
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Molly McGuire, Planner

DATE: February 15, 2023

SUBJECT: ZTR23-001

ATTACHMENTS: A. Mercer Island Beach Club (MIBC) Docket Request dated September 29, 2022

SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR23-001. This zoning code amendment was proposed in a Docket Request dated September 29, 2022 (Attachment A). The docket request proposed an amendment to the [Shoreline Master Program \(SMP\) Chapter 19.13 Mercer Island City Code \(MICC\)](#). This staff report focuses on and provides the staff recommendation regarding the request, and an additional proposed amendment to MICC 19.13.010(E), Relationship to other federal and state law. The proposed amendments would establish consistency between the SMP and state law, specifically [Chapter 173-27 WAC](#) for Shoreline Management Permit and Enforcement Procedures, and allow uses not classified to be authorized subject to approval of a shoreline conditional use permit consistent with the requirements in [WAC 173-27-160](#). At the February 22 meeting, staff seeks initial guidance from the commission on the proposed code amendment. Specifically, whether the commission would like to proceed with the amendment as proposed, pursue a revised amendment, or recommend no further action.

BACKGROUND

Mercer Island Beach Club (MIBC) submitted a docket request on September 29, 2022. This proposal, along with several other docket requests were considered by the Planning Commission and City Council. The City Council considered whether to add the proposed amendments to the Community Planning and Development (CPD) work program during a public meeting on December 6, 2022. The City Council approved [Resolution No. 1641](#), which added legislative review of the proposed SMP amendment to the final docket.

The docket request proposed an amendment to a footnote in MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark. The purpose of the amendment proposed by the MIBC is to allow for any existing private club or residential community serving more than 10 families to use a shoreline conditional use permit for the redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses. The MIBC desires to substantially update and reconfigure their moorage and swimming dock facilities, however the current Note

in MICC 19.13.040 Table B does not allow a path forward for permitting the proposed project as currently designed. The proposed code amendment would enable the MIBC and similar organizations to apply for a shoreline conditional use permit for permitting these types of uses.

Staff recommend adding a second proposed amendment to correct an inconsistency with state law, which is directly tied to the amendment proposed by the MIBC. The proposed amendments to the SMP would result in the following changes:

- Revision of MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark Notes, “A use not listed in this table is not permitted within shorelands”.
- Adoption of a reference to Chapter 173-27 Washington Administrative Code (WAC) Shoreline Management Permit and Enforcement Procedures to MICC 19.13.010(E), Relationship with other federal and state law.

The purpose of the amendments proposed by city staff is to provide consistency between the SMP and state law on shoreline permit processing procedures and requirements. The SMP does not currently include permitting requirements or procedures for shoreline permits, such as shoreline conditional use permits and shoreline variances. Establishing the relationship between the SMP and the Washington Administrative Code creates clear requirements for reviewing and processing all shoreline permits, consistent with state law.

Shoreline Management Act

The WA Legislature adopted the Shoreline Management Act (SMA) in 1971. The SMA requires cities and counties to establish local SMPs to regulate development in areas within 200 feet of the waters of the state. The SMA is intended to address three major policy goals: 1) encourage water-dependent uses; 2) protecting the shoreline natural resources; and 3) promoting public access to the shoreline. One of the primary requirements of the SMA is to ensure no net loss of shoreline ecological functions and values, meaning regulations are designed to preserve the shoreline environment and allow for mitigating potential environmental impacts.

Adoption of local SMPs is subject to review by the WA Department of Ecology (Ecology). Ecology assists local governments throughout the drafting of SMP amendments to ensure that the proposed amendments are consistent with the SMA. Staff is working with Ecology to review the currently proposed SMP amendments. This will include a joint public hearing with the Mercer Island Planning Commission and Ecology prior to the Planning Commission making a recommendation to the City Council.

CHAPTER 19.13 MICC - Shoreline Master Program

The current Shoreline Master Program (SMP) was adopted by the City of Mercer Island in 2015 following an extensive update between 2009 and 2015. The SMP regulates development in the shoreline jurisdiction, that area within 200 feet of the ordinary high water mark (OWHM) of Lake Washington. The OWHM is defined in MICC 19.16.010 as, “The point on the shore [...] 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 [...].”

MICC 19.13.040 Table B – Shoreland Uses Waterward of the Ordinary High Water Mark

MICC 19.13.040 establishes what uses are allowed in the shoreline jurisdiction and the shoreline permits required for each use. Table B specifies the shoreline uses and developments which may take place or be conducted waterward of the OHWM within the designated environments of the shoreline jurisdiction. Shoreline uses are classified by one of the following:

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 uses classified in Table B - Shoreland Uses Waterward of the Ordinary High Water Mark are as follows:

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, dock, 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
<p>Notes:</p> <p>A use not listed in this table is not permitted within shorelands.</p> <p>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.</p>		

The amendment proposed by MIBC is related to the footnote: “A use not listed in this table is not permitted within shorelands” and would allow the MIBC, and other similar facilities, to redevelop their existing moorage and swimming dock facilities. The proposed footnote amendment would read:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for

redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

The amendment as proposed would not be consistent with the state law. This amendment would end up allowing any existing private club or residential community to redevelop unlisted uses by SCUP without establishing a necessary link to the state law. Staff proposes an alternative amendment to the footnote that would allow the types of shoreline developments proposed and ensure that the SMP remains consistent with state law. The further discussion of the staff proposed alternative is included under alternative B below. The staff alternative would read:

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the shoreland development standards contained in this chapter.

MICC 19.13.010(E) – Relationship with other federal and state law.

MICC 19.13.010(E) establishes the Shoreline Master Program’s authority and relationship with federal and state law. The relationship is currently described as follows:

“The provisions of this chapter 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.”

The relationship does not explicitly provide a connection to Chapter 173-27 WAC for Shoreline Management and Enforcement Procedures. The Mercer Island SMP does not currently contain local standards for processing shoreline permits, therefore, clarifying this connection is necessary to provide a clear path forward on reviewing various shoreline permit applications, such as shoreline conditional use permits resulting from the amendment to MICC 19.13.040 Table B - Notes above.

Staff proposes the following amendment to MICC 19.13.010(E) to clarify the relationship between the City’s SMP and state law:

The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work 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.

ALTERNATIVES

There are three alternatives the Planning Commission can consider for ZTR23-001:

Alternative A: Amend MICC 19.13.040 Table B – Shoreland Uses Waterward of the Ordinary High Water Mark as proposed.

Alternative A would revise the footnote for MICC 19.13.040 Table B “A use not listed in this table is not permitted within shorelands” as proposed by the MIBC to allow existing private clubs or residential communities serving more than 10 families to use the SCUP process for redevelopment of moorage facilities, floating platforms, mooring piles, diving boards, diving platform, swim areas and other accessory uses. The proposed footnote amendment would read:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

Benefits: Existing private clubs or residential communities serving more than 10 families would be authorized to redevelop their facilities with the approval of a shoreline conditional use permit.

Drawbacks: Alternative A does not contain language that is consistent with existing state law for processing uses not listed in the SMP. See Alternative B, which would provide a similar outcome for facilities like the MIBC, but also includes the language needed to remain consistent with state law.

Alternative B: Amend MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Note and Amend MICC 19.13.010(E) as proposed by City Staff (Staff Recommended).

Alternative B would revise the footnote “A use not listed in this table is not permitted within shorelands” as proposed by Staff to language that is consistent with existing state law. WAC 173-27-160(3) states that “other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program”. The proposed staff alternative amendment would read:

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the shoreland development standards contained in this chapter.

Alternative B would also amend MICC 19.13.010(E) to include an adoption by reference to Chapter 173-27 WAC Shoreline Management and Enforcement Procedures to establish the relationship with existing state law and provide clear procedures for processing various shoreline permits. The amendment to MICC 19.13.010(E) would read:

The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work 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.

Benefits: Amending the Table B Notes and MICC 19.13.010(E) to be consistent with existing state law would result in the same outcome for the applicant and other similar facilities and provide a clear path forward for permit processing. The amendment would also provide flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](#).

Drawbacks: Amending the Table B Notes to allow for uses not classified or listed in the SMP to be authorized subject to a shoreline conditional use permit could result in proposed uses that the City has not considered. Any proposed use that is not listed would however need to go through the conditional use permit process to ensure there are no detrimental impacts to surrounding uses and that the proposal is consistent with the City's comprehensive plan, per the requirements in WAC 173-27-160. Staff cannot identify any drawbacks to adopting by reference state law for shoreline management and enforcement procedures.

Alternative C: Do not amend MICC 19.13.040 Table B Notes or MICC 19.13.010(E).

Making changes to MICC 19.13.040 Table B Notes and MICC 19.13.010(E) is a local choice. Amending this code section is not required by state or local law. The City can elect to make no changes at this time.

Benefits: Alternative C would not allow for unforeseen uses to be authorized subject to a shoreline conditional use permit and would not establish a relationship between the SMP and state law for shoreline permit processing procedures.

Drawbacks: Making no change to MICC 19.13.040 Table B Notes or MICC 19.13.010(E) would not provide consistency with state law or clarity on shoreline permit processing. It would also prevent the MIBC from proceeding with reconfigurations to their docks as currently designed.

STAFF RECOMMENDATION

Alternative B to amend MICC 19.13.040 Table B Footnote and 19.13.010(E) as proposed by City Staff. MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Footnote does not currently allow for uses not listed to be permitted through any means. The proposed amendment would provide flexibility in the application of use regulations in a manner consistent with state law, including the policies of RCW [90.58.020](#).

MICC 19.13.010(E) does not currently establish a relationship with shoreline management and enforcement procedures. The purpose of this proposed amendment is to provide clarity for City staff and future applicants for reviewing shoreline permits such as shoreline conditional use permits and shoreline variances, that do not have local requirements through the City's SMP. Taken together, the amendments proposed in Alternative B would better articulate the relationship between the City's SMP and state law while also allowing the MIBC to redevelop their aquatic facilities in a manner consistent with the City's SMP.