

**CITY OF MERCER ISLAND
ORDINANCE NO. 23C-15**

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, AMENDING MICC 19.13.010 AND MICC 19.13.040 TO INCLUDE MARINA AS A NEW ALLOWED USE, ADOPTING NEW REGULATIONS IN MICC 19.13.050 RELATED TO MARINA DEVELOPMENT STANDARDS AND AMENDING MICC 19.16.010 TO INCLUDE A DEFINITION OF MARINA; AUTHORIZING ISSUANCE OF RULES TO ADMINISTER THE AMENDED CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Shoreline Management Act (SMA) requires cities and counties to adopt shoreline master programs to regulate use of shorelines of the state;

WHEREAS, The SMA requirements are established in Chapter 90.58 RCW;

WHEREAS, pursuant to Chapter 90.58 RCW, the City has adopted a Shoreline Master Program (SMP) element of the Comprehensive Plan and implementing regulations in Chapter 19.13 Mercer Island City Code (MICC);

WHEREAS, WAC 173-26-090(1) allows local governments to review and make amendments deemed necessary to its shoreline master program;

WHEREAS, WAC 173-26-104 authorizes local governments to elect to use a joint review process with the WA Department of Ecology (Ecology);

WHEREAS, the joint review process authorized by WAC 173-26-104 combines the local and state public comment periods required by RCW 90.58.090 and requires close coordination in conducting a joint public review, early and continuous consultation with Ecology during the drafting of amendments to address local interests while ensuring proposed amendments are consistent with the SMA;

WHEREAS, between January and July 2023, Mercer Island and Ecology Staff held several coordination meetings as required by the joint review process;

WHEREAS, the Mercer Island City Council directed the Planning Commission to consider amendments to the SMP proposed by the Mercer Island Beach Club to allow for expansion of their existing marina;

WHEREAS, on February 13, 2023, the Washington Department of Commerce (Commerce) was notified of the City's intent to adopt amended development regulations;

WHEREAS, on February 13, 2023, a public hearing notice was published in the Community Planning and Development Weekly Bulletin pursuant to MICC 19.15.100;

WHEREAS, on February 14, 2023, Commerce granted expedited review of the proposed amendments to the development regulations;

WHEREAS, on February 15, 2023, a public hearing notice was published in the Mercer Island Reporter pursuant to MICC 19.15.100;

WHEREAS, in addition to the notice of public hearing required by MICC 19.15.100, the City conducted informal public outreach consisting the establishment of a dedicated webpage on “LetsTalk”; and

WHEREAS, on February 22, 2023, the Planning Commission was briefed on amendments to the SMP as proposed in the original docket application and staff alternative;

WHEREAS, on March 22, 2023, the Planning Commission and Ecology held a joint public hearing and considered public comments on the original proposal as required by WAC 173-26-104(2)(c)(ii);

WHEREAS, following the public hearing, the Planning Commission asked staff to develop an alternative to allow marinas by shoreline conditional use permit; and

WHEREAS, on April 26, 2023, the Planning Commission was briefed on the alternative and provided additional input;

WHEREAS, on June 7, 2023, the City issued a State Environmental Policy Act (SEPA) Determination of Nonsignificance, which was posted to the SEPA Register and assigned the SEPA Register number 202302748;

WHEREAS, on June 7, 2023, the Mercer Island Planning Commission held a second public hearing and considered public comments received prior to the close of the public hearing; and

WHEREAS, on June 7, 2023, the Mercer Island Planning Commission unanimously recommended adoption of the proposed amendments to the shoreline master program; and

WHEREAS, on July 7, 2023, the City of Mercer Island submitted the proposed amendment to Ecology for initial review;

WHEREAS, on August 3, 2023, Ecology provided a formal written statement of initial concurrence with the proposed amendments;

WHEREAS, on September 19, 2023, the Mercer Island City Council conducted its first reading of this ordinance; and

WHEREAS, on October 3, 2023, the Mercer Island City Council conducted its second reading of this ordinance.

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

Section 1. MICC 19.13.010 Amended. MICC 19.13.010 is amended to clarify the relationship between the Mercer Island SMP and state law as provided in Exhibit A to this Ordinance. Exhibit A is incorporated herein by this reference as though set forth in full.

Section 2. MICC 19.13.040 Amended. MICC 19.13.040 is amended to allow the shoreline use “marinas” by shoreline conditional use permit as provided in Exhibit B to this Ordinance. Exhibit B is incorporated herein by this reference as though set forth in full.

- Section 3. MICC 19.13.050 Amended.** MICC 19.13.050 is amended to establish use regulations for the shoreline use “marinas” by shoreline conditional use permit as provided in Exhibit C to this Ordinance. Exhibit C is incorporated herein by this reference as though set forth in full.
- Section 4. MICC 19.16.010 Amended.** MICC 19.16.010 is amended to establish a definition of the shoreline use “marinas” as provided in Exhibit D to this Ordinance. Exhibit D is incorporated herein by this reference as though set forth in full.
- Section 5. Severability.** If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.
- Section 6. Publication and Effective Date of Ordinance.** A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and shall be transmitted to the Washington State Department of Ecology for review and final approval. This ordinance shall become effective fourteen (14) days after approval by the Washington State Department of Ecology, but no sooner than 5 days after publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS MEETING ON OCTOBER 3, 2023.

CITY OF MERCER ISLAND

Salim Nice, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio Park, City Attorney

Andrea Larson, City Clerk

Date of Publication: XXXXXXX, 2023

Date of Final Approval by WA DOE:

Chapter 19.13 SHORELINE MASTER PROGRAM

19.13.010 Authority and purpose.

- A. *Authority.* This chapter is adopted as part of the shoreline master program of the city. It is adopted pursuant to the authority and requirements of RCW Chapter 90.58 and WAC Chapter 173-26.
- B. *Applicability.* The requirements of this chapter apply to all uses, activities and development within the shorelands, unless specifically exempted by RCW Chapter 90.58 or WAC Chapter 173-27, or as specified in subsection F of this section. All proposed uses and development occurring within shoreline jurisdiction must conform to RCW Chapter 90.58, the Shoreline Management Act.
- C. *Purpose and intent.* It is the purpose and intent of this chapter to achieve the shoreline master program (SMP) mandates of the state of Washington and to adopt property development standards within the shorelands that protect the health, safety, welfare, values and property interests of the city of Mercer Island and its residents.
- D. *Relationship with other Mercer Island codes and ordinances.* This chapter 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 19.07.190, Ordinance 19C-05) are hereby incorporated as specific regulations of the shoreline master program. To the extent this chapter conflicts with any other section of the Mercer Island City Code, the provisions of this chapter shall govern within the shorelands. In general, provisions related to administration and reasonable use do not apply in shoreline jurisdiction. Activities proposed within the shoreline jurisdiction that required a critical area review 1 or 2 should complete these reviews concurrently with the required shoreline permit.
1. MICC 19.07.120, Exemptions, is excluded from this shoreline master program. Exemptions and exceptions within shoreline jurisdiction are found in WAC 173-27-040, 173-27-044, and 173-27-045.
 2. MICC 19.07.130, Modifications, is excluded from this shoreline master program.
 3. MICC 19.07.140, Reasonable use exception, and MICC 19.07.150, Public agency exception, are excluded from this shoreline master program and shall not apply in shoreline jurisdiction.
 4. MICC 19.07.180(C)(5) and 19.07.190(C)(6), pertaining to buffer reductions, are excluded from the shoreline master program.
 5. MICC 19.07.190(D)(1) is excluded from this master program.
 6. In order to use the wetland buffer table in MICC 19.07.190(C), all of the applicable minimizing measures listed in MICC 19.07.190(D)(3) must be implemented. For wetlands with a habitat score of six or more, if a protected corridor of relatively undisturbed vegetation exists between the wetland and a nearby priority habitat, the portion on the subject property must be protected. Otherwise the following buffers shall be established from the wetland boundary within shoreline jurisdiction:

Wetland Category	Habitat Score		
	3—5	6—7	8—9
Category I	100 ft	150 ft	300 ft
Category II	100 ft	150 ft	300 ft

Chapter 19.13 SHORELINE MASTER PROGRAM

19.13.040 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 MICC 19.13.050.

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 19.13.020(C)
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

Chapter 19.13 SHORELINE MASTER PROGRAM

19.13.050 Shoreland development standards.

All development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this chapter.

- A. *Standards landward of the OWHM.* The standards in Table C shall apply to development located landward of the OWHM:

Table C — Requirements for Development Located Landward from the OWHM		
Setbacks for All Structures (Including Fences over 48 Inches High) and Parking	A*	25 feet from the OWHM and all required setbacks of the development code, except (1) light rail transit facilities and (2) shore access structures less than 30 inches above the existing or finished grade, whichever is lower. 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 Hardscape and Lot Coverage	C	10%: between 0 and 25 feet from OWHM
	D	30%: between 25 and 50 feet from OWHM
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
Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor		The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges
*The letters in this column refer to the Plan View (A) and Section (A) diagrams.		

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- 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.
 2. *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.
 3. 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 (B)(7) of this section and building and construction codes.
 4. 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 (B)(7) of this section and building and construction codes.
 - iv. The erosion control structure will not result in a net loss of shoreline ecological functions.
 5. New structural stabilization measures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW Chapter 70.105D 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.

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6. 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.
 7. 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.
 8. 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.
- C. *Transportation and parking.*
1. Shoreline circulation system planning shall include safe, reasonable, and adequate systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with all regulations.
 2. Transportation and parking facilities shall be planned, located, and designed where routes will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
 3. Where other options are available and feasible, new roads or road expansions should not be built within shorelands.
 4. Parking facilities in shorelands shall be allowed only as necessary to support an authorized use.

- D. *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 Docks, Covered Moorages, and Floating Platforms	A*	10 feet from the lateral line (except where moorage facility is built pursuant to the agreement between the owners of adjoining lots on the shoreline 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 Docks, Covered Moorage, Boatlifts and Floating Platforms	D	Maximum 100 feet, but in cases where water depth is less than 11.85 feet below OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.
Width of Docks 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 boatlifts.
Width of Moorage Facilities More Than 30 Feet Waterward from the OHWM	E	Maximum 6 feet wide. Moorage facility width shall not include pilings, boat ramps and boatlifts.
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.		

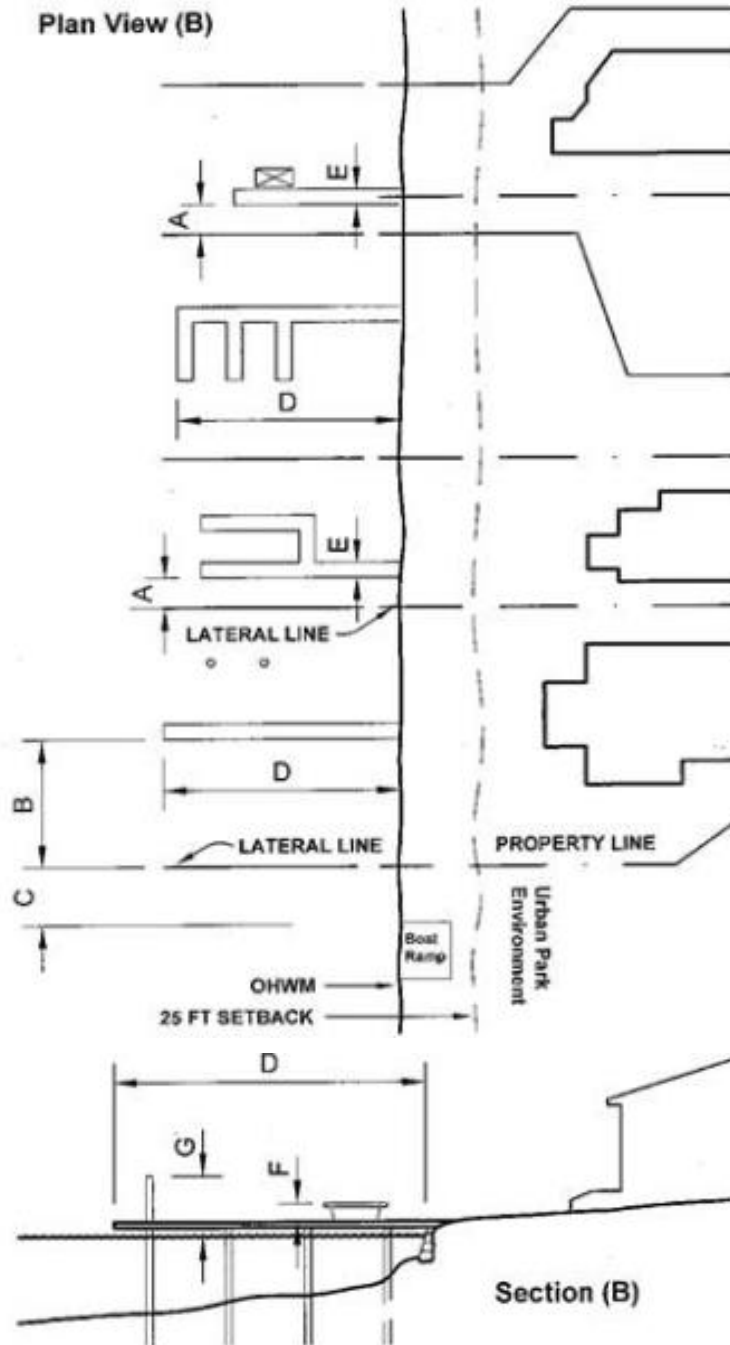
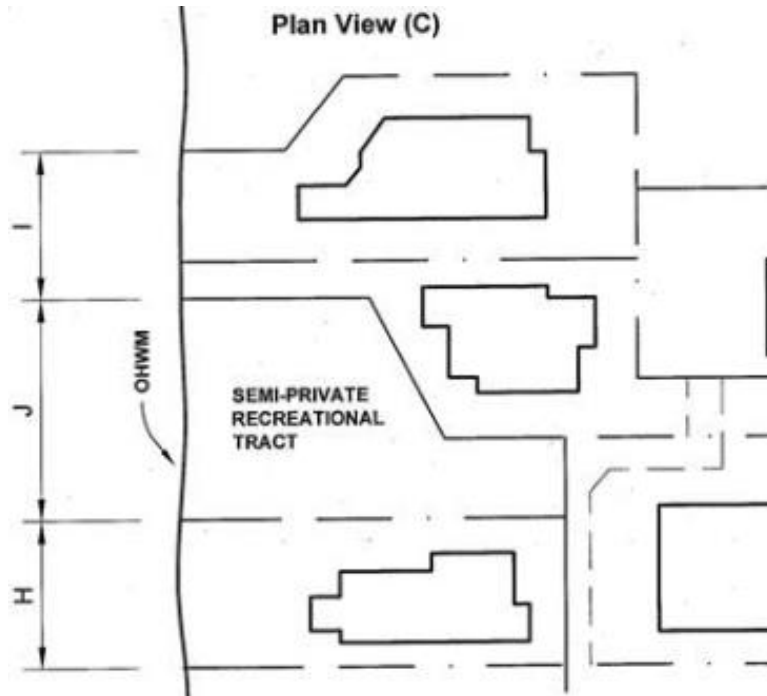


Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM (Continued)

Minimum Water Frontage for Docks	H*	Single-family lots: 40 feet.
	I	Shared — Two adjoining lots on the shoreline: 40 feet combined.

	J	<p>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.</p>
Covered Moorage		<p>Permitted on single-family residential lots subject to the following:</p> <ul style="list-style-type: none"> (a) Maximum height above the OHWM: 16 feet; 16 to 21 feet subject to criteria of subsection (E)(1) of this section. (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 coverings are required.
*The letters in this column refer to the Plan View (C).		

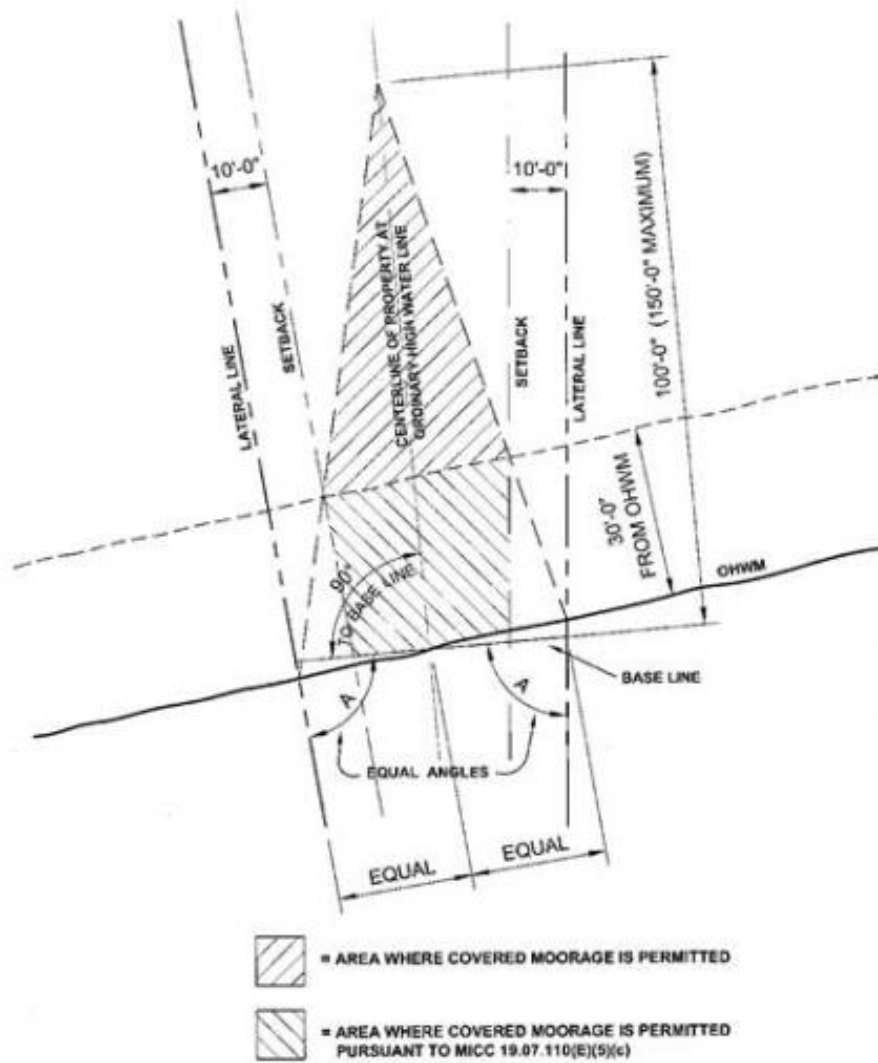


Option A	Option B	Option C
Includes at Least One of the Following:	Includes at Least Two of the Following:	Includes at Least Three of the Following:
1. Complete removal of existing bulkhead with shoreline restoration	1. Removal of 12 feet or 30% (lineal), whichever is greater, of existing bulkhead and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

docks with a single joint use moorage facility	feet waterward from the OHWM	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

- E. 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)(1) 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 ten-foot setbacks from the side property lines shall be deducted from the triangle area.
1. 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.

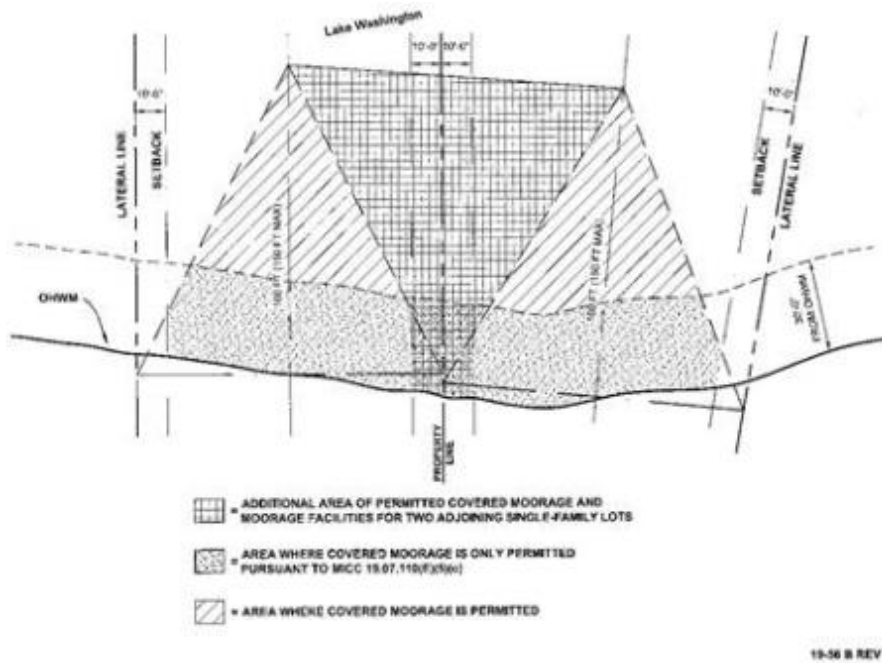
Figure A: Area of Permitted Covered Moorage, Individual Lots



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2. Where a covered moorage or moorage facility is built pursuant to the agreement of owners of adjoining single-family lots located on the shoreline, 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.

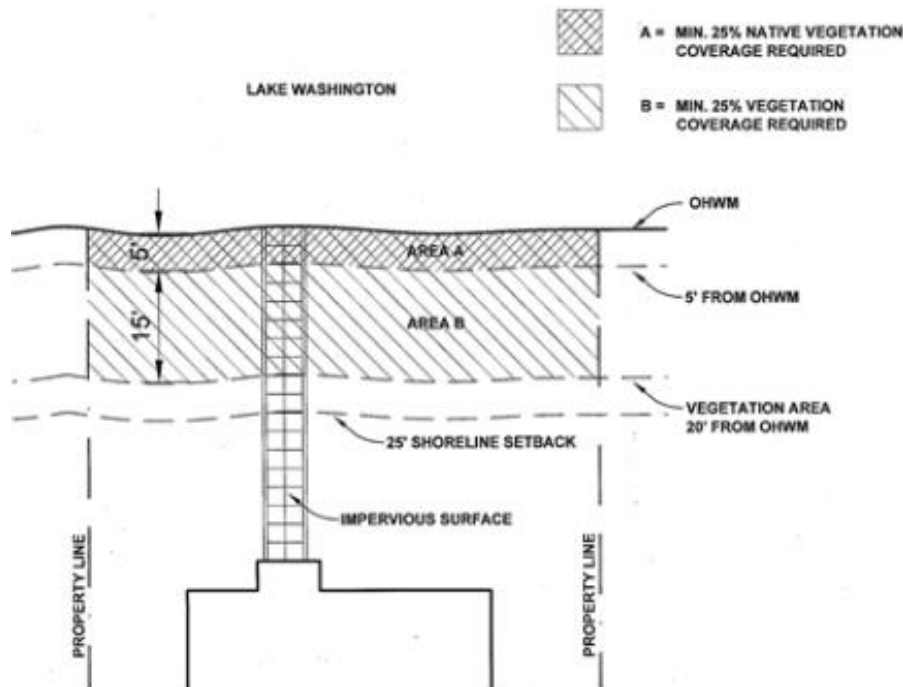
Figure B: Area of Permitted Covered Moorage and Moorage Facilities, Two Adjoining Single-Family Lots



3. 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.
- F. *Moorage facilities.* All permits for new and expanded moorage facility, other than [marinas and](#) public access piers or boardwalks, shall meet the following standards unless otherwise exempted. Moorage facilities have the option of meeting either the development standards prescribed in subsection (F)(1) or (F)(2) of this section, or the "alternative development standards" in subsection (F)(3) of this section.
1. *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



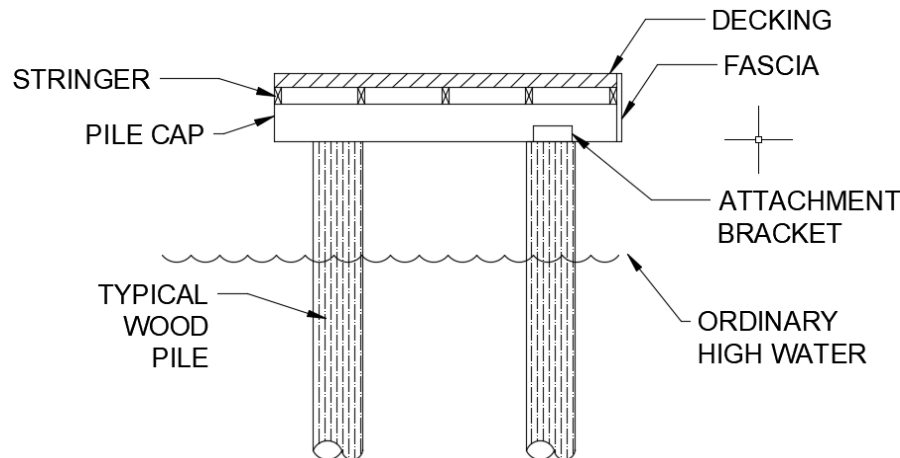
- iv. Only docks, ramps, and boatlifts may be within the first 30 feet from the OHWM. No skirting is allowed on any structure;
- v. The height above the OHWM for docks shall be a minimum of one and one-half feet and a maximum of five feet;
- vi. The first in-water (nearest the OHWM) set of pilings shall be steel, ten 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 dock must be leach resistant, completely dried or cured prior to installation. Materials shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds;

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- 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.
2. *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 (F)(2)(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 pentachlorophenol, 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;
 - ix. *Structural repair.* The structural repair, which may include replacement of framing elements, of moorage facilities that results in the repair of more than 50 percent of the structure's framing elements within a five-year period shall comply with subsections (F)(2)(ix)(a) through (F)(2)(ix)(c) of this section. For this section, framing elements include,

but are not limited to, stringers, piles, pile caps, and attachment brackets, as shown in Figure D:

- a. One hundred percent of the decking area of the pier, dock, and any 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 Table D of this section;

Figure D: Example of Overwater Structure



- x. *Exterior surface repair.* The exterior surface repair, which may include the replacement of exterior surface materials of moorage facilities that results in the repair of more than 50 percent of the surface area of the moorage facility's decking, fascia, and platform lifts within a five-year period (see Figure D), shall be required to utilize materials that allow a minimum of 40 percent light transmittance over 100 percent of the dock; and
 - xi. Any decking that is removed in the course of repair shall be replaced with decking materials that allow a minimum of 40 percent light transmittance.
3. *Alternative development standards.* The code official shall approve moorage facilities not in compliance with the development standards in subsection (F)(1) or (F)(2) 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 standards specified in subsection D of this section (Table D);

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- 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.
- G. *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).
- H. *Public access piers, docks, or boardwalk.* New public access piers, docks, or boardwalks on public lands shall comply with the following:
1. Public access piers, docks, or boardwalks shall be designed and constructed using WDFW-approved methods and materials;
 2. With the exception of the requirements for moorage facilities related to width and length, public access piers, docks, or boardwalks shall comply with design standards required for moorage facilities listed in Table D, Requirements for Moorage Facilities and Development Located Waterward from OHWM;
 3. There is no dock length or area limit for public access piers, docks, or boardwalks; however, public access piers, docks, and boardwalks shall not interfere with navigation and shall be the minimum size necessary to meet the needs of the proposed water-dependent use;
 4. Public access piers, docks, or boardwalks may have a width of up to six feet subject to Army Corps of Engineers and/or Washington Department of Fish and Wildlife approval;
 5. Public access piers, docks, or boardwalks must be fully grated with materials that allow a minimum of 40 percent light transmittance;
 6. Minimum of one and one-half feet above ordinary high water to bottom of pier stringer, except the floating section of a dock attached to a pier;
 7. The first in-water (nearest the OHWM) set of pilings shall be steel, ten 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;
 8. 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 pentachlorophenol, creosote, CCA or comparably toxic compounds;
 9. 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;

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10. Construction of public access piers, docks, or boardwalks shall abide by the work windows for listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife; and
 11. A no net loss plan shall be prepared pursuant to MICC 19.13.020 demonstrating that the proposed project will not create a net loss in ecological function of the shorelands.
- I. *Restoration of ecological functions.* The code official may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects consistent with the criteria and procedures in WAC 173-27-215.
- J. *Dredging.*
1. 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.
 2. Dredging shall be the minimum necessary to accommodate the proposed use.
 3. Dredging shall utilize techniques that cause the least possible environmental and aesthetic impact.
 4. 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.
 5. 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.
- K. *General requirements.* The following requirements apply to the following types of activities that may be waterward and/or landward of the OHWM:
1. Critical areas within the shorelands are regulated by chapter 19.07 MICC, as adopted in the MICC on June 18, 2019, except: MICC 19.06.110(B), Variances; MICC 19.06.110(C), Setback deviations; and MICC 19.07.140, Reasonable use exception.
 2. *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.
 3. *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.

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- 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.
4. New development totaling 500 square feet or more of any combination of additional gross floor area, lot coverage or hardscape, 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 total shall include all gross floor area, lot coverage, and hardscape added in the five years immediately prior to the development proposal.
- i. New development totaling 1,000 square feet or more of any combination of additional gross floor area, lot coverage or hardscape, 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.

L. *Marinas.* Marinas must comply with the following standards.

- 1. With the exception of the requirements for moorage facilities related to width and length, marinas shall comply with design standards required for moorage facilities listed in Table D, Requirements for Moorage Facilities and Development Located Waterward from OHWM.
- 2. Marinas are only allowed if they provide significant public access to the shoreline. A proposed marina provides significant public access by meeting one of the following conditions.
 - a. The marina is owned or operated by the City of Mercer Island;
 - b. The marina ~~is owned or operated by an organization or corporation serving serves at least fifty (50) people; or~~
 - c. The marina is open to the general public and access is not limited to membership in an organization.
- 3. *Application Requirements.* Applications for marinas must include the following.
 - a. A no net loss plan, consistent with MICC 19.13.020(C), which demonstrates that the proposed project will not create a net loss in ecological function of the shorelands.
 - b. A demand analysis or master plan that projects future needs for pier or dock space during the life of the development.
 - i. The total amount of moorage spaces proposed;
 - ii. The total number of commercial moorage spaces in the City of Mercer Island within a one-mile radius of the proposed facility; and
 - iii. The expected population and vessel characteristics of the potential users of the facility and how these characteristics relate to specific facility design elements including slip sizes, pier and dock length, and necessary water depth.

4. General Requirements. The following standards apply to all marinas.

- a. Marinas shall be designed and operated consistent with federal and state water quality laws and established best management practices (BMPs) for marina operators, such as BMPs for bilge water discharge, hazardous waste, waste oil and spills, sewer management, and spill prevention and response. Rules for spill prevention and response, including reporting requirements, shall be posted on site.
- b. Marinas shall be designed and sited to prevent the need for maintenance dredging during the life of the development. Moorage must be designed to avoid vessels resting on the lakebed.
- c. Marinas must not be larger than necessary to accommodate the expected need as determined by the required demand analysis, this includes:
 - i. Overwater structures must not be wider or longer than necessary to accommodate the expected need;
 - ii. The number of slips provided must not exceed the expected need; and
 - iii. The slip dimensions must not be larger than necessary to moor the expected vessels moored.
- d. Marinas shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. All other exterior finishes above the waterline must be nonreflective.
- e. Marinas must not include materials treated with pentachlorophenol, creosote, chromated copper arsenate, or comparably toxic compounds. Any paint, stain or preservative applied to components of the marina must be leach resistant and completely dried or cured prior to installation.
- f. Marinas must not interfere with the public use and enjoyment of the water or create a hazard to navigation.
- g. At least one (1) restroom must be provided upland of the OHWM.
- h. At least one (1) covered and secured waste receptacle must be provided upland of the OHWM.
- i. Utility and service lines located waterward of the OHWM must be affixed below the pier deck and above the water. Utility and service lines located upland of the OHWM shall be underground, where feasible.
- j. Covered moorage is prohibited in marinas.
- k. Floating homes and ~~live aboard vessels~~ living within vessels are prohibited in marinas.
- l. 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 must occur prior to final approval of the building permit. 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.
- m. Exterior lighting mounted on piers, docks or other overwater components of a marina shall be at ground or dock level, be directed away from adjacent properties and the water, be of the lowest intensity needed, and designed and located to prevent light

from spilling onto the lake water. The following development activities are exempt from this requirement:

- i. Emergency lighting required for public safety incidents;
- ii. Lighting required by state or federal regulations;
- iii. Lighting for public rights-of-way;
- iv. Outdoor lighting for temporary or periodic events (e.g., community events at public parks); and
- v. Seasonal decorative lighting beyond 30 feet of the ordinary high water mark.
- n. The applicant must provide documentation of approval of the marina by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.
- o. Vessels shall be restricted from extended mooring on waters of the state, except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

5. Piles. Piles associated with a marina must comply with the following requirements.

- a. Piles shall be placed at least eighteen (18) feet from the OHWM.
- b. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds.
- c. Piles must be spaced at least eighteen (18) feet apart. The code official may authorize alternate spacing of piles provided the applicant demonstrates that the alternate spacing reduces the total number of piles needed for the project.
- d. Piles must not exceed twelve (12) inches in diameter. The code official may authorize larger piles provided the applicant demonstrates that the larger piles reduce the total number of piles needed for the project.
- e. Piles must be fitted with devices to prevent perching by fish-eating birds.

6. Overwater structures. Overwater structures associated with a marina must comply with the following requirements.

- a. Overwater structures must be designed to minimize the lakebed shading to the greatest degree feasible.
 - i. Overwater structures within thirty (30) feet of the OHWM must not exceed six feet in width.
 - ii. Overwater structures more than thirty (30) feet from the OHWM may be wider than six (6) feet provided:
 - A. Overwater structures wider than six (6) feet must be approved by the Army Corps of Engineers and/or Washington Department of Fish and Wildlife;
 - B. Potential environmental impacts of overwater structures with a width greater than six (6) feet must addressed in the required no net loss plan; and
 - C. The code official may condition approval to require mitigation for any overwater structure exceeding six (6) feet in width.

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- iii. Overwater structures must be grated in compliance with state and federal law.
 - b. Length. Overwater structures that compose a marina must be designed to avoid adversely affecting navigability of waterways.
 - i. Overwater structures associated with the marina shall not exceed the minimum length necessary to accommodate facility needs as demonstrated in the required demand analysis or master plan.
 - ii. The code official may condition approval ~~to reduce the maximum of the length~~ to reduce the effects of overwater structures on navigability of the waterway.
 - c. Floats. Floats must comply with the following requirements.
 - i. All floats shall be designed to prevent the bottom of the float from resting on the lakebed.
 - ii. All floats must be fully enclosed and contained in a shell, tub, or wrap. The shell, tub, or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.
7. New Marinas. New marinas shall only be located where there are existing marinas on the effective date of this ordinance.

Chapter 19.16 DEFINITIONS

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, chapter 19.13 MICC.¹

M

Macro wireless communications facility: Any wireless communication facility that does not meet the definition of small wireless facility.

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 single-family dwelling building permit: A building permit for:

1. A new single-family dwelling on a vacant lot or as replacement of an existing or demolished building; or
2. Any change to a single-family dwelling that requires a building permit and results in any of the following:
 - a. An increase in the existing maximum building height above the highest point of the building, except for a reroof that increases the highest point of the building by 12 inches or less;
 - b. A reduction in any existing side yard;
 - c. An increase in the existing gross floor area of more than 500 square feet; or
 - d. An increase in the existing lot coverage of more than 100 square feet.

Major site feature: The public development amenities listed in MICC 19.11.060(B) 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.

Marina: A private or public moorage facility providing the purchase, lease, and/or use of a slip for storing, berthing, and securing watercraft, including both long-term and transient moorage. Marinas may include accessory facilities for providing incidental services to users of the marina, such as swim structures, waste collection, boat sales, or rental activities, and retail establishments providing fuel service, repair, or service of watercraft. Marinas do not include moorage facilities serving four or fewer single-family residences.

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,

¹Editor's note(s)—The reference to MICC 19.07.110 in this section was corrected to chapter 19.13 MICC at the city's request, for consistency with Ordinance No. 19C-06.

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(A) 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 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.

Morning peak hour: The single hour with the highest traffic volumes on the roadway adjacent to the development between 7:00 a.m. and 9:00 a.m.

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.