The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section.
    - d) The proposed buffer width is not less than 25% of the standard buffer width at any point
    - e) The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- D) Development Standards – Additional Criteria for Specific Activities:
- 1) Alterations to wetlands are allowed when the applicant has ~~demonstrated~~ demonstrated how mitigation sequencing has been applied pursuant to MICC 19.07.060 and ~~provided the applicant demonstrates when the applicant has demonstrated that the wetland is:~~
    - a) hydrologically isolated;
    - b) Category III or IV;
    - c) less than 1,000 square feet
    - d) in an area that is not associated with riparian areas or buffers;
    - e) not part of a wetland mosaic, and
    - f) does not contain habitat for WDFW priority species.
  - 2) The construction of trails within ~~watercourse wetland~~ 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.

- 1 d) The trail width shall be added to the buffer width applied to the wetland (e.g., if a trail is  
 2 three feet wide, the wetland buffer for the portion of the wetland where the trail is located  
 3 shall be expanded by three feet.)  
 4 3) Development proposals shall incorporate the following measures, where feasible and as  
 5 applicable:

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• 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 outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Intensity Development techniques (per PSAT publication on LID techniques)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
Disruption of corridors or connections	<ul style="list-style-type: none"> <li>• Maintain connections to offsite areas that are undisturbed</li> <li>• Restore corridors or connections to offsite habitats by replanting</li> </ul>

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 7 E) Mitigation Requirements

- 8 1) Mitigation Ratios:  
 9 a) Buffer mitigation shall provide mitigation area  
 10 b) Buffer mitigation should be provided at least at a 1:1 ratio.  
 11 2) Preference of Mitigation Actions. Compensatory wetland mitigation shall occur in the following  
 12 order of preference:



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- a) Restoration
    - (1) Re-establishment
    - (2) Rehabilitation
  - b) Creation
  - c) Enhancement
  - d) Preservation
  - e) 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. 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 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009).
  - f) Fee-in-lieu
- 3) Site protection: As a condition of any permit or land use approval, the code official may require permanent fencing to be installed around the wetland or buffer. Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

1 19.07.### Critical Areas Monitoring

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~~19.07.11013~~ Shoreline master program. 

19.13.010A Authority and Purpose.

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

1 4)5)Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to  
2 chapter 80.50 RCW.

3 19.13.###B-.020 General Regulations.

4 A) ~~1-~~Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and  
5 uses and structures 25 feet landward from the OHWM, which were legally created may be  
6 maintained, repaired, renovated, remodeled and completely replaced to the extent that  
7 nonconformance with the standards and regulations of this section is not increased.

8 B) Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater  
9 structures and structures upland 25 feet from the OHWM are permitted; provided, that the  
10 expanded portion of the structure is constructed in compliance with this section and all other  
11 standards and provisions of the Mercer Island development regulations, including this chapter.

12 ~~B)C) 2-~~No Net Loss Standard and Mitigation Sequencing. No development shall be approved unless  
13 the applicant demonstrates to the code official's satisfaction that the shoreline development will  
14 not create a net loss of ecological function in the shorelands.

15 1) ~~a-~~Standards Presumed to Meet No Net Loss. When all individual development standards that  
16 apply to a development project do not explicitly require a determination of no net loss and the  
17 project conforms with all such standards, there is a rebuttable presumption that the project  
18 does not create a net loss of ecological function to the shorelands.

19 2) ~~b-~~No Net Loss Plan. Whenever an applicant seeks a variance or conditional use permit or an  
20 applicable development standard explicitly requires a determination of no net loss of ecological  
21 function, the applicant shall provide the city with a plan that demonstrates the proposed project  
22 will not create a net loss in ecological function to the shorelands. The plan shall accomplish no  
23 net loss of ecological function by avoiding adverse ecological impacts that are not reasonably  
24 necessary to complete the project, minimizing adverse ecological impacts that are reasonably  
25 necessary to complete the project, and mitigating or offsetting any adverse impacts to  
26 ecological functions or ecosystem-wide processes caused by the project. The code official may  
27 require the plan to include reports from qualified professionals with expertise in ecological  
28 function. The plan's compliance with the no net loss requirement may be considered through  
29 the SEPA process.

30 a) ~~i-~~Off-Site Mitigation Permitted. While on-site mitigation is preferred, off-site mitigation may  
31 be permitted at the discretion of the code official.

32 b) ~~ii-~~Demonstration of No Net Loss Supported by a Qualified Professional. The code official  
33 may require any applicant to provide reports by qualified professionals that demonstrate to  
34 the code official's satisfaction that the applicant's proposed plan avoids a net loss in  
35 ecological function.

36 ~~C) 3- Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater~~  
37 ~~structures and structures upland 25 feet from the OHWM are permitted; provided, that the~~  
38 ~~expanded structure is constructed in compliance with this section and all other standards and~~  
39 ~~provisions of the Mercer Island development regulations.~~

40 ~~D) 4-~~Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM  
41 moves further landward as a result of any action required by this section, or in accordance with  
42 permits involving a shoreline habitat and nature systems enhancement approved by the city, or a  
43 state or federal agency, the shoreline setback shall be measured from the location of the OHWM  
44 that existed immediately prior to the action or enhancement project.

- 1 E) The development of two or more dwelling units on a lot abutting the OHWM should provide joint  
2 use or community dock facilities, when feasible, rather than allow individual docks for each lot.
- 3 F) New development should be located and designed to avoid the need for future shoreline  
4 stabilization to the extent feasible. This future shoreline stabilization standard does not apply to  
5 stabilization that occurs pursuant to subsection (B)(1) of this section. New structural stabilization  
6 measures in support of new non-water-dependent development, including single-family residences,  
7 shall only be allowed when all of the conditions below apply:
- 8 1) The erosion is not being caused by upland conditions, such as the loss of vegetation and  
9 drainage.
- 10 2) Nonstructural measures, such as placing the development further from the shoreline, planting  
11 vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- 12 3) The need to protect primary structures from damage due to erosion is demonstrated through a  
13 geotechnical report, in compliance with subsection (B)(7) of this section. The damage must be  
14 caused by natural processes, such as currents and waves.
- 15 4) The erosion control structure will not result in a net loss of shoreline ecological functions.

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

- 24 A) ~~1~~-Urban Park Environment. This environment consists of shoreland areas designated for public  
25 access and active and passive public recreation. The areas include, but are not limited to, parks,  
26 street ends, public utilities and other publicly owned rights-of-way. The uses located in this  
27 environment should be water-dependent and designed with no net loss to the ecological functions  
28 of the shorelands. Restoration of ecological functions is planned for these areas and is strongly  
29 encouraged. The preferred and priority use in the urban park environment is public access to, and  
30 enjoyment of, Lake Washington.
- 31 B) ~~2~~-Urban Residential Environment. The purpose of the urban residential environment is to provide  
32 for residential and recreational utilization of the shorelands, compatible with the existing residential  
33 character in terms of bulk, scale, type of development and no net loss of ecological functions of the  
34 shorelands. The preferred and priority use in the urban residential environment is single-family  
35 residential use.

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

KEY:

CE: Permitted via shoreline categorically exempt

P: Permitted use

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

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

SHORELAND USE LANDWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Places of worship	P-1	NP
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

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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 <del>Impervious Surface</del> 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.		



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

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

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

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

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- 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.

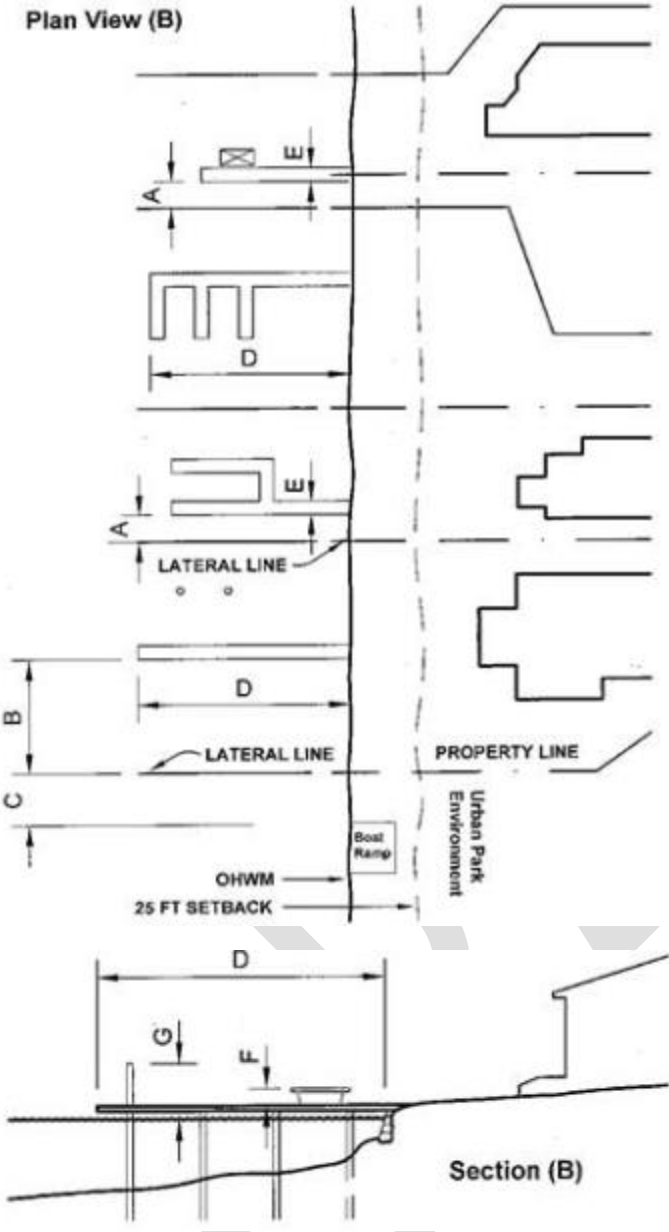
D) ~~4-~~Standards Waterward of the OHWM. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots. Only one noncommercial, residential moorage facility per upland residential waterfront lot authorized. The standards in Table D shall apply to development located waterward 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 <del>moorage facilities</del> <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"> <li>1) Water depth is 4.85 feet or more, as measured from the OHWM; or</li> <li>2) A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements; or</li> <li>3) A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5); or</li> <li>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.</li> </ol> <p>Moorage facility width shall not include pilings, boat ramps and <del>lift stations</del><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 <del>boatlifts</del> <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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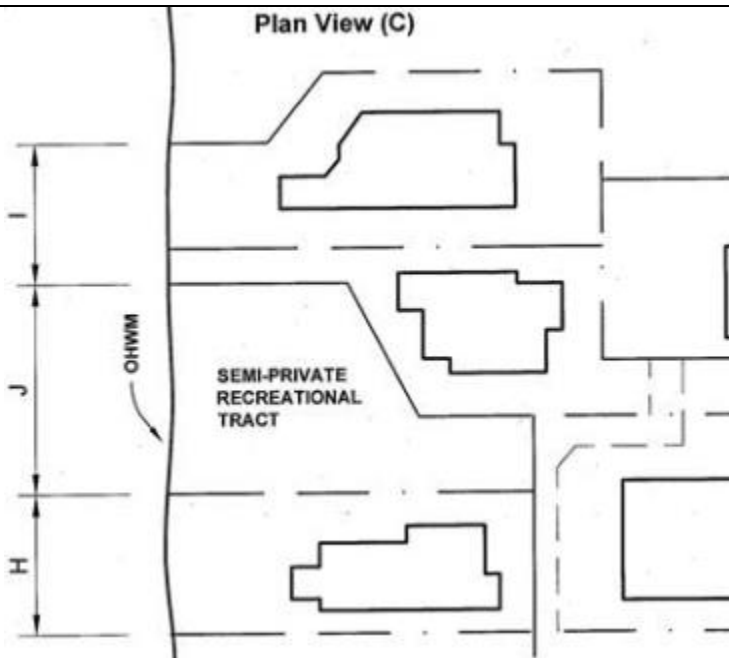
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Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM (Continued)

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>
Covered Moorage	<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).



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Table E. Dock Width Mitigation Options

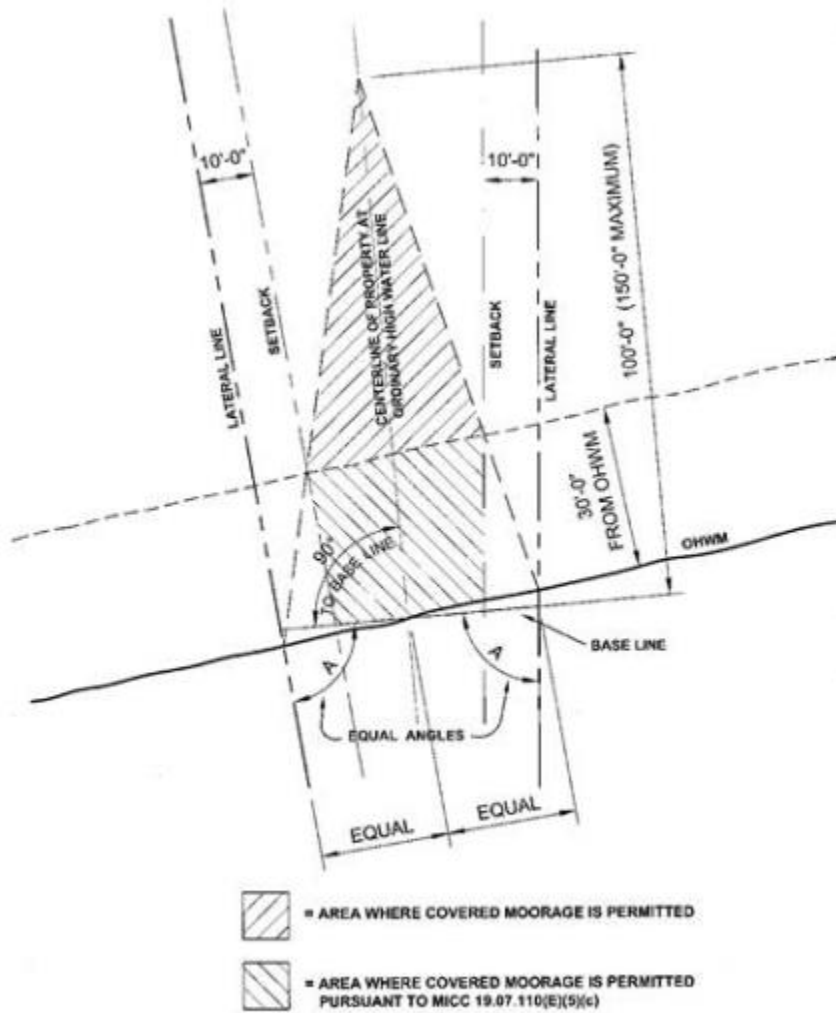
Option A	Option B	Option C
Includes at Least One of the Following:	Includes at Least Two of the Following:	Includes at Least Three of the Following:
1. Complete removal of existing bulkhead with shoreline restoration	1. Removal of 12 feet or 30% (lineal), whichever is greater, of existing bulkhead and 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.

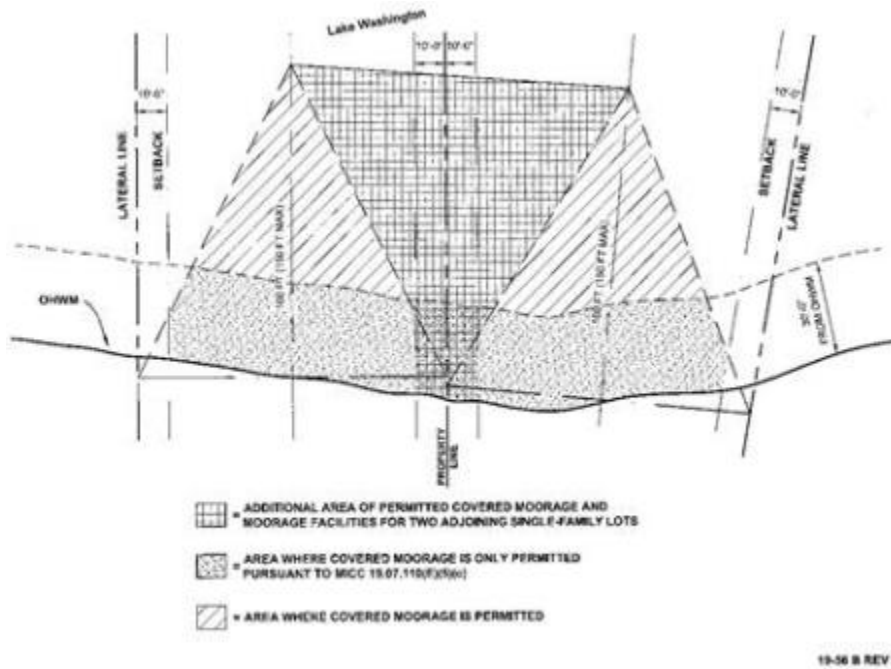
10 Figure A: Area of Permitted Covered Moorage, Individual Lots



11 19-56 A rev. 5

- 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:
- a) ~~i~~-Demonstrates to the code official's satisfaction that proposed project will not create a net loss in ecological function of the shorelands; and
  - b) ~~ii~~-Provides the city with documentation of approval of the moorage facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

3

4 F) ~~6~~-Moorage Facilities. All permits for new and expanded moorage facility, other than public access piers or boardwalks, shall meet the following standards unless otherwise exempted. Moorage facilities have the option of meeting either the development standards prescribed in subsections ~~(E)(6)(a)(F)(1)~~ or ~~(2b)~~ of this section, or the "alternative development standards" in subsection ~~(E)(6)(cF)(3)~~ of this section.

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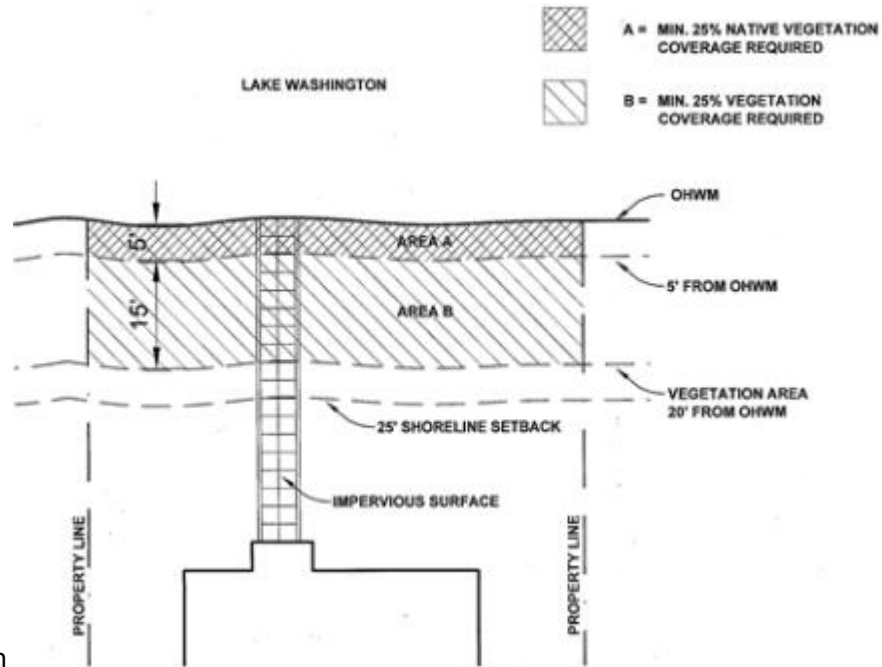
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- 1) ~~a~~-Development Standards for New and Expanded Moorage Facilities. A proposed moorage facility shall be presumed to not create a net loss of ecological functions pursuant to subsection (B)(2) of this section if:
- a) ~~i~~-The surface coverage area of the moorage facility is:
    - (1) ~~(A)~~-Four hundred eighty square feet or less for a single property owner;
    - (2) ~~(B)~~-Seven hundred square feet or less for two residential property owners (residential);
    - or
    - (3) ~~(C)~~-One thousand square feet or less for three or more residential property owners;
  - b) ~~ii~~-Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;
  - c) ~~iii~~-Vegetation. The code official approves a vegetation plan that conforms to the following:

Vegetation must be planted as provided in Figure C and as follows: Within the 25-foot shoreline setback, a 20-foot vegetation area shall be established, measured landward from the OHWM. Twenty-five percent of the area shall contain vegetation coverage. The five feet nearest the 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)(BF)(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) ~~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)J) 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;



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

19.14.###.035 K Environmental Checklist.

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

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

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

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

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

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

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

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

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

a. Follow submission of a permit application and environmental checklist for a nonexempt proposal for 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 Chapter 19.15

29 [Change references to "Critical Areas Determination" to "Critical Areas Review"]

30 19.15.030 Table A

31 Type II [...] Critical areas alteration

32 Type III [...] Critical areas review, Public Agency Exception

33 Chapter 19.16



1 19.15.180 Additional procedures for shoreline review.

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

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

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

15 D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving,  
16 approving with conditions, or denying a shoreline conditional use permit or shoreline variance is  
17 rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable  
18 local, state, or federal laws. The city shall send the shoreline permit and documentation of final local  
19 decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all  
20 other applicable local, state, or federal agencies. The decision shall be sent to the Department of  
21 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 Alteration: An approval allowing reduction or averaging of a wetland or watercourse  
15 buffer, or alteration of a geologically hazardous area.

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

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

26 [...] Noxious weed: Any plant which when established is highly destructive, competitive, or difficult to  
27 control by cultural or chemical practices (see Chapter 5.10 RCW). The state noxious weed list in Chapter  
28 16-750 WAC, as compiled by the State Noxious Weed Control Board, together with the King County  
29 Noxious Weed and Weeds of Concern lists, is the officially adopted list of noxious weeds for the city.

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

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

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

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

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

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

14 Streams Watercourses shall be classified according to the following criteria types:

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

17 B) Type F, which include segments of natural waters other than Type S Waters, which are within the  
18 bankfull widths of defined channels and periodically inundated areas of their associated wetlands,  
19 or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low  
20 water and which in any case contain fish habitat.

21 C) Type Np, which include all segments of natural waters within the bankfull width of defined channels  
22 that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry  
23 any time of a year of normal rainfall and include the intermittent dry portions of the perennial  
24 channel below the uppermost point of perennial flow.

25 D) Type Ns, which include all segments of natural waters within the bankfull width of the defined  
26 channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which  
27 surface flow is not present for at least some portion of a year of normal rainfall and are not located  
28 downstream from any stream reach that is a Type Np Water. Ns Waters must be physically  
29 connected by an above-ground channel system to Type S, F, or Np Waters.

30 E) Piped Watercourses, which are pipes or other conveyances through which surface waters, with  
31 some regularity (annually in the rainy season), naturally and normally flow in draining from higher to  
32 lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales,  
33 canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters  
34 that were naturally occurring prior to construction.

35  
36 A: Type S...

37 B: Type F:...

38 C: Type Np...

39 D: Type Ns...

1 Wetlands: Areas that are inundated or saturated by surface water or ground water at a frequency and  
2 duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation  
3 typically adapted for life in saturated soil conditions. Wetlands do not include artificial wetlands, such as  
4 irrigation and drainage ditches, grass-lined swales, canals, landscape amenities, and detention facilities  
5 or those wetlands, created after July 1, 1990, that were unintentionally created as a result of the  
6 construction of a road or street unless the artificial wetlands were created to mitigate the alteration of a  
7 naturally occurring wetland. For identifying and delineating a regulated wetland, the city will use the  
8 Wetland Manual.

9  
10 Wetland Classification System: Those categories set forth in the Washington State Wetland Rating  
11 System for Western Washington, Publication #~~04-06-025~~14-06-029 dated ~~August, 2004~~October, 2014. A  
12 summary of the classification system is provided below:

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

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

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

- 21 a. Wetlands that are identified by scientists as containing “sensitive” plant species;
- 22 b. Bogs between one-quarter and one-half acre in size; or
- 23 c. Wetlands with a moderately high level of functions.

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

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

29  
30 Wetland Manual: Identification of wetlands and delineation of their boundaries shall be done in  
31 accordance with the most currently approved Army Corps of Engineers wetlands delineation manual  
32 and applicable regional supplements.