

**19.07.110 Shoreline master program.**

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**A. Authority and Purpose.**

1. Authority. This section is adopted as part of the shoreline master program of the city. It is adopted pursuant to the authority and requirements of Chapter 90.58 RCW and Chapter 173-26 WAC.
2. Applicability. The requirements of this section apply to all uses, activities and development within the shorelands, unless specifically exempted. All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act.
3. Purpose and Intent. It is the purpose and intent of this section to achieve the shoreline master program (SMP) mandates of the state of Washington and to adopt property development standards within the shorelands that protect the health, safety, welfare, values and property interests of the city of Mercer Island and its residents.
4. Relationship with Other Mercer Island Codes and Ordinances. This section is an integrated element of the city of Mercer Island Unified 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 Municipal Code, the provisions of this section shall govern within the shorelands.
5. Relationship with Other Federal and State Law. The provisions of this section shall not relieve any responsibility to comply with other federal and state laws 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.

**B. General Regulations.**

1. Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that nonconformance with the standards and regulations of this section is not increased.
2. No Net Loss Standard and Mitigation Sequencing. No development shall be approved unless the applicant demonstrates to the code official's satisfaction that the shoreline development will not create a net loss of ecological function in the shorelands.
  - a. Standards Presumed to Meet No Net Loss. When all individual development standards that apply to a development project do not explicitly require a determination of no net loss and the project conforms with all such standards, there is a rebuttable presumption that the project does not create a net loss of ecological function to the shorelands.
  - b. No Net Loss Plan. Whenever an applicant seeks a variance or conditional use permit or an applicable development standard explicitly requires a determination of no net loss of ecological function, the applicant shall provide the city with a plan that demonstrates the proposed project will not create a net loss in ecological function to the shorelands. The plan shall accomplish no net loss of ecological function by avoiding adverse ecological impacts that are not reasonably necessary to complete the project, minimizing adverse ecological impacts that are reasonably necessary to complete the project, and mitigating or offsetting any adverse impacts to ecological functions or ecosystem-wide processes caused by the project. The code official may require the plan to include reports from qualified professionals with expertise in ecological function. The plan's compliance with the no net loss requirement may be considered through the SEPA process.
    - i. Off-Site Mitigation Permitted. While on-site mitigation is preferred, off-site mitigation may be permitted at the discretion of the code official.
    - ii. Demonstration of No Net Loss Supported by a Qualified Professional. The code official may require any applicant to provide reports by qualified professionals that demonstrate to the code official's satisfaction that the applicant's proposed plan avoids a net loss in ecological function.
3. Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater structures and structures upland 25 feet from the OHWM are permitted; provided, that the expanded structure is constructed in compliance with this section and all other standards and provisions of the Mercer Island development regulations.
4. Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM moves further landward as a result of any action required by this section, or in accordance with permits involving a shoreline habitat and nature systems enhancement approved by the city, or a state or federal agency, the shoreline setback shall be measured from the location of the OHWM that existed immediately prior to the action or enhancement project.

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

1. Urban Park Environment. This environment consists of shoreland areas designated for public access and active and passive public recreation. The areas include, but are not limited to, parks, street ends, public utilities and other publicly owned rights-of-way. The uses located in this environment should be water-dependent and designed with no net loss to the ecological functions of the shorelands. Restoration of ecological functions is planned for

these areas and is strongly encouraged. The preferred and priority use in the urban park environment is public access to, and enjoyment of, Lake Washington.

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

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

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

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

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

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

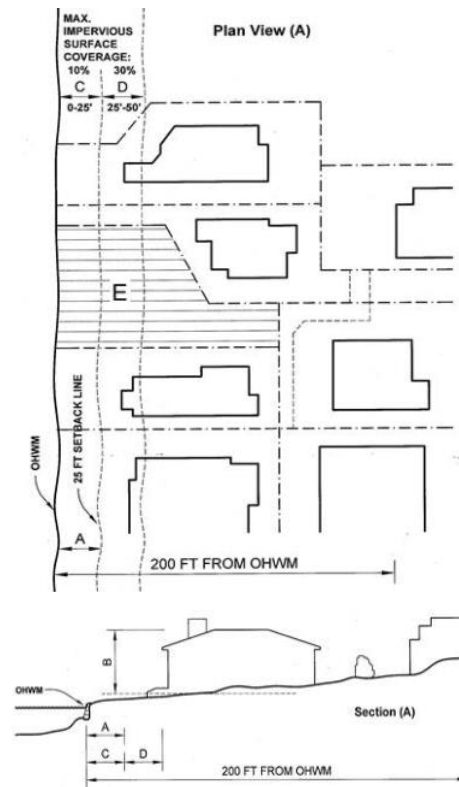
SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Moorage facilities and covered moorages 600 square feet or less	P	P
Covered moorage larger than 600 square feet	SCUP	SCUP
Floating platforms	P	P
Mooring piles, diving boards and diving platforms	P	P
Boat ramp	P	P
Boat houses	NP	NP
Floating homes	NP	NP
Public access pier 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.		

E. Shoreland Development Standards. All development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this section.

1. Standards Landward of the OWHM. The standards in Table C shall apply to development located 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 light rail transit facilities. If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland's boundary
Height Limits for All Structures	B	Shall be the same as height limits specified in the development code but shall not exceed a height of 35 feet above average building elevation, except light rail transit facilities
Maximum Impervious Surface 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.		



## 2. Bulkheads and Shoreline Stabilization Structures.

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:

- i. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- 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 stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.
- iii. For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- iv. Construction and maintenance of normal protective bulkhead common to single-family dwellings requires only a shoreline exemption permit, unless a report is required by the code official to ensure compliance with the above conditions; however, if the construction of the bulkhead is undertaken wholly or in part on lands covered by water, such construction shall comply with SEPA mitigation.

b. **New Structures for Existing Primary Structures.** New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, are not allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of shoreline ecological functions.

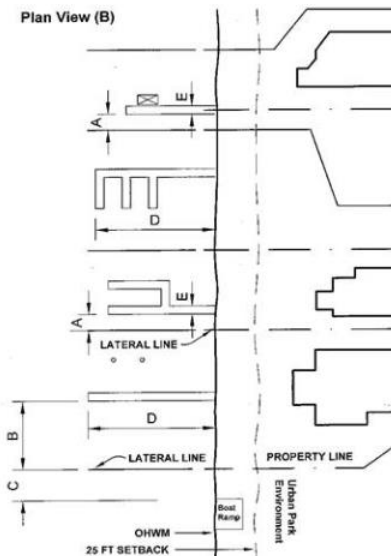
c. **New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible.** This future shoreline stabilization standard does not apply to stabilization that occurs pursuant to subsection (E)(2)(a) of this section. New structural stabilization measures in support of new non-water-dependent development, including single-family residences, shall only be allowed when all of the conditions below apply:

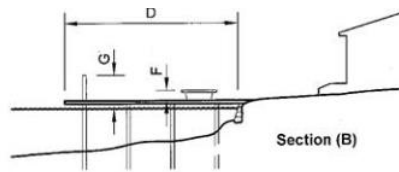
- i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
- ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with subsection (E)(2)(h) of this section. The damage must be caused by natural processes, such as currents and waves.

- iv. The erosion control structure will not result in a net loss of shoreline ecological functions.
  - d. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis, in compliance with subsection (E)(2)(h) of this section and building and construction codes.
  - e. New structural stabilization measures in support of water-dependent development shall only be allowed when all of the conditions below apply:
    - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
    - ii. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
    - iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with subsection (E)(2)(h) of this section and building and construction codes.
    - iv. The erosion control structure will not result in a net loss of shoreline ecological functions.
  - f. New structural stabilization measures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW shall only be allowed when all of the conditions below apply:
    - i. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
    - ii. The erosion control structure will not result in a net loss of shoreline ecological functions.
  - g. Bulkheads shall be located generally parallel to the natural shoreline. No filling may be allowed waterward of the ordinary high water mark, unless there has been severe and unusual erosion within two years immediately preceding the application for the bulkhead. In this event the city may allow the placement of the bulkhead to recover the dry land area lost by erosion.
  - h. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
  - i. When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions, the following shall apply:
    - i. Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
    - ii. Ensure that publicly financed or subsidized shoreline erosion control measures do not permanently restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions: WAC 173-26-221(4). Where feasible, incorporate ecological restoration and public access improvements into the project.
    - iii. Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the adverse impacts of erosion control measures.
  - 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.
3. Transportation and Parking.
- 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.
  - 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.
  - c. Where other options are available and feasible, new roads or road expansions should not be built within shorelands.
  - d. Parking facilities in shorelands shall be allowed only as necessary to support an authorized use.
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**

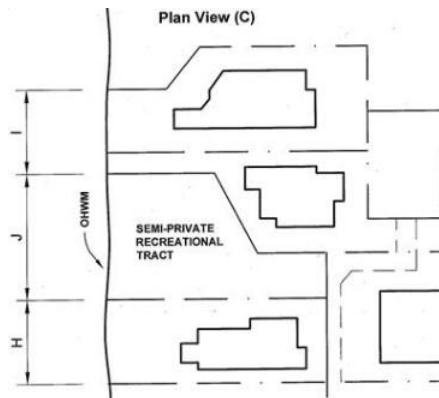
Setbacks for All Moorage Facilities, Covered Moorage, and Floating Platforms	A*	10 feet from the lateral line (except where moorage facility is built pursuant to the agreement between adjoining owners as shown in Figure B below).
	B	Where a property shares a common boundary with the urban park environment, 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, Covered Moorage, Boatlifts and Floating Platforms	D	Maximum 100 feet, but in cases where water depth is less than 11.85 feet below OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.
Width of moorage facilities within 30 feet waterward from the OHWM	E	Maximum 4 feet. Width may increase to 5 feet if one of the following is met: 1) Water depth is 4.85 feet or more, as measured from the OHWM; or 2) A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements; or 3) A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5); or 4) The proposed project includes mitigation option A, B or C listed in Table E; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM, or a site-specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. Moorage facility width shall not include pilings, boat ramps and lift stations.
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 lift stations.
Height Limits for Walls, Handrails and Storage Containers Located on Piers	F	3.5 feet above the surface of a dock or pier. 4 feet for ramps and gangways designed to span the area 0 feet to 30 feet from the OHWM.
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.		





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

Minimum Water Frontage for Moorage Facility	H*	Single-family lots: 40 feet.
	I	Shared – two adjoining lots: 40 feet combined.
	J	Semi-private recreational tracts: 2 families: 40 feet. 3 – 5 families: 40 feet plus 10 feet for each family more than 2. 6 – 10 families: 70 feet plus 5 feet for each family more than 5. 11 – 100 families: 95 feet plus 2 feet for each family more than 10. 101+ families: 275 feet plus 1 foot for each family more than 100.
Covered Moorage	Permitted on single-family residential lots subject to the following: (a) Maximum height above the OHWM: 16 feet; 16 to 21 feet subject to criteria of MICC 19.07.110(E)(5)(a). (b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage. (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. (d) Covered moorage shall have open sides. (e) Prohibited in semi-private recreational tracts and noncommercial recreational areas. (f) Translucent canopies are required.	
*The letters in this column refer to the Plan View (C).		



**Table E. Dock Width Mitigation Options**

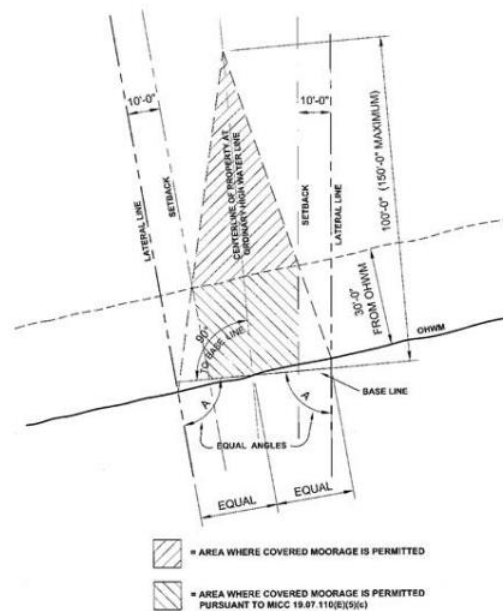
Option A	Option B	Option C
<b>Includes at Least One of the Following:</b>	<b>Includes at Least Two of the Following:</b>	<b>Includes at Least Three of the Following:</b>
1. Complete removal of existing bulkhead with shoreline restoration	1. Removal of 12 feet or 30% (lineal), whichever is greater, of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

Option A	Option B	Option C
3. Replacement of two or more existing legally established individual moorage facilities 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

5. The covered portion of a moorage shall be restricted to the area lying within a triangle as illustrated in Figure A, except as otherwise provided in subsection (E)(5)(a) of this section. The base of the triangle shall be a line drawn between the points of intersection of the property lateral lines with the ordinary high water mark. The location of the covered moorage shall not extend more than 100 feet from the center of the base line of such triangle. In cases where water depth is less than 11.85 feet from OHWM, the location of the covered moorage may extend up to 150 feet from the center of the base line or to the point where water depth is 11.85 feet at OHWM, whichever is less. The required 10-foot setbacks from the side property lines shall be deducted from the triangle area.

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

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

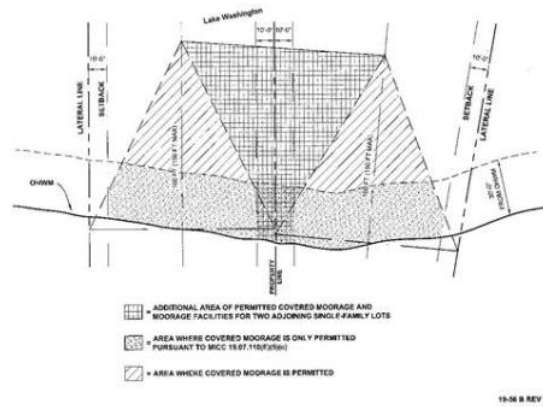


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- b. Where a covered moorage or moorage facility is built pursuant to the agreement of adjoining owners of single-family lots, the covered moorage area shall be deemed to include, subject to limitations of such joint agreement, all of the combined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

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





- c. Covered moorage is not allowed within the first 30 feet from the OHWM unless the applicant:
  - i. Demonstrates to the code official's satisfaction that proposed project will not create a net loss in ecological function of the shorelands; and
  - 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.

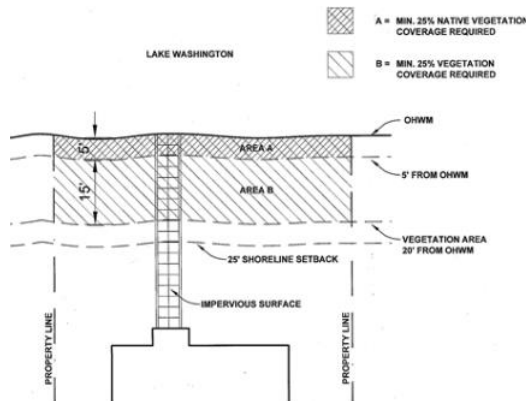
6. Moorage Facilities. All permits for new and expanded moorage facility shall meet the following standards unless otherwise exempted. Moorage facilities have the option of meeting either the development standards prescribed in subsections (E)(6)(a) or (b) of this section, or the "alternative development standards" in subsection (E)(6)(c) of this section.

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:

- i. The surface coverage area of the moorage facility is:
  - (A) Four hundred eighty square feet or less for a single property owner;
  - (B) Seven hundred square feet or less for two residential property owners (residential); or
  - (C) One thousand square feet or less for three or more residential property owners;
- ii. Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;
- 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 shall be submitted to the city for approval. The vegetation coverage shall consist of a variety of ground cover shrubs and trees, excluding nonnative grasses. No plants on the current King County noxious weed lists shall be planted within the shorelands.

Figure C: Vegetation Plan



- iv. Only piers, ramps, and lift stations may be within the first 30 feet from the OHWM. No skirting is allowed on any structure;
- v. The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet;
- vi. The first in-water (nearest the OHWM) set of pilings shall be steel, 10 inches in diameter or less, and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter. Piles shall not be treated

with pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant shall meet all of the best management practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. All piling sizes are in nominal diameter;

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

viii. No more than two mooring piles shall be installed per structure. Joint-use structures may have up to four mooring piles. The limits include existing mooring piles. Moorage piling shall not be installed within 30 feet of the OHWM. These piles shall be as far offshore as possible;

ix. The applicant shall abide by the work windows for listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife; and

x. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48 hours of the completion of construction. Woody vegetation components shall be planted in the fall or early winter, whichever occurs first. The applicant shall take appropriate measures to ensure revegetation success.

b. Development Standards for Replacement, Repair and Maintenance of Overwater Structures, Including Moorage Facilities. The maintenance, repair and complete replacement of legally existing overwater structures is permitted; provided, that:

i. All permit requirements of federal and state agencies are met;

ii. The area, width, or length of the structure is not increased, but may be decreased;

iii. The height of any structure is not increased, but may be decreased; provided, that the height above the OHWM may be increased as provided in subsection (E)(6)(b)(ix)(B) of this section;

iv. The location of any structure is not changed unless the applicant demonstrates to the director's satisfaction that the proposed change in location results in: (A) a net gain in ecological function, and (B) a higher degree of conformity with the location standards for a new overwater structure;

v. Piles shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant shall meet all of the best management practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. All piling sizes are in nominal diameter;

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

vii. The applicant shall abide by the work windows for listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife;

viii. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48 hours of the completion of construction. Woody vegetation components shall be planted in the fall or early winter, whichever occurs first. The applicant shall take appropriate measures to ensure revegetation success; and

ix. If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:

(A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;

(B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and

(C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).

c. Alternative Development Standards. The code official shall approve moorage facilities not in compliance with the development standards in subsection (E)(6)(a) or (b) of this section subject to both U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife approval to an alternate project design. The following requirements and all other applicable provisions in this chapter shall be met:

i. The dock must be no larger than authorized through state and federal approval;

ii. The maximum width must comply with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D);

iii. The minimum water depth must be no shallower than authorized through state and federal approval;

iv. The applicant must demonstrate to the code official's satisfaction that the proposed project will not create a net loss in ecological function of the shorelands; and

- v. The applicant must provide 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.
7. Breakwaters, jetties, groins, and weirs. Breakwaters, jetties, groins, weirs, and similar structures are prohibited, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).
8. Dredging.
- a. Dredging shall be permitted only if navigational access has been unduly restricted or other extraordinary conditions in conjunction with water-dependent use; provided, that the use meets all state and federal regulations.
  - b. Dredging shall be the minimum necessary to accommodate the proposed use.
  - c. Dredging shall utilize techniques that cause the least possible environmental and aesthetic impact.
  - d. Dredging is prohibited in the following locations:
    - i. Fish spawning areas except when the applicant conclusively demonstrated that fish habitat will be significantly improved as a result of the project.
    - ii. In unique environments such as lake logging of the underwater forest.
  - e. Dredging and the disposal of dredged material shall comply with Ecology water quality certification process and U.S. Army Corps of Engineers permit requirements. The location and manner of the disposal shall be approved by the city.
9. General Requirements. The following requirements apply to the following types of activities that may be waterward and/or landward of the OHWM:
- a. Critical Areas within the shorelands are regulated by MICC 19.07.010 through and including 19.07.090, as adopted in the MICC on January 1, 2011, except: MICC 19.07.030(B), Reasonable Use Exception, and 19.07.040(C), Setback Deviation, and (D), Variances.
  - b. Utilities.
    - i. Utilities shall be placed underground and in common rights-of-way wherever economically and technically practical.
    - ii. Shoreline public access shall be encouraged on publicly owned utility rights-of-way, when such access will not unduly interfere with utility operations or endanger public health and safety. Utility easements on private property will not be used for public access, unless otherwise provided for in such easement.
    - iii. Restoration of the site is required upon completion of utility installation.
  - c. Archaeological and Historic Resources.
    - i. If archaeological resources are uncovered during excavation, the developer and property owner shall immediately stop work and notify the city, the Office of Archaeology and Historic Preservation, and affected Indian tribes.
    - ii. In areas documented to contain archaeological resources by the Office of Archaeology and Historic Preservation, a site inspection or evaluation is required by a professional archaeologist in coordination with affected Indian tribes.
  - d. New development adding over 500 square feet of additional gross floor area or impervious surface, including the primary structures and appurtenances, shall be required to provide native vegetation coverage over 50 percent of the 20-foot vegetation area shown on Figure C. This standard shall apply to the total of all new impervious surface area added in the five years immediately prior to the construction of the gross floor area or impervious surface addition.
    - i. New development over 1,000 square feet of additional gross floor area or impervious surface, including the primary structures and appurtenances, shall be required to provide native vegetation coverage over 75 percent of the 20-foot vegetation area shown in Figure C.
    - ii. A shoreline vegetation plan shall be submitted to the city for approval.
    - iii. The vegetation coverage shall consist of a variety of ground cover shrubs and trees indigenous to the central Puget Sound lowland ecoregion and suitable to the specific site conditions. Existing mature trees and shrubs, but excluding noxious weeds, may be included in the coverage requirement if located in the 20-foot vegetation area shown in Figure C.
    - iv. No plants on the current King County noxious weed lists shall be planted within the shorelands. (Ord. 15C-02 §§ 1, 2; Ord. 13C-12 § 2).

**19.15.010 General procedures.**

A. Purpose. Administration of the development code is intended to be expedient and effective. The purpose of this chapter is to identify the processes, authorities and timing for administration of development permits. Public noticing and hearing procedures, decision criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

B. Objectives. Guide customers confidently through the permit process; process permits equitably and expediently; balance the needs of permit applicants with neighbors; allow for an appropriate level of public notice and involvement; make decisions quickly and at the earliest possible time; allow for

administrative decision-making, except for those decisions requiring the exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made consistently and predictably; and resolve conflicts at the earliest possible time.

C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the development code are shared by appointed boards and commissions, elected officials and city staff. The authorities of each of these bodies are set forth below.

1. City Council. The city council is responsible for establishing policy and legislation affecting land use within the city. The city council acts on recommendations of the planning commission in legislative and quasi-judicial matters, and serves as the appeal authority on discretionary actions.
2. Planning Commission. The role of the planning commission in administering the development code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated planning agency for the city (see Chapter 35A.63 RCW). The planning commission is responsible for final action on a variety of discretionary permits and makes recommendations to the city council on land use legislation, comprehensive plan amendments and quasi-judicial matters. The planning commission also serves as the appeal authority for some ministerial and administrative actions.
3. Design Commission. The role of the design commission in administering the development code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission is responsible for maintaining the city's design standards and action on sign, commercial and multiple-family design applications.
4. Building Board of Appeals. The role of the building board of appeals in administering the construction codes is governed by Chapter 3.28 MICC. In general, the building board of appeals is responsible for hearing appeals of interpretations or application of the construction codes set forth in MICC Title 17.
5. Development Services Group. The responsible officials in the development services group act upon ministerial and administrative permits.
  - a. The code official is responsible for administration, interpretation and enforcement of the development code.
  - b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.
  - c. The city engineer is responsible for the administration and interpretation of engineering standards.
  - d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.
  - e. The fire code official is responsible for administration and interpretation of the International Fire Code.
6. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

D. Actions. There are four categories of actions or permits that are reviewed under the provisions of the development code.

1. Ministerial Actions. Ministerial actions are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
2. Administrative Actions. Administrative actions are based on objective and subjective standards that require the exercise of limited discretion about nontechnical issues.
3. Discretionary Actions. Discretionary actions are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing.
4. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to large geographic areas and are of interest to many property owners and citizens. Legislative actions are only taken after an open record hearing.

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

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
<b>Ministerial Actions</b>			
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) Less Than \$100,000	Code official	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Design commission

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) \$100,000 or Greater	Design commission	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030, 19.07.060(D)(4)	Building board of appeals
Development Code Interpretations	Code official	MICC 19.15.020(L)	Planning commission
Shoreline Exemption	Code official	MICC 19.07.110 and 19.15.020(G)(6)(c)(i)	Hearing examiner <sup>1</sup>
<b>Administrative Actions</b>			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Planning commission
Deviation	Code official	MICC 19.15.020(G), 19.01.070, 19.02.050(F), 19.02.020(C)(4) and (D) (3)	Planning commission
Critical Areas Determination	Code official	Chapter 19.07 MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110 and 19.15.020(G)(6)	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Planning commission
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC 19.08.010(F)	Superior court
Temporary Encampment	Code official	MICC 19.06.090	Superior court
Wireless Communications Facility	Code official	MICC 19.06.040	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC 19.01.070, 19.06.040(H) and 19.15.020(G)	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC 19.01.070, 19.03.020(B)(4), 19.04.040(B)(9), 19.05.020(B)(9) and 19.15.020(G)	Hearing examiner
<b>Discretionary Actions</b>			
Conditional Use Permit	Planning commission	MICC 19.11.130(B), 19.15.020(G)	Hearing examiner
Reclassification (Rezone)	City council via planning commission <sup>2</sup>	MICC 19.15.020(G)	Superior court
Design Review – Major New Construction	Design commission	MICC 19.15.040, Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission <sup>2</sup>	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G), 19.01.070	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC 19.08.020	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission <sup>2</sup>	MICC 19.09.070	Superior court

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Shoreline Conditional Use Permit	Code official and Department of Ecology <sup>3</sup>	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Shoreline Variance	Code official and Department of Ecology <sup>3</sup>	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.020(D)(4)	Superior court
<b>Legislative Actions</b>			
Code Amendment	City council via planning commission <sup>2</sup>	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission <sup>2</sup>	MICC 19.15.020(G)	Growth management hearings board
<sup>1</sup> Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).			
<sup>2</sup> The original action is by the planning commission which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.			
<sup>3</sup> Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10).			

(Ord. 13C-12 § 5; Ord. 11C-05 § 2; Ord. 11C-04 § 2; Ord. 10C-06 § 5; Ord. 10C-01 § 5; Ord. 08C-01 § 8; Ord. 06C-06 § 2; Ord. 06C-05 § 2; Ord. 05C-12 § 9; Ord. 04C-12 § 16; Ord. 04C-08 § 3; Ord. 03C-08 §§ 9, 10; Ord. 02C-04 § 5; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

#### 19.15.020 Permit review procedures.

The following are general requirements for processing a permit application under the development code. Additional or alternative requirements may exist for actions under specific code sections (see MICC 19.07.080, 19.07.110, and 19.08.020).

A. Preapplication. Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.

#### B. Application.

1. All applications for permits or actions by the city shall be submitted on forms provided by the development services group. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations.
2. All applications for permits or actions by the city shall be accompanied by a filing fee in an amount established by city ordinance.

#### C. Determination of Completeness.

1. The city will not accept an incomplete application. An application is complete only when all information required on the application form and all submittal items required by code have been provided to the satisfaction of the code official.
2. Within 28 days after receiving a development permit application, the city shall mail or provide in person a written determination to the applicant, stating either that the application is complete or that the application is incomplete and what is necessary to make the application complete. An application shall be deemed complete if the city does not provide a written determination to the applicant stating that the application is incomplete.
3. Within 14 days after an applicant has submitted all additional information identified as being necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.
4. If the applicant fails to provide the required information within 90 days of the determination of incompleteness, the application shall lapse. The applicant may request a refund of the application fee minus the city's cost of determining the completeness of the application.

#### D. Notice of Application.

1. Within 14 days of the determination of completeness, the city shall issue a notice of application for all administrative, discretionary, and legislative actions listed in MICC 19.15.010(E).
2. The notice of application shall include the following information:
  - a. The dates of the application, the determination of completeness, and the notice of application;
  - b. The name of the applicant;
  - c. The location and description of the project;
  - d. The requested actions and/or required studies;
  - e. The date, time, and place of the open record hearing, if one has been scheduled;

- f. Identification of environmental documents, if any;
  - g. A statement of the public comment period, which shall be not less than 14 days nor more than 30 days following the date of notice of application; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision once made and any appeal rights;
  - h. The city staff contact and phone number;
  - i. The identification of other permits not included in the application to the extent known by the city;
  - j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan; and
  - k. Any other information that the city determines appropriate.
3. Open Record Hearing. If an open record hearing is required on the permit, the city shall:
- a. Provide the notice of application at least 15 days prior to the hearing; and
  - b. Issue any threshold determination required under MICC 19.07.110 at least 15 days prior to the hearing.
4. Notice shall be provided in the bi-weekly DSG bulletin, posted at City Hall and made available to the general public upon request.
5. All comments received on the notice of application must be received by the development services group by 5 pm on the last day of the comment period.
6. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.110 or issue a decision on an application until the expiration of the public comment period on the notice of application.
7. A notice of application is not required for the following actions; provided, the action is either categorically exempt from SEPA or an environmental review of the action in accordance with SEPA has been completed:
- a. Building permit;
  - b. Lot line revision;
  - c. Right-of-way permit;
  - d. Storm drainage permit;
  - e. Home occupation permit;
  - f. Design review – minor new construction;
  - g. Final plat approval;
  - h. Shoreline exemption permit;
  - i. Critical lands determination; and
  - j. Seasonal development limitation waiver.

E. Public Notice.

- 1. In addition to the notice of application, a public notice is required for all administrative, discretionary, and legislative actions listed in MICC 19.15.010 (E).
- 2. Public notice shall be provided at least 10 days prior to any required open record hearing. If no such hearing is required, public notice shall be provided 10 days prior to the decision on the application.
- 3. The public notice shall include the following:
  - a. A general description of the proposed project and the action to be taken by the city;
  - b. A nonlegal description of the property, vicinity map or sketch;
  - c. The time, date and location of any required open record hearing;
  - d. A contact name and number where additional information may be obtained;
  - e. A statement that only those persons who submit written comments or testify at the open record hearing will be parties of record; and only parties of record will receive a notice of the decision and have the right to appeal; and
  - f. A description of the deadline for submitting public comments.
- 4. Public notice shall be provided in the following manner:

a. Administrative and Discretionary Actions. Notice shall be mailed to all property owners within 300 feet of the property and posted on the site in a location that is visible to the public right-of-way.

b. Legislative Action. Notice shall be published in a newspaper of general circulation within the city.

F. Open Record Hearing.

1. Only one open record hearing shall be required prior to action on all discretionary and legislative actions except design review and street vacations.

2. Open record hearings shall be conducted in accordance with the hearing body's rules of procedures. In conducting an open record hearing, the hearing body's chair shall, in general, observe the following sequence:

a. Staff presentation, including the submittal of any additional information or correspondence. Members of the hearing body may ask questions of staff.

b. Applicant and/or applicant representative's presentation. Members of the hearing body may ask questions of the applicant.

c. Testimony by the public. Questions directed to the staff, the applicant or members of the hearing body shall be posed by the chairperson at his/her discretion.

d. Rebuttal, response or clarifying statements by the applicant and/or the staff.

e. The public comment portion of the hearing is closed and the hearing body shall deliberate on the action before it.

3. Following the hearing procedure described above, the hearing body shall:

a. Approve;

b. Conditionally approve;

c. Continue the hearing; or

d. Deny the application.

G. Decision Criteria. Decisions shall be based on the criteria specified in the Mercer Island City Code for the specific action. A reference to the code sections that set out the criteria and standards for decisions appears in MICC 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the code, the following are the required criteria for decision.

1. Comprehensive Plan Amendment.

a. There exists obvious technical error in the information contained in the comprehensive plan;

b. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies;

c. The amendment addresses changing circumstances of the city as a whole;

d. If the amendment is directed at a specific property, the following additional findings shall be determined:

i. The amendment is compatible with the adjacent land use and development pattern;

ii. The property is suitable for development in conformance with the standards under the potential zoning;

iii. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

2. Reclassification of Property (Rezoning).

a. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;

b. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;

c. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;

d. The proposed reclassification does not constitute a "spot" zone;

e. The proposed reclassification is compatible with surrounding zones and land uses; and

f. The proposed reclassification does not adversely affect public health, safety and welfare.

3. Conditional Use Permit.

a. The permit is consistent with the regulations applicable to the zone in which the lot is located;

b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;



c. The use is consistent with policies and provisions of the comprehensive plan; and

d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

4. Variances.

a. No use variance shall be allowed;

b. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; the trees, groundcover, or other physical conditions of the lot and its surroundings; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

c. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

d. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and

e. The variance is consistent with the policies and provisions of the comprehensive plan and the development code.

5. Deviation.

a. No use deviation shall be allowed;

b. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

c. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and

d. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code.

6. Shoreline Permits Administration and Procedures.

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

i. Administering shoreline permits.

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

iii. Determining compliance with the State Environmental Policy Act.

iv. No development shall be undertaken within the shorelands without first obtaining a shoreline exemption permit, substantial development permit, conditional use permit, and/or a variance permit in accordance with all applicable procedures unless it qualifies under a categorical exemption. In addition, such permit shall be in compliance with permit requirements of all other agencies having jurisdiction within the shorelands. Compliance with all applicable federal and state regulations is also required.

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

c. Shoreline Exemption Permit Decision Criteria and Process.

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

(A) Any development of which the total cost or fair market value, whichever is higher, does not exceed \$6,416 or as periodically revised by the Washington State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state; or

(B) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts established to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, including complete replacement of legally existing structures. Normal maintenance of single-family dwellings is categorically exempt as stated above; or

(C) Construction of the normal protective bulkhead common to single-family dwellings. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single-family dwelling and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings; or

(D) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this section; or

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

(F) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family dwelling, for which the cost or fair market value, whichever is higher, does not exceed \$10,000; or

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

(H) Projects for the restoration of ecological functions.

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

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

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

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

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

(B) Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period. An open record hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline substantial development permits when the following factors exist:

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

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

(D) The city's action in approving, approving with conditions, or denying any substantial development permit or shoreline exemption is final unless an appeal is filed in accordance with applicable laws. The city shall send the shoreline permit decisions to the applicant, the Department of Ecology, the Washington State Attorney General and to all other applicable local, state, or federal agencies.

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

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

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

- (A) That the proposed use is consistent with the policies of RCW 90.58.020 and the Mercer Island Uniform Land Development Code;
- (B) That the proposed use will not detrimentally interfere with the normal public use of shorelands within the "urban park environment" shoreline environment designation;

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

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

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

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

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

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

The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.

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

(B) Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

(C) The technical review of shoreline conditional use permit must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code. An open record hearing before the code official, as set out in subsection F of this section, shall be conducted on the shoreline conditional use permits when the following factors exist:

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

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

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

f. Shoreline Variance Permit Decision Criteria and Process.

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

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

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

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

(2) That the hardship in this subsection (G)(6)(f)(i) is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the applicable regulations, and not, for example, from deed restrictions or the applicant's own actions;

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

(4) That the requested shoreline variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

(5) That the public interest will suffer no substantial detrimental effect.

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

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

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

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

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

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

The notices shall include a statement that any person desiring to submit written comments concerning the application, receive notice of and participate in any hearings, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after the issuance of the decision may submit the comments or request a copy of the decision(s) to the city within 30 days of the last date the notice is published, and any appeal rights.

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

(B) Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit written comments on the proposed application. The city will not make a decision on the permit until after the end of the comment period.

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

(1) The proposed development has broad public significance; or

(2) Within the 30-day comment period, 10 or more interested citizens file a written request for a public hearing; or

(3) At the discretion of the code official.

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

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

iii. The reasonable use exemption provided in MICC 19.07.030(B) does not apply in the shorelands. The provision of reasonable use in the shorelands shall be accomplished through a shoreline variance.

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

i. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

ii. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the Department of Ecology.

h. Appeals. Appeals to any shoreline permit decision, except shoreline exemption permits, shall be in accordance with RCW 90.58.180. Appeals to shoreline exemptions permits shall be filed in accordance with subsection J of this section.

i. Suspension of Permits. The city may suspend any shoreline exemption permit, substantial development permit, shoreline conditional use permit, or shoreline variance permit when the permittee has not complied with the conditions of the permit. Such noncompliance may be considered a public nuisance. The enforcement shall be in conformance with the procedures set forth in MICC 19.15.030, Enforcement.

j. Revisions. When an applicant seeks to revise a substantial development permit, shoreline conditional use permit and/or shoreline variance permit, the requirement of WAC 173-27-100, as amended, shall be met.

#### H. Notice of Decision.

1. Unless the city and applicant have mutually agreed in writing to an extension of time, project review shall be completed within 120 days from the date the application is determined to be complete. Time required for the submittal of additional information, preparation of environmental impact statement, and hearing of appeals shall be excluded from this 120-day period.

2. Written notice of the decision shall be provided to the applicant and all parties of record. Notice of decision shall also be provided in the biweekly DSG bulletin.

#### I. Optional Consolidated Permit Processing.

1. An application that involves two or more permits may be processed concurrently and the decision consolidated at the request of the project applicant. If an applicant elects the consolidated permit processing, the code official shall determine the appropriate application and review procedures for the project.

2. If a project requires action from more than one hearing body, the decision authority in the consolidated permit review shall be by the decision body with the broadest discretionary powers.

#### J. Appeals.

1. Any party of record on a decision may file a letter of appeal on the decision. Appeals shall be filed with the city clerk within 14 days after the notice of decision or after other notice that the decision has been made and is appealable.

2. Appeals shall include the following information:

a. The decision being appealed;

b. The name and address of the appellant and his/her interest in the matter;

c. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;

d. The desired outcome or changes to the decision; and

e. The appeals fee, if required.

3. Authority for appeals is specified in MICC 19.15.010(E).

4. Public notice of an appeal shall be provided in the manner specified in subsection E of this section.

5. The rules of procedure for appeal hearings shall be as follows:

a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.

b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.

c. The total time allowed for oral argument on the appeal shall be equal for the appellants and the applicant (if not the appellants). If there are multiple parties on either side, they may allocate their time between themselves or designate a single spokesperson to represent the side. All testimony shall be given under oath.

d. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:

i. Reverse the decision.

ii. Modify the decision and approve it as modified.

iii. Remand the decision back to the decision maker for further consideration.

e. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.

f. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.

g. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

K. Expiration of Approvals. Except for building permits or unless otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.

L. Code Interpretations. Upon request or as determined necessary, the code official shall interpret the meaning or application of provisions of the development code. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also request a review of the code official's interpretation by the planning commission. (Amended during 3/15 supplement; Ord. 13C-12 § 6; Ord. 10C-06 § 6; Ord. 08C-01 § 8; Ord. 02C-04 § 7; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

#### **19.16.010 Definitions.**

Words used in the singular include the plural and the plural the singular.

Definitions prefaced with (SMP) are applicable only to the shoreline master program, MICC 19.07.110.

A

Accessory Buildings: A separate building or a portion of the main building, the use of which is related to and supports that of the main building on the same lot.

1. Attached Accessory Building: An accessory building that shares a portion of one of its walls with the main building, is separated from the main building by less than five feet, or is attached to the main building by a structure other than a fence.

2. Detached Accessory Building: An accessory building that does not share a portion of any of its walls with the main building and is separated from the main building by more than five feet and is not attached to the main building by a structure other than a fence or a pedestrian walkway.

Accessory Dwelling Unit (ADU): A habitable dwelling unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation.

Accessory Use: A use customarily incidental and accessory to the principal use of a site or a building or other structure located upon the same lot.

Adult Entertainment: An adult retail establishment or adult theater. "Adult entertainment" shall not be considered to be included under any other permitted use in this code as either a primary or accessory use, and is not permitted in any zone unless specifically stated. For purposes of adult entertainment, the following definitions apply:

1. Adult Retail: An establishment in which 10 percent or more of the stock in trade consists of merchandise distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to specified sexual activities or specified anatomical areas.

2. Adult Theater: A facility used for presenting for commercial purposes motion picture films, video cassettes, cable television, live entertainment or any other such material, performance or activity, distinguished or characterized by a predominant emphasis on depiction, description, simulation or relation to specified sexual activities or specified anatomical areas for observation by patrons therein. Structures housing panoramas, peep shows, entertainment studios or topless or nude dancing are included in this definition.

3. Merchandise: Shall include, but is not limited to, the following: books, magazines, posters, cards, pictures, periodicals or other printed material; prerecorded video tapes, discs, film, or other such medium; instruments, devices, equipment, paraphernalia, or other such products.

4. Panoramas or Peep Shows: Any device which, upon insertion of a coin or token or by any other means, exhibits or displays a picture; an image from a film, video cassette, video disc, or any other medium; or provides a view of a live performance.

5. Specified Anatomical Areas:

a. Less than completely and/or opaquely covered human genitals, pubic region, buttock, or female breast below the top of the areola.

b. Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

6. Specified Sexual Activities:

a. Human genitals in a state of sexual stimulation, and/or

b. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals, and/or

c. Acts of human masturbation, sadism or torture in the context of sexual relationship, and/or sadomasochistic abuse in the context of sexual relationship, and/or

d. Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breast.

7. Stock in Trade: Shall mean either:

- a. The dollar value of all merchandise readily available for purchase, rental, viewing, or use by patrons of the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or
- b. The total volume of shelf space and display area in those portions of the establishment open to patrons.

Adult Family Home: As defined and regulated by Chapter 70.128 RCW, an adult family home is the regular family abode of a person or persons who are providing personal care, special care, and room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

Affordable Housing Unit:

1. Owner Affordable Housing Unit: An owner-occupied dwelling unit affordable to households with household income not exceeding 90 percent of the King County median income, adjusted for household size.
2. Rental Affordable Housing Unit: A renter-occupied dwelling unit affordable to households whose income does not exceed 60 percent of the King County median income, adjusted for household size.
3. King County Median Income: The median yearly income for the average sized family in the Seattle Metropolitan Statistical Area as published by the United States Department of Housing and Urban Development from time to time. In the event such income determination is no longer published, or has not been updated for a period of at least 18 months, the city may use or develop such other reasonable method as it may choose in order to determine the income for families in King County at the median yearly income for King County.

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

Antenna: An apparatus, outside of or attached to the exterior of a structure, together with any supporting structure for sending or receiving electromagnetic waves. "Antenna" includes, but is not limited to, a dish antenna, wire or whip antenna, and microwave transmitting antenna. This definition does not include an antenna mounted on a licensed vehicle; provided, the antenna is a type commonly mounted on a licensed vehicle for the purposes of mobile communication or radio reception within the vehicle (such as AM/FM radio, citizens band radio, two-way radio or cellular telephone).

Appeal, Closed Record: An administrative appeal to the city council following an open record hearing on a project application. Evidence for the appeal is limited to the record of the open record hearing. (See also "Open Record Hearing").

Appeal, Open Record: An administrative appeal to the planning commission or city council when there has not been an open record hearing on a project application. New evidence or information is allowed to be submitted in review of the decision (See also "Open Record Hearing").

Appurtenance:

1. Single-Family Residential: A structure which is necessarily connected to the use and enjoyment of a single-family dwelling. An appurtenance includes but is not limited to antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, garages, decks, driveways, utilities, fences, swimming pools, hot tubs, landscaping, irrigation, grading outside the building footprint which does not exceed 250 cubic yards and other similar minor construction.
2. Town Center and Multifamily Zones: A subordinate element added to a structure which is necessarily connected to its use and is not intended for human habitation or for any commercial purpose, other than the mechanical needs of the building, such as areas for mechanical and elevator equipment, chimneys, antennas, communication facilities, smoke and ventilation stacks.

Assisted Living Facilities: Residences for the frail, sick or elderly, excluding special needs group housing, that provide rooms, meals, personal care and supervision of self-administered medication. Other services, such as recreational activities and transportation, may also be provided.

Average Building Elevation: The reference point on the surface topography of a lot from which building height is measured. Elevation established by averaging the elevation at existing grade. The elevation points to be averaged shall be located at the center of all exterior walls of the completed building; provided:

1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may project outside exterior walls and are not to be considered as walls.
2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be used to calculate the average building elevation.
3. For Properties within the Town Center: If a new sidewalk is to be installed as the result of a new development, the midpoint elevation for those walls adjacent to the new sidewalk shall be measured from the new sidewalk elevation, rather than existing grade prior to development activity. The city engineer shall determine the final elevation of the sidewalk.

Formula:

Average Building Elevation = (Mid-point Elevation of Individual Wall Segment) x (Length of Individual Wall Segment) ÷ (Total Length of Wall Segments)

B

**Bar:** A premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

**Bed and Breakfast:** A single-family dwelling in which public lodging and meals may be provided to guests for periods of 30 days or less.

**Best Available Science:** Current scientific information based upon scientifically valid methods used to analyze critical areas, as defined by WAC 375-195-900 through 375-195-925, as amended.

**Best Construction Practices:** Methods, techniques and/or procedures developed by the city arborist to protect trees being retained during construction work from damage.

**Best Management Practices:** The practices that use the best available technologies or techniques, to prevent or minimize the degradation of any critical area or its buffer.

**Binding Site Plan:** A method of dividing land that sets out specifications for a number of aspects of development on the site, including streets, building envelopes, improvements, utilities, parking, and open spaces. The requirements of a binding site plan are enforceable against any person acquiring an interest in any lot or parcel created pursuant to the plan.

**Boat Ramp:** An inclined structure upon which a watercraft is raised or pulled onto land or a dock.

**Boatlift:** A structure or device used to raise a watercraft above the waterline for secure moorage purposes.

**Breakwater:** A protective structure usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action.

**Buffer:** A designated area adjoining a critical area intended to protect the critical area from degradation.

**Building:** A structure having a roof, but excluding trailers, mobile homes, and all other forms of vehicles even though immobilized. Where this code requires, or where special authority granted pursuant to this code requires that a use shall be entirely enclosed within a building, this definition shall be qualified by adding "and enclosed on all sides."

**Building Footprint:** That portion of the lot that is covered by building(s).

**Building Height:** The vertical distance measured from the average building elevation to the highest point of the roof structure excluding appurtenances. A mezzanine need not be counted as a story for determining the allowable number of stories when constructed in accordance with the requirements of the construction codes set forth in MICC Title 17.

**Building Pad:** That portion of a lot on which a building may be located based on criteria set forth under the development code.

**Bulkhead:** A solid or open pile of rock, concrete, steel, timber or other materials erected parallel to, and normally erected at, the ordinary high water line for the purpose of protecting adjacent property from waves or currents.

## C

**Capital Improvement:** Any development by the city upon property owned by or under the control of the city.

**Care Services:** The provision of rooms, meals, personal care and health monitoring assistance other than in special needs group housing. Other support may be provided as an adjunct to the provision of care services, including recreation, social, counseling, transportation and financial services. Examples include daycare services, nursing homes, assisted living facilities and retirement homes.

**Carport:** A covered parking area or an accessory portion of the main building, entirely open on two or more sides, which is used for parking or storage of private vehicles, trailers and boats, by the occupants of the primary building.

**Catastrophic Loss:** A loss which occurs as a result of accidental fire, storm, earthquake or any other natural disaster, or an act of vandalism, terrorism or war.

**City:** The city of Mercer Island, Washington.

**City Arborist:** The person designated by the code official to administer the provisions of Chapter 19.10 MICC.

**City Department:** Any division, subdivision or organizational unit of the city established by ordinance, rule or order.

**City Street:** "City street" means and includes the right-of-way of every principal arterial, secondary arterial, collector arterial or local street or portion thereof, which has been improved for and is used for vehicular travel within the city limits.

**Civic and Social Organizations:** Organizations primarily engaged in promoting the civic and social interests of their members. Illustrative examples include alumni associations, fraternal lodges, granges, and social clubs. Such organizations may operate bars and restaurants for their members if such uses are otherwise allowed within the zone.

**Clearing:** The act of destroying or removing trees or groundcover from any undeveloped or partially developed lot, public lands, or public right-of-way. Clearing may only occur on these lots with approval by the city.

**Code Official:** The director of the development services group for the city of Mercer Island or a duly authorized designee.

**Commercial Zone:** Any area located within a Town Center, business, planned business or multifamily zone, or any area located on property in a single-family zone containing a nonresidential use.



Conditional Use: A use listed among those permitted in any given zone but authorized only after a conditional use permit has been granted.

Condominium: A multiple-family dwelling, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the dwelling unit owners, and unless a declaration and a survey map and plans have been recorded.

Conifer Trees: Trees that are called evergreen, stay green all year, have needles or scales for leaves, and produce seeds in protective cones. This includes a few rare conifer trees that lose their needles in the fall such as: Tamarack or Larch, *Larix sp.*, Dawn Redwood, *Metasequoia glyptostroboides*, or Bald Cypress, *Taxodium distichum*.

Construction Costs: Construction costs shall mean all costs included in the average price per square foot of a building as set forth in the current Mercer Island Building Valuation Data Table on file with the code official.

Construction Work: Any construction or reconstruction creating more than 500 square feet of new impervious surface. Trees are considered cut as a result of construction work if done during the construction work, two years prior to commencement of the work or two years following completion of the work. For these purposes, commencement of the work shall be the date the initial permit for the work is issued by the city, and completion of the work shall be the date the city final a building permit.

Covered Moorage: A pier, dock, boatlift, series of piles, or other structure intended for moorage over which a roof or canopy is erected.

Critical Area Determination: An administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope.

Critical Area Study: A study prepared by a qualified professional on existing conditions, potential impacts and mitigation measures for a critical area, consistent with MICC 19.07.050.

Critical Areas: Geologic hazard areas, watercourses, wetlands and wildlife habitat conservation areas.

Critical Tree Area: An area on a lot where trees are provided certain protections that contains any of the following:

1. A geologic hazard area;
2. A watercourse or its buffer;
3. Wetlands or their buffer; or
4. Protected slope area.

Crown: The leaves and branches of a tree from the lowest branch on the trunk to the top.

Crown Cleaning: The removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches, and watersprouts from a tree's crown.

Crown Raising: The removal of the lower branches of a tree in order to provide a height of up to eight feet for pedestrian clearance, up to 14 feet for equestrian clearance and up to 16 feet for vehicular clearance or such other increased height as deemed appropriate for clearance by the city arborist.

Crown Thinning: The selective removal of branches not to exceed more than 25 percent of the leaf surface to increase light penetration and air movement, and to reduce weight.

Crown Topping: The removal of the upper portion of the crown of a tree by cutting back young shoots to a bud or older branches or trunk to a stub or lateral branch not sufficiently large enough to assume the terminal role.

Cut or Cutting: The intentional cutting of a tree to the ground (excluding acts of nature), any practice or act which is likely to result in the death of or significant damage to the tree or any other removal of a part of a tree that does not qualify as pruning.

D

Day Care: A business that provides personal care, education and/or supervision of minor children age 12 or under for a fee or other consideration for periods lasting less than 24 hours.

Development:

1. A piece of land that contains buildings, structures, and other modifications to the natural environment; or
2. The alteration of the natural environment through:
  - a. The construction or exterior alteration of any building or structure, whether above or below ground or water, and any grading, filling, dredging, draining, channelizing, cutting, topping, or excavation associated with such construction or modification.
  - b. The placing of permanent or temporary obstructions that interfere with the normal public use of the waters and lands subject to this code.
  - c. The division of land into two or more parcels, and the adjustment of property lines between parcels.

Deviation: A minor modification of standard development code provisions that does not require the special circumstances necessary for granting a variance and which complies with the city's deviation criteria.

Diameter: The circumference of a tree divided by pi (3.14) and measured at a point four and one-half feet above the ground.

Dish Antenna: A parabolic antenna greater than 24 inches in diameter intended to send or receive signals to or from orbiting satellites or other communications systems.

Ditch: A long, narrow, human-built excavation that conveys storm water or irrigation water that is not identified by the state of Washington as a classified or unclassified stream.

Dwelling:

1. Dwelling Unit: A part of a multiple-family dwelling containing only one kitchen, that houses not more than one family, plus any live-in household employees of such family (see also "Accessory Dwelling Unit (ADU)").
2. Multiple-Family Dwelling: A building, other than a single-family dwelling with an accessory dwelling unit, containing two or more dwelling units.
3. Single-Family Dwelling: A building designed and/or used to house not more than one family, plus any live-in household employees of such family.
4. Single-Family Dwelling – Detached: A single-family dwelling that is not attached to any other structure by any means and is surrounded by open space or yards.
5. Single-Family Dwelling – Semi-Detached: A single-family dwelling that is attached to another dwelling unit by a common vertical wall, with each dwelling unit located on a separate lot.

E

Easement: A grant of one or more of the property rights or privileges by the property owner to and/or for use or protection of a portion of land, by the public, a corporation or another person or entity, that runs with the land.

Ecological Functions or Shoreline Functions: The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Ecosystem-Wide Processes: The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Enhancement or Enhance: Actions performed to increase the functions of critical areas.

Erosion Hazard Areas: Those areas greater than 15 percent slope and subject to a severe risk of erosion due to wind, rain, water, slope and other natural agents including those soil types and/or areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" or "very severe" rill and inter-rill erosion hazard.

Existing Grade: The surface level at any point on the lot prior to alteration of the ground surface.

F

Facade: Any exterior wall of a structure, including projections from and attachments to the wall. Projections and attachments include balconies, decks, porches, chimneys, unenclosed corridors and similar projections.

Fair Market Value: The expected price at which a development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation and other costs incurred for the duration of the permitted project (WAC 173-27-030(8)).

Family: One or more persons (but not more than six unrelated persons) living together in a single housekeeping unit. For purposes of this definition, persons with familial status and persons with handicaps within the meaning of the Fair Housing Amendments Act (FHAA), 42 U.S.C. Sections 3602(h) and (k) will not be counted as unrelated persons. The limitation on the number of unrelated residents set forth in this definition shall not prohibit the city from making reasonable accommodations, as required by the FHAA, 42 U.S.C. Section 3604(f)(3)(B) and as provided in MICC 19.01.030. The term "family" shall exclude unrelated persons who are not also handicapped or have familial status within the meaning of the FHAA who live together in social service transitional housing or special needs group housing.

Feasible (SMP): An action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions: (1) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (2) the action provides a reasonable likelihood of achieving its intended purpose; and (3) the action does not physically preclude achieving the project's primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

Fence: A barrier composed of posts or piers connected by boards, rails, panels or wire, or a masonry wall.

Fill: The placement of earth material by artificial means.

Fill (SMP): The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Financial and Insurance Services: Establishments primarily engaged in financial transactions and/or in facilitating financial transactions. Examples include banks, credit unions, stock brokers, and insurance underwriters.

Fish Use or Used by Fish: Those areas within a watercourse where live fish normally exist for spawning rearing and/or migration. "Fish use" may be presumed to occur in those reaches of watercourses that have year round flow, are accessible from Lake Washington to juvenile salmonid fish and have an average bed slope of less than 12 percent. "Fish use" shall not be presumed for (1) intermittent or seasonal reaches; (2) for reaches with an average bed slope of 12 percent or greater; (3) for reaches upstream from road culverts with a bottom slope of 10 percent or greater; or (4) reaches with greater than a 12-inch drop from the downstream invert of the culvert to the downstream pool elevation at ordinary high water. If the uppermost point of fish use cannot be identified with simple, nontechnical observations, then the upper extent of fish use should be determined using the best professional judgment of a qualified professional after considering actual conditions and the physical abilities and capabilities of juvenile salmonid fish.

Floating Home: A single-family dwelling unit constructed on a float, which is moored, anchored or otherwise secured in waters.

Floating Platform: A flat structure or device moored or anchored, not permanently secured by piles, which floats upon the water.

Foster Family Home: A person or persons providing state-licensed foster care on a 24-hour-a-day basis to one or more, but not more than four, children, expectant mothers, or developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

Foster Family Home, Large: At least two persons providing state-licensed foster care on a 24-hour-a-day basis to five or six children, expectant mothers or developmentally disabled persons in the family abode of the persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

## G

Garage: An accessory building or an accessory portion of the main building designed and/or used customarily for parking or storage of vehicles, trailers, and boats by the occupants of the main building, which does not meet the definition of a carport.

Geologic Hazard Areas: Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas.

Geotechnical Professional: A practicing, geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, or a licensed engineering geologist with sufficient relevant training and experience as approved by the city.

Geotechnical Report or Geotechnical Analysis (SMP): A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Government Services: Services provided by the city, King County, the state of Washington, or the federal government including, but not limited to, fire protection, police and public safety activities, courts, administrative offices, and equipment maintenance facilities.

Groin: A structure used to interrupt sediment movement along the shore.

Gross Floor Area: The total square footage of floor area bounded by the exterior faces of the building.

1. The gross floor area of a single-family dwelling shall include:
  - a. The main building, including but not limited to attached accessory buildings.
  - b. All garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet.
  - c. That portion of a basement which projects above existing grade as defined and calculated in Appendix B of this development code.
2. In the Town Center, gross floor area is the area included within the surrounding exterior finish wall surface of a building, excluding courtyards and parking surfaces.

Groundcover: Small plants such as salal, ferns, mosses, grasses or other types of vegetation which normally cover the ground and includes trees less than four inches in diameter measured at 24 inches above the ground level.

## H

Handicaps, Persons With:

1. A person who has a physical or mental impairment which substantially limits one or more of such person's major life activities; or
2. A person with a record of having such an impairment; or
3. A person who is regarded as having such an impairment, but the term impairment does not include current, illegal use of or active addiction to a controlled substance.

**Hard Structural Shoreline Stabilization:** Shore erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces that are located at or waterward of ordinary high water, as well as those structures located on average within five feet landward of OHWM. These include bulkheads, rip-rap, groins, retaining walls and similar structures.

**Hazardous Tree:** Any tree that receives an 11 or 12 rating under the International Society of Arboricultural rating method set forth in Hazard Tree Analysis for Urban Areas (copies of this manual are available from the city arborist) and may also mean any tree that receives a 9 or 10 rating, at the discretion of the city arborist.

**Hazardous Waste:** Those solid wastes designated by 40 CFR Part 261 and regulated by the State Dangerous Waste Regulations, Chapter 173-303 WAC.

1. **Hazardous Waste Storage:** The holding of hazardous waste for a temporary period.
2. **Hazardous Waste Treatment:** The physical, chemical or biological processing of hazardous waste to make such waste nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume.

**Healthcare Services:** Establishments providing outpatient health care services directly or indirectly to ambulatory patients. Examples include offices for doctors, dentists, optometrists, and mental health professionals. This use does not include medical and diagnostic laboratories.

**Hotel/Motel:** A facility offering temporary accommodations for a fee to the general public and which may provide additional services such as restaurants, meeting rooms, entertainment, and recreational facilities.

**Hydric Soils:** Soil that is wet long enough to periodically produce reduced oxygen conditions, thereby influencing the growth of plants.

I

**Impervious Surfaces:** Includes without limitation the following:

1. Buildings – the footprint of the building and structures including all eaves;
2. Vehicular use – driveways, streets, parking areas and other areas, whether constructed of gravel, pavers, pavement, concrete or other material, that can reasonably allow vehicular travel;
3. Sidewalks – paved pedestrian walkways, sidewalks and bike paths;
4. Recreation facilities – decks, patios, porches, tennis courts, sport courts, pools, hot tubs, and other similar recreational facilities;
5. Miscellaneous – any other structure or hard surface which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, or causes water to run off the surface in greater quantities or at an increased rate of flow from present flow rate under natural conditions prior to development.

J

**Jetty:** A barrier used to protect areas from accumulations of excess sediment.

K

**Kennel:**

1. Any lot on which six or more dogs, cats, or other small animals over the age of four months are kept for any reason; or
2. Any lot on which any number of dogs, cats, or other small animals over the age of four months are kept for sale, are bred to produce off-spring for sale, or are boarded for a fee or other consideration.

**Kitchen:** Any room used, intended, or designed for cooking and/or preparation of food.

L

**Landmark Grove:** A healthy grove of trees satisfying one or more of the following criteria and having been designated as a landmark grove under MICC 19.10.140:

1. The grove is relatively mature and is of a rare or unusual nature containing trees that are distinctive either due to size, shape, species, age or exceptional beauty;
2. The grove is distinctive due to a functional or aesthetic relationship to a natural resource, such as trees located along a ridge line; or
3. The grove has a documented association with a historical figure, property or significant historical event.

**Landmark Tree:** Any healthy tree satisfying one or more of the following criteria and having been designated as a landmark tree under MICC 19.10.140:

1. The tree has a diameter of 36 inches or greater;
2. The tree has a distinctive size, shape or location, or is of a distinctive species or age;
3. The tree possesses exceptional beauty;

4. The tree is distinctive due to a functional or aesthetic relationship to a natural resource, such as trees located along a ridge line; or
5. The tree has a documented association with a historical figure, property or significant historical event.

Landslide Hazard Areas: Those areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors, including:

1. Areas of historic failures;
2. Areas with all three of the following characteristics:
  - a. Slopes steeper than 15 percent; and
  - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - c. Springs or ground water seepage;
3. Areas that have shown evidence of past movement or that are underlain or covered by mass wastage debris from past movements;
4. Areas potentially unstable because of rapid stream incision and stream bank erosion; or
5. Steep Slope. Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.

Landward: Any point located inland from the ordinary high water mark.

Large (Regulated) Tree: Any conifer tree that is six feet tall or more or any deciduous tree with a diameter of more than six inches.

Lateral Line: The extension waterward of a property line into Lake Washington beyond the ordinary high water mark. How property lines extend waterward from the ordinary high water mark is an area of misconception. If the title does not clearly state the location of the property lines waterward from the ordinary high water mark, waterfront owners are not allowed to unilaterally project the upland boundaries out into the shorelands (waterward). There are no statutes defining the direction of the lateral lines waterward from the ordinary high water mark. The Supreme Court has the final word to decide location of lateral line on case-by-case basis.

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

Light Rail Facilities: A public rail transit line, including all ancillary facilities such as transit power substations, that operates at grade level, above grade level, on a bridge or in a tunnel and that provides high capacity, regional transit service owned or operated by a regional transit authority authorized under Chapter 81.112 RCW. A regional light rail transit system will be designed to cross I-90 right-of-way.

Lot: A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law to be used, developed or built upon as a unit.

1. Corner Lot: A lot located at the junction of and abutting two or more intersecting streets.
2. Upland Lot: A lot having no frontage on Lake Washington.
3. Waterfront Lot: A lot having frontage on Lake Washington.

Lot, Conforming: A lot that conforms with the applicable zoning ordinance standards as to size, width, depth and other dimensional regulations.

Lot Depth: For lots with exactly one front lot line, one rear lot line, and two side lot lines, lot depth is the distance as measured from the midpoint of the front property line to the midpoint of the rear property line. For all other lots, lot depth is determined by the mean average distance measured from the front lot line to the rear lot line. To calculate mean average distance, draw lines perpendicular to the front property line at two-foot intervals. The lengths of the perpendicular lines, which extend through the building pad to the rear lot line, shall be added together and the sum of the lengths shall be divided by the total number of perpendicular lines.

Lot Line Revisions: An adjustment of boundary lines between existing lots that does not create any additional lots and which does not reduce the area of any existing lot to the point that it fails to meet minimum development code requirements for area and dimensions.

Lot, Nonconforming: See Nonconforming Lot.

Lot Width: For lots with exactly one front lot line, one rear lot line, and two side lot lines, lot width is the distance between the two midpoints of side lot lines. For all other lots, lot width is determined by a lot width circle within the boundaries of the lot; provided, that no access easements are included within the lot width circle.

Lots, Contiguous: Contiguous lots are two or more lots that share a common property line; provided, the existence of a public or private roadway, utility and/or similar easement shall not be deemed to divide or make land noncontiguous if land on both sides of such roadway, utility and/or similar easement is commonly owned or controlled.

M

Major New Construction: Construction from bare ground or an enlargement or alteration that changes the exterior of an existing structure that costs in excess of 50 percent of the structure's assessed value. Single-family development is excluded from this definition.

Major Site Feature: The public development amenities listed in MICC 19.11.060 that an applicant of major new construction in the Town Center must provide in order to be allowed building height over the base building height of two stories.

**Manufacturing:** An establishment engaged in the mechanical or chemical transformation of materials or substances into new products. Uses which create or involve the production of hazardous materials or objectionable noise, odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse or water-carried waste are not allowed. Manufacturing uses are limited to 10,000 square feet or less of gross floor area.

**Master Site Plan:** The comprehensive, long range plan intended to guide the growth and development on a parcel of land that shows the existing and proposed conditions on the site including topography, vegetation, drainage, flood plains, wetlands, waterways, landscaping, open spaces, walkways, means of ingress and egress, circulation, utilities, structures and buildings, and any other information reasonably necessary for the design commission to make an informed decision about development of the site.

**Mean Low Water:** The level of Lake Washington during the fall and winter when the water level is lowered to minimize winter storm damage to lakeside properties. Mean low water is one and one-half feet lower than ordinary high water.

**Minor Exterior Modification:** Any exterior modification to an existing development or site that does not constitute major new construction.

**Minor Modification to Site Plan:** Modification of lot lines which does not violate any development or design standards, or increase the intensity or density of uses; reconfiguration of parking lots or landscape areas which does not reduce the required amount of parking or landscaping or negatively impact the screening from adjacent residential property; change in tree and landscape plant material that is less than four-inch caliber in size; modifications of the building envelope which do not increase the building footprint or which constitute minor exterior modification; relocation of fire lanes or utility lines.

**Minor Site Feature:** The public development amenities listed in MICC 19.11.060 that an applicant of major new construction in the Town Center must include regardless of the building's height.

**Mitigation or mitigate:** The use of any or all of the following actions in a critical area:

1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
4. Minimizing or eliminating the impact over time by preservation or maintenance operations;
5. Compensating for the impact by replacing, enhancing or providing substitute critical areas; or
6. Monitoring the impact and taking appropriate corrective measures including any combination of the measures listed in subsections (1) through (5) of this definition.

**Mixed Use:** Development with a variety of complementary and integrated uses, such as, but not to be limited to, residential, office, retail, public, or recreation.

**Monitoring:** Evaluating the impacts of alterations to critical areas and assessing the performance of required mitigation measures through the collection and analysis of data.

**Moorage Facility:** Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.

**Mortuary Services:** The preparation of the dead for burial or interment including conducting funerals, transporting the dead, and selling caskets and related merchandise.

**Museums and Art Exhibitions:** The exhibition of objects of historical, cultural, and/or educational value that are not offered for sale.

N

**Native Growth Protective Easement (NGPE):** An easement granted to the city for the protection of native vegetation within a critical area or buffer.

**Native Vegetation:** Vegetation identified by the Washington Native Plant Society or the United States Department of Agriculture as being native to Washington State. Native vegetation does not include noxious weeds.

**No Net Loss:** An ecological concept whereby conservation losses in one geographic or otherwise defined area are equaled by conservation gains in function in another area.

**Nonconforming Lot:** A lot that has less than the minimum area, width and depth required by the current code for the zone in which the lot is located.

**Nonconforming Site, Legal:** A developed building site that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements that were in effect regarding site development at the time it was developed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

**Nonconforming Structure, Legal:** A structure that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was constructed but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

**Nonconforming Use, Legal.** The use of a structure, site or of land that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements in effect at the time it was commenced but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements.

Noxious weed: Any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices (see Chapter 5.10 RCW). The state noxious weed list in Chapter 16-750 WAC, as compiled by the State Noxious Weed Control Board, is the officially adopted list of noxious weeds for the city.

Nursing Home: An establishment as defined, regulated and licensed by Chapter 18.51 RCW that provides care to persons who through illness or infirmity are not capable of caring for themselves.

O

Office Uses: The use of a room or group of rooms for conducting the affairs of a business, profession, service, or government and generally furnished with desks, tables, files and communication equipment.

Open Record Hearing: A hearing conducted by the authorized body that creates the city's record through testimony and submission of evidence and information, under procedures prescribed by city ordinance and/or adopted by the hearing body.

Ordinary High Water Mark (OHWM): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the Department of Ecology; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the state. To determine OHWM for a shoreline armoring project, a site-specific determination by a qualified professional is required. For determination of OHWM for measuring building setbacks, the OHWM corresponds with a lake elevation of 18.6 feet above sea level, when based on North American Vertical Datum of 1988 (NAVD 88).

Ordinary Repairs and Maintenance: An activity in response to the effects of aging or ordinary use, wear and tear that restores the character, scope, size, footprint or design of a serviceable area, structure, or land use to its previously existing, authorized or undamaged condition; however, this is not intended to allow total replacement, substitution or reconstruction of a nonconforming structure. Activities that change the character, size, footprint or scope of a project beyond the original shall not be considered ordinary repairs and maintenance and shall result in loss of nonconforming status.

P

Parking: A public or private area, under, within or outside a building or structure, designed and used for parking motor vehicles including parking lots, garages, and driveways. For the purposes of this definition only:

1. "Parking structure" shall mean a building or structure consisting of more than one level and used for the temporary parking and storage of motor vehicles.
2. "Underground parking" shall mean the location of that portion of the parking structure located below the existing grade of the ground abutting the structure.

Patio Home: A single-family dwelling on a separate parcel with open spaces on three sides and with a court.

Pavers: A paver or pavement that allows rain and/or surface water runoff to pass through it and reduce runoff from a site and surrounding areas. Pavers include porous pavement, porous pavers, and permeable interlocking concrete pavement as described in the Washington State Department of Ecology Stormwater Management Manual, as now exists or hereafter amended.

Pedestrian-Oriented Uses: Uses that stimulate pedestrian activity along the sidewalk frontage of a building. Uses include, but are not limited to, small scale retail, restaurants and theaters.

Pedestrian Walkway: A walkway used exclusively for pedestrian trafficway, which may be covered or enclosed.

Person: An individual, partnership, corporation, or association.

Personal Services: A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.

Pile: A timber or section of concrete placed into the ground to serve as a support or moorage.

Places of Worship: A church, synagogue, mosque, or other institution that people regularly attend to participate in or hold religious services, meetings, or other religious activities.

Premises: A piece of land with or without improvements, including but not limited to a building, room, enclosure, vehicle, vessel or other place thereon.

Private Property: Any property other than public property.

Professional, Scientific, and Technical Services: Establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training and include legal services; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; real estate sales services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.

Protected Slope Area: Any area within a 40-foot radius of the base of the subject tree if there is any point within that area that is at least 12 feet higher or lower than the base of the tree.

**Prune or Pruning:** The pruning of a tree through crown thinning, crown cleaning, windowing or crown raising but not including crown topping of trees or any other practice or act which is likely to result in the death of or significant damage to the tree.

**Public Access:** A means of physical approach to and along the shoreline, or other area, available to the general public. Public access may also include visual approach.

**Public Facility:** A building, structure, or complex used by the general public. Examples include but are not limited to assembly halls, schools, libraries, theaters and meeting places.

**Public Meeting:** A meeting, hearing workshop, or other public gathering of people to obtain comments from the public on a proposed project permit prior to the city's decision. A public meeting does not include an open record hearing.

**Public Property:** Any property under direct ownership or control of the city of Mercer Island. This includes, but is not limited to, parks, green belts, open spaces, rights-of-way, and ground around public buildings but excludes Interstate 90 and any property owned by the state of Washington.

**Public Tree:** Any tree located on public property.

## Q

**Qualified professional:** A person who performs studies, field investigations, and plans on critical areas and has an educational background and/or relevant experience in the field, as determined by the code official.

## R

**Reasonable Use:** A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC 19.07.030(B) balances the public interests against the regulation being unduly oppressive to the property owner.

**Recreation:** In the Town Center, recreation includes a place designed and equipped for the conduct of leisure-time activities or sports.

**Recreational Area:** For single-family and multifamily residential zones, an area, including facilities and equipment, for recreational purposes, such as a swimming pool, tennis court, a golf course, or a playground.

1. **Commercial Recreational Area:** A recreational area maintained and operated for a profit.
2. **Noncommercial Recreational Area:** A recreational area maintained and operated by a nonprofit club or organization with specified limitations upon the number of members or limited to residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests.
3. **Recreational Area, Private:** A recreational area maintained by an individual for the sole use of his/her household and guests, located or adjacent to his/her residence, not for profit or in connection with any business operated for profit.
4. **Semi-Private Waterfront Recreational Area:** A separate shoreline property interest established in fee simple or by easement in favor of one or more upland lots which is used for water-related recreational purposes.

**Regulated Improvements:** Any development of any property within the city, except:

1. Property owned or controlled by the city; or
2. Single-family dwellings and the buildings, structures and uses accessory thereto; or
3. Wireless communications structures, including associated support structures and equipment cabinets.

**Repair Services:** The repair and maintenance of personal and household goods, including locksmithing, appliance repair, furniture reupholstery, and shoe repair.

**Replacement Tree:** Any tree that is planted in order to satisfy the tree replacement requirements of a tree permit.

**Residential Care Facility:** A facility, licensed by the state that cares for at least five but not more than 15 people with functional disabilities, that has not been licensed as an adult family home pursuant to Chapter 70.128 RCW.

**Residential Dwelling:** A home, abode or place that is used for human habitation.

**Residential Uses:** For purposes of the shoreline management provisions of this code, residential uses shall mean those uses allowed in the R-8.4, R-9.6, R-12, R-15, MF-2L, and MF-2 zones.

**Restaurant:** An establishment where food and drink are prepared and consumed. Such establishment may also provide catering services.

**Restoration of Ecological Functions (SMP):** The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.



Restoration or restore: Actions performed to return a critical area to a state in which its functions approach its unaltered state as closely as possible.

Retail Use: An establishment engaged in selling goods or merchandise and rendering services incidental to the sale of such goods.

1. Small Scale Retail: A retail establishment occupying a space of 20,000 square feet or less.
2. Large Scale Retail: A retail establishment occupying more than 20,000 square feet.
3. Outdoor Retail: The display and sale primarily outside a building or structure of the following: vehicles, garden supplies, gas, tires, boats, aircraft, motor homes, building and landscape materials, and lumber yards.

Retaining Walls/Rockerries: A wall of masonry, wood, rock, metal, or other similar materials or combination of similar materials that bears against earth or other fill surface for purposes of resisting lateral or other forces in contact with the wall, and/or the prevention of erosion.

Retirement Home: An establishment operated for the purpose of providing domiciliary care or assisted living for a group of persons who by reason of age are unable to or do not desire to provide such care for themselves and who are not in need of medical or nursing aid, except in cases of temporary illness.

Right-of-way: Land acquired by reservation, dedication, prescription or condemnation, and intended to be used by a road, sidewalk, utility line or other similar public use.

Riprap: Hard angular carry rock or other similar materials used for erosion control and/or land or bank stabilization.

Rooming House: A home or other facility, other than special needs group housing or social service transitional housing as provided in MICC 19.06.080(A) and (B), that provides room or room and board to seven or more persons unrelated to the operator, and does not include persons with handicaps or persons with familial status within the meaning of the FHAA.

S

Salmonid: A member of the fish family Salmonidae.

Scale: The height, width and general proportions of a structure or features of a structure in relationship to its surroundings. Human or pedestrian scale is building form or site design that is intimate, comfortable and understandable from the perspective of an individual walking.

Seismic Hazard Areas: Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

Senior Citizen Housing: Dwelling units which are used exclusively for housing persons 60 years of age and older.

SEPA Rules: Chapter 197-11 WAC adopted by the Department of Ecology, as now or hereafter amended.

Service: An establishment primarily engaged in providing assistance as opposed to products. Examples include but are not limited to personal services, business, financial and insurance services, mortuary services, tailors, healthcare services, educational services, repair services, amusement services, membership organizations, and other professional, scientific, and technical services.

Service Stations: Establishments retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol) and automotive oils. These establishments may also provide repair and maintenance services for automotive vehicles and/or convenience store retailing.

Shared Pier: A dock or pier which is shared by two or more waterfront lots.

Shorelands: Lake Washington, its underlying land, associated wetlands, and those lands extending landward 200 feet from its ordinary high water mark (OHWM).

Shoreline Areas and Shoreline Jurisdiction: All "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

Shoreline Master Program: The comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under Chapter 90.58 RCW shall be considered an element of the county's or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of the county's or city's development regulations.

Shrub: Any living woody plant species characterized by having multiple vertical or semiupright branches originating at or near the ground and is known to achieve a typical mature height of less than 15 feet. Species include without limitation, rhododendrons, pyramidalis, laurel, boxwood and other ornamental shrubs.

Sign: Any series of letters, figures, design symbols, lights, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, or thing. Excluded are official traffic signs or signals, public notices, and governmental flags.

Sign, Directional: A sign which contains only the name and location of a use located elsewhere and intended for guidance only.

Significant Affordable Housing: Affordable housing in the Town Center meeting the requirements of MICC 19.11.050(B)(5).

Significant Pedestrian Connection or Connection: A pedestrian connection in the Town Center meeting the requirements of MICC 19.11.050(B)(3).

**Significant Public Amenity or Amenities:** The public development amenities listed in MICC 19.11.050 that an applicant must provide in order to be permitted the maximum allowed building height in the Town Center.

**Significant Public Plaza or Plaza:** A public plaza in the Town Center meeting the requirements of MICC 19.11.050(B)(2).

**Slope:** A measurement of the average incline of a lot or other piece of land calculated by subtracting the lowest elevation from the highest elevation, and dividing the resulting number by the shortest horizontal distance between these two points.

**Small Tree:** Any conifer tree that is less than six feet tall or any deciduous tree with a diameter of six inches or less.

**Social Service Transitional Housing:** Noninstitutional group housing facilities for unrelated persons, other than special needs group housing or rooming houses, that are privately or publicly operated, including those facilities required to be licensed by the state or federal governments as well as those that may not be required to be licensed, that provide temporary and transitional housing to meet community social service needs including, but not limited to, work-release facilities and other housing facilities serving as an alternative to incarceration, halfway houses, emergency shelters, homeless shelters, domestic violence shelters and other such crisis intervention facilities. Social service transitional housing excludes institutional facilities that typically cannot be accommodated in a single-family residential structure.

**Soft Structural Shoreline Stabilization Measures:** Shore erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a nonlinear, sloping arrangement.

**Solar Energy System:** Any device, structure, mechanism, or series of mechanisms which use solar radiation as an energy source for heating, cooling, or electrical energy.

**Special Needs Group Housing:** Noninstitutional group housing that primarily supports unrelated persons with handicaps or persons protected by familial status within the meaning of the FHAA, but not including individuals whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Special needs group housing includes, but is not limited to, foster family homes, adult family homes and residential care facilities as provided in Chapter 70.128 RCW, but excludes facilities that typically cannot be accommodated in a single-family residential structure such as hospitals, nursing homes, assisted living facilities and detention centers.

**Stealth Design:** Wireless communications facilities designed to blend into the surrounding environment as determined by the code official. Examples of stealth design include architecturally screened roof-mounted antennas, facilities integrated into architectural elements, and facilities designed to blend with or be integrated into light poles, utility poles, trees, steeples, or flag poles.

**Steep Slope:** Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run. Steep slopes do not include artificially created cut slopes or rockeries.

**Story:** Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet (1,829 mm) above grade for more than 50 percent of the total perimeter, or is more than 12 feet (3,658 mm) above grade at any point, such usable or unused under-floor space shall be considered as a story. Grade is measured as the lowest point on the property within a distance of five feet from the exterior wall.

**Street:** An improved or unimproved public or private right-of-way or easement which affords or could be capable of affording vehicular access to property.

1. **Collector Arterial:** A street designed to collect and distribute traffic from major arterials to the local access streets. The collector arterial is similar to a local access street except for stop and yield privileges over a local access street and restrictions for on street parking.
2. **Local Access Street:** A street designated for direct access to properties, and which is tributary to the arterial system.
3. **Major Arterial Street:** A street designed to collect and distribute large volumes of traffic from the freeway, Town Center and less important arterial streets. This type of arterial normally is designed to expedite through traffic.
4. **Second Arterial Street:** A street designed to collect and distribute traffic from the freeway or major arterials and less important streets.

**Street Furniture:** Structures located in streets, rights-of-way, parking lots, or other similar open spaces on a site, including, but not limited to, light standards, utility poles, newspaper stands, bus shelters, planters, traffic signs, traffic signals, benches, guard rails, rockeries, retaining walls, mail boxes, litter containers, and fire hydrants.

**Structural Alteration:** Any change, addition, or modification to elements of a structure that are or relate to load-bearing members or the stability of the structure (as distinguished from screening or ornamental elements). Examples of structural alterations include, but are not limited to, any change in the supporting members of a structure, such as foundations, studs in exterior or bearing walls or bearing partitions, columns, beams, headers, girders, joists or rafters. Replacement of exterior cladding and replacement of glazing in existing openings shall not be considered structural alteration.

**Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

**Subdivision:** The division or platting of, or the act of division or platting of, land into two or more lots for the purpose of transfer of ownership, building development, or lease, whether immediate or future, and shall include all resubdivision of land.

1. **Short Subdivision or Short Plat:** A subdivision consisting of four or less lots on four or less acres.

2. Long Subdivision or Long Plat: A subdivision consisting of five or more lots on any number of acres or any number of lots on more than four acres.

Substantial Development: A development of which the total cost or fair market value exceeds \$2,500 or any development that materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3e) and WAC 173-27-040.

Support Structure: See "Wireless Communication Support Structure."

T

Teen Dance: Any dance that is open to the public and is held and conducted directly or indirectly for a profit, or requires a monetary contribution from any of the persons admitted or from a parent, and which permits the entry of persons under the age of 20 years. Teen dance does not include noncommercial dances sponsored by an accredited educational institution, nor does it include a dance sponsored by churches or other religious institutions, community organizations or other nonprofit tax-exempt organizations.

Temporary Encampment: A group of persons temporarily residing in one or more temporary structures, except for recreational purposes, and located at a place of worship.

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Erosion and Sediment Control Plan: A plan that details the location and type of temporary physical, structural and/or managerial practices an applicant will use to reduce erosion, prevent pollution of water with sediment and comply with the adopted storm water manual pursuant to Chapter 19.09 MICC.

Theaters: Establishments primarily engaged in either (1) producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists or (2) exhibiting motion pictures or videos.

Top and Toe of Slope: The points at which a critical slope decreases to less than 30 percent slope. The upper edge is the "top" of the slope and the bottom is the "toe."

Townhouse: A single-family dwelling unit at least two stories in height constructed in a group of two or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides and a separate means of ingress and egress.

Tract: A piece of land designated and set aside as either public or private open space. No dwelling shall be constructed on the tract, and only those structures that are in keeping with the tract's use as open space shall be allowed.

Trailer: A vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a mobile home or trailer coach and any self-propelled vehicle having a body designed for or converted to the same uses as an automobile trailer without motor power.

Transportation/Utility: A facility primarily engaged in providing transportation services, including automobile service stations and transit stations; the generation, transmission, distribution of energy; or the collection of waste and recycled materials.

Tree: Any living woody plant species other than a shrub, characterized by one main trunk or few dominant trunks and many branches, known to achieve a typical mature height of at least 15 feet.

Tree Permit: A permit issued by the city arborist under Chapter 19.10 MICC.

U

Uplighting: Illumination of an object by methods that project light upward and onto the object to be illuminated, primarily to enhance visual interest at night.

Usable Signal: An unscrambled signal, which when acquired or transmitted by use of a properly installed, maintained and operated antenna, is at least equal in sound or picture quality to that received from local commercial radio or television stations or by way of cable.

Utilities: Facilities providing infrastructure services by a public utility or private utility regulated by the state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. "Utilities" does not include wireless facilities.

V

Variance: A modification of standard development code provisions based on special circumstances and complying with the city's variance criteria.

Vegetative Cover: All significant vegetation (excluding exotic or invasive species) in a critical tree area, the existence or loss of which will have a material impact on the critical tree area.

Vehicle: An instrument capable of movement, by means of wheels, skids or runners of any kind, along roadways, paths, or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, buses, trucks, cars and vans, and all forms of trailers or mobile homes of any size whether

capable of supplying their own motor power or not, regardless whether the primary purpose of such instrument is or is not the conveyance of persons or objects. A vehicle includes all such instruments even if immobilized in any way and for any period of time.

W

**Warehouse:** A building used primarily for the storage of goods and materials, including facilities available to the public for a fee.

**Warehousing:** The storage of goods and materials, including facilities available to the public for a fee.

**Water-Dependent:** A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

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

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

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

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

**Waterfront Structure:** Docks, piers, wharves, floats, mooring piles, anchor buoys, bulkheads, submerged or overhead wires, pipes, cables, and any other object passing beneath, through or over the water beyond the line of ordinary high water.

**Waterward:** Any point located in Lake Washington, lakeward from the ordinary high water mark.

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

**Wetland Classification System:** Those categories set forth in the Washington State Wetland Rating System for Western Washington, Publication #04-06-025 dated August, 2004. A summary of the classification system is provided below:

1. Category I. Category I wetlands are those that meet the following criteria:
  - a. Wetlands that are identified by scientists as high quality or high function wetlands;
  - b. Bogs larger than one-half acre;
  - c. Mature and old-growth forested wetlands larger than one acre; or
  - d. Wetlands that are undisturbed and contain ecological attributes that are impossible to replace within a human lifetime.
2. Category II. Category II wetlands are not defined as Category I wetlands and meet the following criteria:
  - a. Wetlands that are identified by scientists as containing "sensitive" plant species;
  - b. Bogs between one-quarter and one-half acre in size; or
  - c. Wetlands with a moderately high level of functions.
3. Category III. Category III wetlands do not satisfy Category I or II criteria, and have a moderate level of functions. These wetlands generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources than Category II wetlands.
4. Category IV. Category IV wetlands do not satisfy Category I, II or III criteria; and have the lowest level of functions; and are often heavily disturbed.

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

**Wildlife Habitat Conservation Areas:** Those areas the city council determines are necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created consistent with WAC Title 365.

Windowing: The selective removal of branches not to exceed more than 25 percent of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

Wireless Communications:

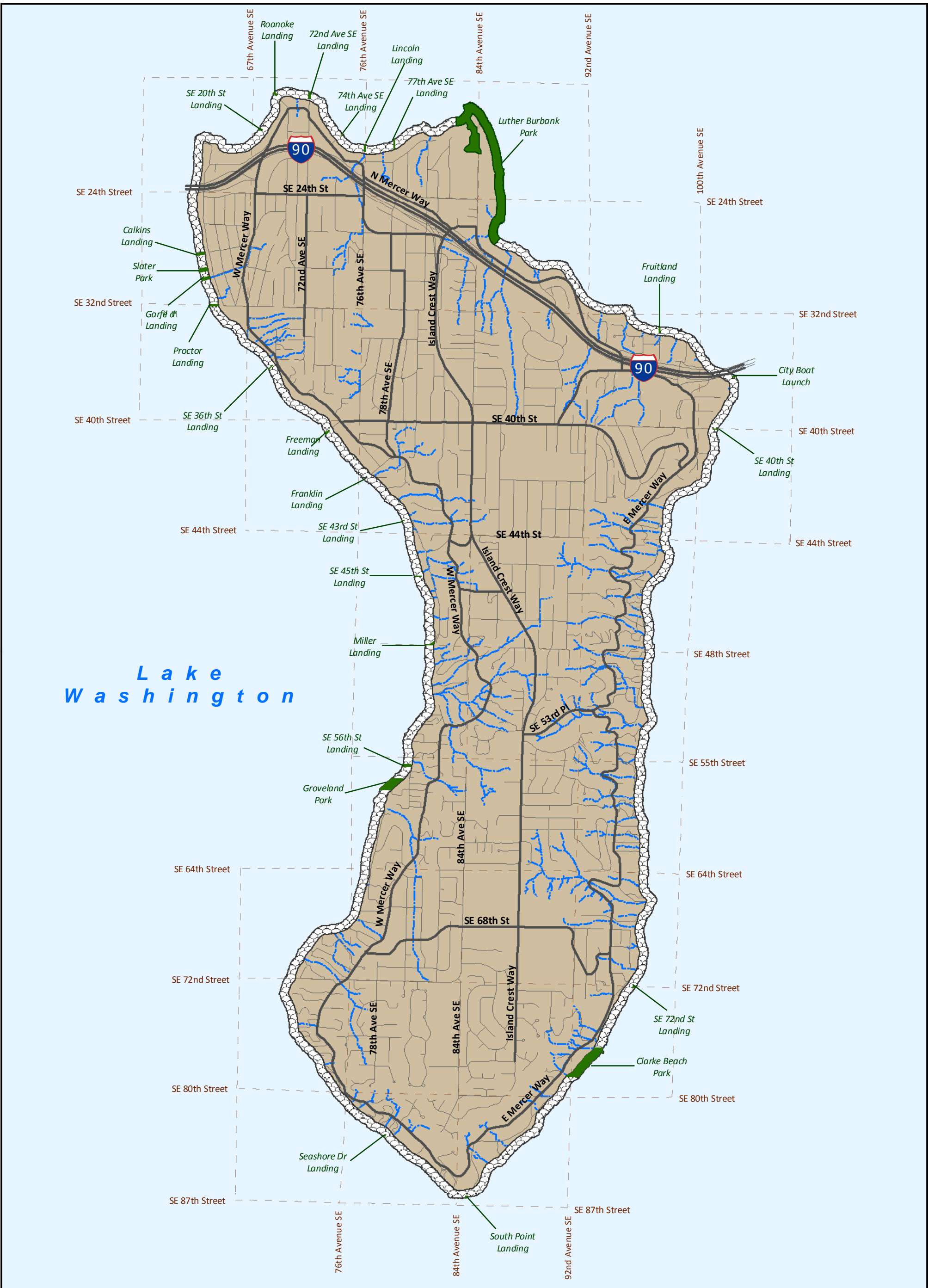
1. Attached Wireless Communications Facility (Attached WCF): An antenna array that is attached to an existing building or structure, including utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.
2. Wireless Communications Antenna Array (Antenna Array): One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
3. Wireless Communications Facility (WCF): Any unstaffed facility for the transmission and/or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.
4. Wireless Communications Support Structure (Support Structure): A structure designed and constructed specifically to support an antenna array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an attached WCF to an existing building or structure (hereinafter "attachment structure") shall be excluded from the definition of and regulations applicable to support structures.

Y

Yard: An open, unoccupied space, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated, required to be kept open by the yard requirements prescribed herein.

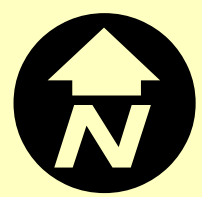
1. Front Yard: The front yard is the yard abutting an improved street from which the lot gains primary access or the yard abutting the entrance to a building and extending the full width of the lot. If this definition does not establish a front yard setback, the code official shall establish the front yard based upon orientation of the lot to surrounding lots and the means of access to the lot.
2. Rear Yard: The yard opposite the front yard.
3. Side Yard: Any yards not designated as a front or rear yard shall be defined as a side yard. (Ord. 15C-02 § 3; Ord. 13C-12 § 3; Ord. 11C-11 § 2; Ord. 11C-05 § 3; Ord. 10C-09 § 1; Ord. 10C-06 § 7; Ord. 10C-01 § 1; Ord. 08C-01 § 9; Ord. 07C-02 § 1; Ord. 06C-04 § 2; Ord. 05C-16 § 2; Ord. 05C-12 § 4; Ord. 04C-12 § 17; Ord. 04C-08 § 11; Ord. 04C-02 § 2; Ord. 03C-08 § 11; Ord. 03C-01 § 5; Ord. 02C-10 § 4; Ord. 02C-09 § 5; Ord. 02C-05 § 5; Ord. 02C-04 § 8; Ord. 02C-01 § 2; Ord. 01C-06 § 1; Ord. 99C-13 § 1).

**APPENDIX F  
SHORELINE MASTER PROGRAM MAP**



## Appendix F - Proposed Shoreline Environment Designations<sup>1,2,3</sup>

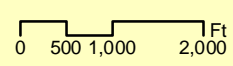
### Shoreline Master Program - City of Mercer Island



- Urban Park Environment
- Urban Residential Environment

Watercourse

- Major Roads
- Minor Roads



<sup>1</sup> Waterward extent of City jurisdiction is measured to the middle of Lake Washington, pursuant to RCW 35.21.160.  
<sup>2</sup> Waterward extent of Shoreline Management Area is measured from the Ordinary High Watermark to the middle of Lake Washington.  
<sup>3</sup> Landward extent of Shoreline Management Area is measured 200 ft landward of the Ordinary High Water Mark.

**19.07.010 Purpose.**

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These regulations are adopted for the following purposes:

- A. To designate and protect critical areas as mandated by Chapter 36.70A RCW;
- B. To include best available science in developing policies to protect the functions of critical areas as mandated by Chapter 36.70A RCW;
- C. To prevent undue hazards to public health, safety, and welfare by minimizing impacts to critical areas;
- D. To implement the city's comprehensive plan; and
- E. To respond to the goals and objectives of the Washington State Growth Management Act, while reflecting the local conditions and priorities of Mercer Island. (Ord. 05C-12 § 5).

**19.07.020 General provisions.**

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- A. Applicability. Any alteration of a critical area or buffer shall meet the requirements of this chapter unless an allowed alteration or reasonable use exception applies pursuant to MICC 19.07.030.
- B. Public Notice – Critical Area Determination. A critical area determination requires public notice pursuant to MICC 19.15.020(E) and this action may be appealed to the planning commission.
- C. Critical Area Designation and Mapping. The approximate location and extent of critical areas are shown on the city's critical area maps (Appendix E), as now existing or hereafter amended. These maps are to be used as a reference only. The applicant is responsible for determining the scope, extent and boundaries of any critical areas to the satisfaction of the code official.
- D. Administrative Guidelines. The code official may adopt administrative guidelines describing specific improvements to critical areas that are based on best available science and satisfy the no net loss standard described in this chapter.
- E. Compliance with Other Federal, State or Local Laws. All approvals under this chapter, including critical area determinations and reasonable use exceptions, do not modify an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation. (Ord. 05C-12 § 5).

**19.07.030 Allowed alterations and reasonable use exception.**

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A. Allowed Alterations. The following alterations to critical areas and buffers are allowed and the applicant is not required to comply with the other regulations of this chapter, subject to an applicant satisfying the specific conditions set forth below to the satisfaction of the code official; and subject further, that the code official may require a geotechnical report for any alteration within a geologic hazard area:

1. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to private property. After the emergency, the code official shall be notified of these actions within seven days. The person or agency undertaking the action shall fully restore and/or mitigate any impacts to critical areas and buffers and submit complete applications to obtain all required permits and approvals following such work. The mitigation and restoration work will be completed within 180 days from issuance of required permits.
2. Operation, maintenance, renovation or repair of existing structures, facilities and landscaping, provided there is no further intrusion or expansion into a critical area.
3. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new access roads or significant amounts of excavation. In every case, impacts shall be mitigated and disturbed areas shall be restored.
4. Boundary Markers. Construction or modification of navigational aids and boundary markers.
5. Existing Streets and Utilities. Replacement, modification or reconstruction of existing streets and utilities in developed utility easements and in developed streets, subject to the following:
  - a. The activity must utilize best management practices; and
  - b. The activity is performed to mitigate impacts to critical areas to the greatest extent reasonably feasible consistent with best available science.
6. New Streets, Driveways, Bridges and Rights-of-Way. Construction of new streets and driveways, including pedestrian and bicycle paths, subject to the following:
  - a. Construction is consistent with best management practices;
  - b. The facility is designed and located to mitigate impacts to critical areas consistent with best available science;
  - c. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so there is no net loss in critical area functions; and

- d. The code official may require a critical area study or restoration plan for this allowed alteration.
7. New Utility Facilities. New utilities, not including substations, subject to the following:
  - a. Construction is consistent with best management practices;
  - b. The facility is designed and located to mitigate impacts to critical areas consistent with best available science;
  - c. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so there is no net loss in critical area functions;
  - d. Utilities shall be contained within the footprint of an existing street, driveway, paved area, or utility crossing where possible; and
  - e. The code official may require a critical area study or restoration plan for this allowed alteration.
8. The removal of noxious weeds with hand labor and/or light equipment; provided, that the appropriate erosion-control measures are used and the area is revegetated with native vegetation.
9. Public and private nonmotorized trails subject to the following:
  - a. The trail surface should be made of pervious materials, unless the code official determines impervious materials are necessary to ensure user safety;
  - b. Trails shall be located to mitigate the encroachment; and
  - c. Trails proposed to be located in a geologic hazard area shall be constructed in a manner that does not significantly increase the risk of landslide or erosion hazard. The city may require a geotechnical review pursuant to MICC 19.07.060.
10. Existing single-family residences may be expanded or reconstructed in buffers, provided all of the following are met:
  - a. The applicant must demonstrate why buffer averaging or reduction pursuant to MICC 19.07.070(B) will not provide the necessary relief;
  - b. Expansion within a buffer is limited to 500 square feet beyond the existing footprint that existed on January 1, 2005;
  - c. The expansion is not located closer to the critical area than the closest point of the existing residence;

- d. The functions of critical areas are preserved to the greatest extent reasonably feasible consistent with best available science;
- e. Impacts to critical areas are mitigated to the greatest extent reasonably feasible so that there is no net loss in critical area functions;
- f. Drainage capabilities are not adversely impacted; and
- g. The city may require a critical area study or restoration plan for this exemption.

11. Conservation, preservation, restoration and/or enhancement of critical areas that does not negatively impact the functions of any critical area. If the proposed work requires hydraulic project approval from the State of Washington Department of Fisheries, the code official may require a critical area study.

12. Tree pruning, cutting and removal in accordance with the permit requirements of Chapter 19.10 MICC, Trees.

13. Alterations to Category III and IV wetlands of low value under 2,500 square feet.

If a project does not qualify as an allowed alteration under this section, it may be allowed through a reasonable use exception or if it is consistent with the other regulations in this chapter.

#### B. Reasonable Use Exception.

1. Application Process. If the application of these regulations deny reasonable use of a subject property, a property owner may apply to the hearing examiner for a reasonable use exception pursuant to permit review, public notice and appeal procedures set forth in Chapter 19.15 MICC.

2. Studies Required. An application for a reasonable use exception shall include a critical area study and any other related project documents, such as permit applications to other agencies, and environmental documents prepared pursuant to the State Environmental Policy Act.

3. Criteria. The hearing examiner will approve the application if it satisfies all of the following criteria:

- a. The application of these regulations deny any reasonable use of the property. The hearing examiner will consider the amount and percentage of lost economic value to the property owner;

- b. No other reasonable use of the property has less impact on critical areas. The hearing examiner may consider alternative reasonable uses in considering the application;
- c. Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property;
- d. Impacts to critical areas are mitigated to the greatest extent reasonably feasible consistent with best available science;
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare; and
- f. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter.

The hearing examiner may approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the above criteria. The applicant has the burden of proof in demonstrating that the above criteria are met. Appeals of the hearing examiner's decision may be made to Washington State Superior Court. (Ord. 05C-12 § 5).

**19.07.040 Review and construction requirements.**

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A. Development Standards. The applicant will comply with the general development standards set forth in Chapter 19.09 MICC.

B. Native Growth Protection Areas.

1. Native growth protection areas may be used in development proposals for subdivisions and lot line revisions to delineate and protect contiguous critical areas.
2. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include an assurance that native vegetation will be preserved and grant the city the right to enforce the terms of the restriction.

C. Setback Deviation. An applicant may seek a deviation from required front and back yard setbacks pursuant to MICC 19.02.020(C)(4).

D. Variances. Variances pursuant to MICC 19.01.070 are not available to reduce any numeric requirement of this chapter. However, the allowed alterations and the reasonable use exception allowed pursuant to MICC 19.07.030 may result in city approvals with reduced numeric requirements.

E. Appeals. Appeals of decisions made under the provisions of this chapter shall follow the procedures outlined in MICC 19.15.010(E) and 19.15.020(J).

F. Fees. Fees shall be set forth in a schedule adopted by city council resolution. The fee should be based on a submittal fee and the time required to review development applications for alterations within critical areas and buffers.

G. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees, Performance Bonds, Insurance. An applicant for a permit within a critical area will comply with the requirements of MICC 19.01.060, if required by the code official.

H. Erosion Control Measures.

1. A temporary erosion and sediment control plan shall be required for alterations on sites that contain critical areas.
2. Erosion control measures shall be in place, including along the outer edge of critical areas prior to clearing and grading. Monitoring surface water discharge from the site during construction may be required at the discretion of the code official.

I. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection and occupancy of a project. Upon a showing of good cause, the code official may extend the completion period.

J. Maintenance and Monitoring.

1. Landscape maintenance and monitoring may be required for up to five years from the date of project completion if the code official determines such condition is necessary to ensure mitigation success and critical area protection.
2. Where monitoring reveals a significant variance 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.

K. 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. (Ord. 05C-12 § 5).

**19.07.050 Critical area study.**

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When a critical area study is required under MICC 19.07.030, 19.07.060, 19.07.070, 19.07.080 or 19.07.090, the following documents are required:

A. Site survey.

B. Cover sheet and site construction plan.

C. Mitigation and restoration plan to include the following information:

1. Location of existing trees and vegetation and proposed removal of same;
2. Mitigation proposed including location, type, and number of replacement trees and vegetation;
3. Delineation of critical areas;
4. In the case of a wildlife habitat conservation area, identification of any known endangered or threatened species on the site;
5. Proposed grading;
6. Description of impacts to the functions of critical areas; and
7. Proposed monitoring plan.

A mitigation and restoration plan may be combined with a storm water control management plan or other required plan. Additional requirements that apply to specific critical areas are located in MICC 19.07.060, Geologic hazard areas; MICC 19.07.070, Watercourses; MICC 19.07.080, Wetlands; and MICC 19.07.090, Wildlife habitat conservation areas.

D. Storm water and erosion control management plan consistent with Chapter 15.09 MICC. Off-site measures may be required to correct impacts from the proposed alteration.

E. Other technical information consistent with the above requirements, as required by the code official.

The critical area study requirement may be waived or modified if the code official determines that such information is not necessary for the protection of the critical area. (Ord. 05C-12 § 5).

**19.07.060 Geologic hazard areas.**

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A. Designation. All property meeting the definition of a geologic hazard area is designated as a geologic hazard area.

B. Buffers. There are no buffers for geologic hazard areas, but a geotechnical report is required prior to making alterations in geologic hazard areas. This provision shall not change development limitations imposed by the creation of building pads under MICC 19.09.090.

C. Geotechnical Review.

1. The applicant must submit a geotechnical report concluding that the proposal can effectively mitigate risks of the hazard. Consistent with MICC 19.07.050, the report shall suggest appropriate design and development measures to mitigate such hazards.
2. The city may require peer review of the geotechnical report by a second qualified professional to verify the adequacy of the information and analysis. The applicant shall bear the cost of the peer review.
3. The code official may waive the requirement for a geotechnical report when the proposed alteration does not pose a threat to the public health, safety and welfare in the sole opinion of the code official.

#### D. Site Development.

1. Development Conditions. Alterations of geologic hazard areas may occur if the code official concludes that such alterations:
  - a. Will not adversely impact other critical areas;
  - b. Will not adversely impact (e.g., landslides, earth movement, increase surface water flows, etc.) the subject property or adjacent properties;
  - c. Will mitigate impacts to the geologic hazard area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
  - d. Include the landscaping of all disturbed areas outside of building footprints and installation of all impervious surfaces prior to final inspection.
2. Statement of Risk. Alteration within geologic hazard areas may occur if the development conditions listed above are satisfied and the geotechnical professional provides a statement of risk with supporting documentation indicating that one of the following conditions can be met:
  - a. The geologic hazard area will be modified, or the development has been designed so that the risk to the lot and adjacent property is eliminated or mitigated such that the site is determined to be safe;
  - b. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologic hazard area;
  - c. The alteration is so minor as not to pose a threat to the public health, safety and welfare; or

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

3. Development Limitations. Within a landslide hazard area, the code official may restrict alterations to the minimum extent necessary for the construction and maintenance of structures and related access where such action is deemed necessary to mitigate the hazard associated with development.

4. Seasonal Limitations. Land clearing, grading, filling, and foundation work within geologic hazard areas are not permitted between October 1 and April 1. The code official may grant a waiver to this seasonal development limitation if the applicant provides a geotechnical report of the site and the proposed construction activities that concludes erosion and sedimentation impacts can be effectively controlled on-site consistent with adopted storm water standards and the proposed construction work will not subject people or property, including areas off-site, to an increased risk of the hazard. As a condition of the waiver, the code official may require erosion control measures, restoration plans, and/or an indemnification/release agreement. Peer review of the geotechnical report may be required in accordance with subsection C of this section. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action. (Ord. 05C-12 § 5).

#### **19.07.070 Watercourses.**

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A. Watercourses – Designation and Typing. Watercourses shall be designated as Type 1, Type 2, Type 3 and Restored according to the following criteria:

1. Type 1 Watercourse. Watercourses or reaches of watercourses used by fish, or are downstream of areas used by fish.
2. Type 2 Watercourse. Watercourses or reaches of watercourses with year-round flow, not used by fish.
3. Type 3 Watercourse. Watercourses or reaches of watercourses with intermittent or seasonal flow and not used by fish.
4. Restored Watercourse. Any Type 1, 2 or 3 watercourses created from the opening of previously piped, channelized or culverted watercourses.

B. Watercourse Buffers.

1. Watercourse Buffer Widths. Standard buffer widths shall be as follows, measured from the ordinary high water mark (OHW), or top of bank if the OHW cannot be determined through simple nontechnical observations.



<b>Watercourse Type</b>	<b>Standard (Base) Buffer Width (feet)</b>	<b>Minimum Buffer Width with Enhancement (feet)</b>
Type 1	75	37
Type 2	50	25
Type 3	35	25
Restored or Piped	25	Determined by the code official

## 2. Reduction of Buffer Widths.

a. The code official may allow the standard buffer width to be reduced to not less than the above listed minimum width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the watercourse, the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in no net loss of watercourse and buffer functions. However, in no case shall a reduced buffer contain a steep slope.

b. The code official may consider the following mitigation options:

- i. Permanent removal of impervious surfaces and replacement with native vegetation;
- ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements;
- iii. Removal of noxious weeds, replanting with native vegetation and five-year monitoring;
- iv. Habitat enhancement within the watercourse such as log structure placement, bioengineered bank stabilization, culvert removal, improved salmonid passage and/or creation of side channel or backwater areas;
- v. Use of best management practices (e.g., oil/water separators) for storm water quality control exceeding standard requirements;
- vi. Installation of pervious material for driveway or road construction;
- vii. Use of "green" roofs in accordance with the standards of the LEED Green Building Rating System;
- viii. Restoration of off-site area if no on-site area is possible;

ix. Removal of sources of toxic material that predate the applicant's ownership; and

x. Opening of previously channelized and culverted watercourses on-site or off-site.

3. Averaging of Buffer Widths. The code official may allow the standard buffer width to be averaged if:

- a. The proposal will result in a net improvement of critical area function;
- b. The proposal will include replanting of the averaged buffer using native vegetation;
- c. The total area contained in the averaged buffers on the development proposal site is not decreased below the total area that would be provided if the maximum width were not averaged;
- d. The standard buffer width is not reduced to a width that is less than the minimum buffer width at any location; and
- e. That portion of the buffer that has been reduced in width shall not contain a steep slope.

4. Restoring Piped Watercourses.

- a. Removal of pipes conveying watercourses shall only occur when the code official determines that the proposal will result in a net improvement of ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards.
- b. Where the buffer of the restored watercourse would extend beyond a required setback the applicant shall obtain written agreement from the affected neighboring property owner. The city may deny a request to restore a watercourse if it results in buffers being adjusted and increased onto adjacent properties.

C. Impervious Surfaces. Impervious surface shall not be permitted within a watercourse or watercourse buffer except as specifically provided in this chapter.

D. Development Standards.

1. Type 3 watercourses may be relocated when such relocation results in equivalent or improved watercourse functions. Type 1 and 2 watercourses shall not be relocated except through the reasonable use exception.

2. Existing watercourses shall not be placed into culverts except as provided by the allowed alterations or reasonable use exception. When culverts are allowed, they shall be designed to mitigate impacts to critical area functions. Oversize and open bottom culverts lined with rock that maintain a semi-natural stream bed are preferred to round culverts. (Ord. 08C-01 § 3; Ord. 05C-12 § 5).

### **19.07.080 Wetlands.**

A. Wetland Designation. All property meeting the definition of a wetland in the Wetland Manual is designated as a wetland.

B. Wetland Ratings. Wetlands shall be rated as Category I, Category II, Category III or Category IV according to the wetland classification system.

C. Wetland Buffers.

1. Standard Wetland Buffer Widths. The following standard buffer widths shall be established from the outer edge of wetland boundaries:

<b>Wetland Type</b>	<b>Standard (Base) Buffer Width (feet)</b>	<b>Minimum Buffer Width with Enhancement (feet)</b>
Category I*	100	50
Category II	75	37
Category III	50	25
Category IV	35	25

\* Note: There are no known Category I wetlands in the city.

2. Reduction of Wetland Buffer Widths. The code official may allow the standard wetland buffer width to be reduced to not less than the minimum buffer width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.070(B)(2), and the proposal will result in no net loss of wetland and buffer functions.

3. Averaging of Wetland Buffer Widths. The code official may allow averaging of the standard wetland buffer widths in accordance with the criteria of MICC 19.07.070(B)(3).

D. Alterations. Category III and IV wetlands of less than one acre in size may be altered if the applicant can demonstrate that the wetland will be restored, enhanced, and/or replaced with a wetland area of equivalent or greater function. In cases where the applicant

demonstrates that a suitable on-site solution does not exist to enhance, restore, replace or maintain a wetland in its existing condition, the city may permit the applicant to provide off-site replacement by a wetland with equal or better functions. The off-site location must be in the same drainage sub-basin as the original wetland. (Ord. 05C-12 § 5).

**19.07.090 Wildlife habitat conservation areas.**

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A. Designation. Bald eagles are the only endangered or threatened non-aquatic wildlife species known to inhabit Mercer Island and the city designates those areas used by these species for nesting, breeding, feeding and survival as wildlife habitat conservation areas. If other non-aquatic species are later added by the State Washington Fish and Wildlife Department as endangered or threatened as set forth in WAC 232-12-011 through 232-12-014, as amended, the city council will consider amending this section to add such species. The provisions of this section do not apply to any habitat areas which come under the jurisdiction of the city's shoreline master program. The city's watercourse, wetland and shoreline regulations in this chapter provide required protections for aquatic species.

B. Establishment of Buffers. For any wildlife habitat conservation area located within other critical areas regulated in this chapter, the buffers for those critical areas shall apply except where species exist that have been identified by the State Department of Fish and Wildlife as endangered or threatened. If such species are present, the applicant shall comply with all state or federal laws in connection with any alteration of the wildlife habitat conservation area and the code official may require a critical area study.

C. Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Activities may be further restricted and buffers may be increased during the specified season. (Ord. 05C-12 § 5).