
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Adam Zack, Senior Planner

DATE: February 11, 2022

SUBJECT: ZTR21-006

ATTACHMENTS: A. MICC 19.15.030 with Alternative A Amendments
B. Sample CPD Weekly Permit Bulletin

SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR21-006. This zoning code amendment was added to the 2021 CPD work program through the annual docket. The proposed amendment would change the land use review type for five types of land use permits, resulting in increased levels of public notice.

At the December 15 meeting, the Planning Commission provided initial guidance on the proposed code amendment. At that meeting, the Planning Commission proposed amending the land use review type for two land use review actions. The option for amending Mercer Island City Code (MICC) 19.15.030 is referred to herein as Alternative A. On December 15, the Planning Commission also proposed an alternative that would establish a programmatic approach for listing land use review actions on the CPD Weekly Permit Bulletin without amending MICC 19.15.030 Land use review types. The programmatic response is referred to herein as Alternative B. The no change option is referred to as Alternative C. Staff recommends Alternative B.

BACKGROUND

Daniel Thompson submitted a docket request for several amendments to Title 19 MICC on November 2, 2020. The City Council approved Resolution 1594 on December 1, 2020, which directed the Planning Commission to make a recommendation on the fifth proposed code amendment from the original docket request.

The docket request proposed six amendments to Title 19 MICC. Only the fifth requested amendment, a proposed amendment to [MICC 19.15.030 – Land use review types](#), was added to the final docket by the City Council. The proposed amendment of MICC 19.15.030 would change the notice requirements for five land use review actions:

- Seasonal Development Limitation Waivers (SDLWs);
- Tree Removal Permits;
- Final Short Plats;
- Lot Line Revisions; and
- Setback Deviations.

The application states the purpose of the proposed amendments is to provide greater public notice of permit applications and decisions.

Please see the December 9, 2021, staff report for additional discussion of the land use review actions considered in the original docket application:

https://mieplan.mercergov.org/public/ZTR21-006/Documents%20for%20Planning%20Commission/2021-12-09_ZTR21-006_Staff_Report.pdf

MICC 19.15.030 – Land use review types.

[MICC 19.15.030](#) establishes four types of land use review, each with its own unique notice requirements. The four types are described as follows:

- A. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
- B. Type II. Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.
- C. Type III. Type III reviews require the exercise of discretion about nontechnical issues.
- D. Type IV. Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.”

The permit types are primarily differentiated by the amount of discretion and technical expertise that must be used in making permitting decisions. Type I and II permits are nondiscretionary and require the application of professional expertise on technical issues. Types III and IV permits require more discretion, with Type IV permits also being for larger, more impactful actions that are of broad public interest.

Together the permit type definitions and the review process establish a hierarchy wherein permit reviews requiring more discretion also have higher levels of public notice as well as opportunities for public comment and participation. Public notice is not required for Type I permits. Public notification posted in the CPD Weekly Permit Bulletin is required for Type II permits. More public notice is required for Type III and IV permits compared with Type II. The additional notice includes posting on site, mailing to addresses within 300 feet and, in some cases, publication in the Mercer Island Reporter. Type III and IV permits also have a 30-day public comment period. Type IV permits require a public hearing.

ALTERNATIVE A – AMEND MICC 19.15.030 – LAND USE REVIEW TYPES

On December 15, the Planning Commission proposed amending the land use review types for Seasonal Development Limitation Waivers (SDLWs) and Final Short Plats from Type I to Type II. Increasing the land use review type from Type I to Type II would require SDLWs and Final Short Plats to be listed on the CPD Weekly Permit Bulletin. This would add more review time to these land use review actions. Please see the December 9, 2021 staff report for additional discussion of increasing the land use review type for SDLWs and Final Short Plats.

Alternative A would amend MICC 19.15.030 Land use review types, Table A as follows. The full text of MICC 19.15.030 with amendments to Table A is provided in Attachment A, page 2, line 2.

MICC 19.15.030 - Land use review types, Table A.

Table A. Land Use Review Type			
Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> • Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption ¹ • Critical area review 1 • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat ^{2,3} • Code official design review • Accessory dwelling unit • Parking modification ⁷ (reviewed by city engineer) • Small wireless facility deployment • <u>Seasonal development limitation waiver</u> • <u>Final short plat</u> 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical area review 2 • Public agency exception • Temporary encampment ⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit ⁵ • Shoreline substantial development permit ¹ • Shoreline revision (substantial development) ¹ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking modifications ⁷ (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP) ⁶ • Shoreline variance ⁶ • Shoreline revision (variance and SCUP)

1 Appeal will be heard by the shorelines hearings board.

2 Decision is made by city council after discussion at a public meeting.

3 A notice of decision will be issued for a final long plat.

- 4 A public meeting is required.
- 5 Major single-family dwelling building permits are subject only to the notice of application process. A notice of decision will be provided to parties of record.
- 6 Hearing examiner will forward a recommendation to the Washington State Department of Ecology for Ecology's decision.
- 7 Parking modifications are issued pursuant to the provisions of MICC 19.11.130.

ALTERNATIVE B – PROGRAMMATIC SOLUTION

On December 15, the Planning Commission proposed a programmatic alternative for providing additional notice without amending MICC 19.15.030. This alternative would add links to online electronic permit records to the CPD Weekly Permit Bulletin. In addition to links, staff proposes adding instructions for searching online building permit records available at www.mybuildingpermit.com. An example of the CPD Weekly Permit Bulletin with search instructions and placeholders for links is provided in Attachment B.

Mybuildingpermit.com Search

Electronic permit records are publicly available at <https://permitsearch.mybuildingpermit.com/>. The online records are updated as soon as an application is entered into the CPD electronic permit system. Staff proposes adding instructions for searching permit records to the CPD Weekly Permit Bulletin, as shown in Attachment B. Through mybuildingpermit.com, anyone can see all permits that have been applied for, issued, or finalized within a given date range.

One of the ideas the Planning Commission proposed on December 15 was creating links that would go directly to a specific search on mybuildingpermit.com (i.e. tree permits issued in the last week). Staff explored this option with City IT staff. Unfortunately, creating a link to a specific search on mybuildingpermit.com is not possible at this time given the way the search function is built on the website. This functionality might be available in the future but is unavailable at present.

Permit Web Map

When CPD staff met with City Information and Geographic Services (IGS) staff to discuss links to a fixed mybuildingpermit.com search, IGS staff proposed an alternative of creating a web map showing permit applications by type, status, and location. After the meeting, IGS staff created a prototype web map for searching permit applications. The web map would provide a search interface that is easier to use than mybuildingpermit.com and give the public the option to search by location. Furthermore, the permit data displayed on the web map is pulled from the same electronic permit data source as mybuildingpermit.com, meaning the permit information shown is updated as new permits are entered into the system. If the Planning Commission recommends Alternative B, a finished web map would be made available online and a link to the web map would be added to the CPD Weekly Permit Bulletin.

Figure 1 shows the initial view of the prototype web map. The colored dots on the map show different land use and building permit applications throughout the City. Each color represents a different type of permit. Clicking on any dot brings up a window with the pertinent permit information (see Figure 3). The search fields on the right allow the user to filter the dots shown on the map by permit type and application date.

Figure 1. Prototype Web Map Initial View.

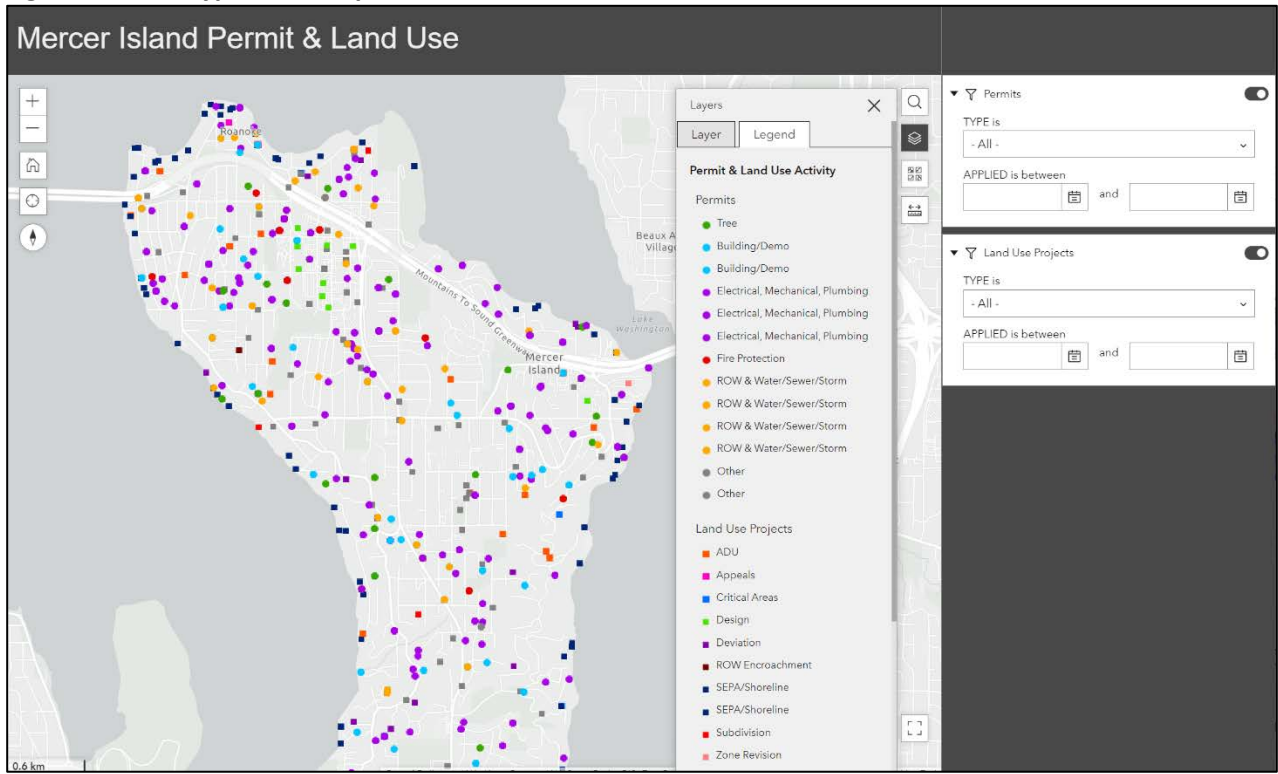


Figure 2 shows a sample tree permit search for an area of east Mercer Island. It illustrates what the map looks like when permits are filtered to show a specific permit type in a given area. The example search is for tree permits submitted between December 1, 2021 and January 31, 2022, in the area south of I-90 and west of E Mercer Way. The green dots on the map are individual tree permits.

Figure 2. Prototype Web Map Search Example.

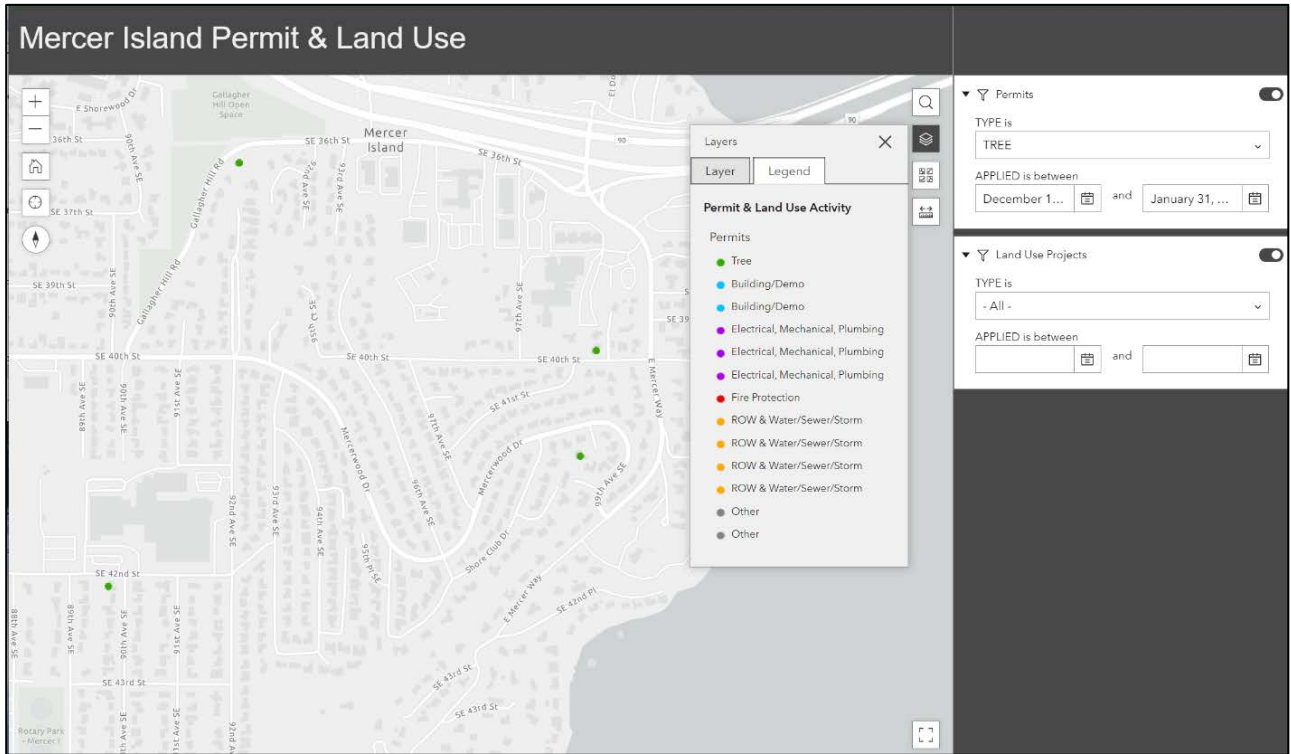
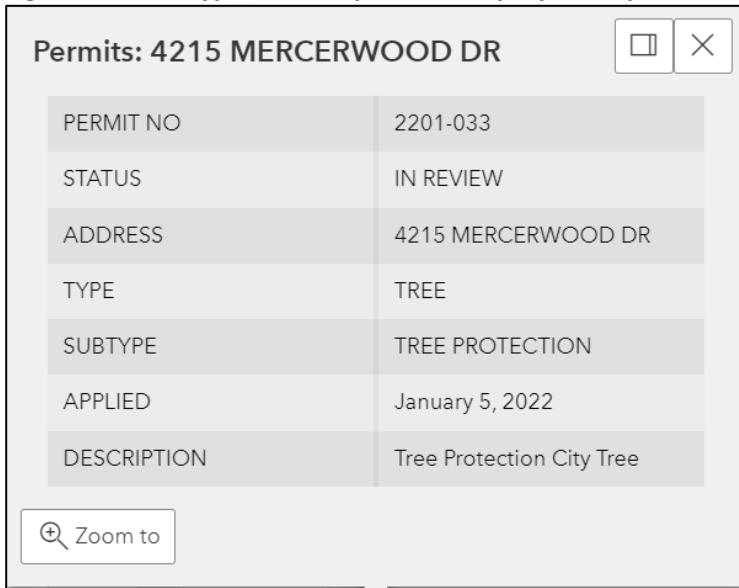


Figure 3 shows the pop up that comes up when a user clicks on a dot on the map. The pop up displays pertinent permit information pulled from the CPD permit records. Note that the example search was completed on January 31, the status for the example permit may be different if searched at a later date.

Figure 3. Prototype Web Map Permit Pop Up Example.



If Alternative B resolves this docket request, staff will finish building the permit web map and create a version for the public to use. One advantage of using a programmatic response is that amending the web map can be done as needed to make it a more useful tool. The programmatic response has the added advantage of being automated moving forward. In other words, once the web map is built it will automatically pull from the City’s electronic permit records without requiring constant ongoing staff maintenance to keep it up to date.

Combining the permit web map and adding instructions for searching mybuildingpermit.com to the CPD Weekly Permit Bulletin will accomplish the goal of making permit information more widely available without requiring any changes to the City Code.

Alternative B is the staff recommended alternative.

ALTERNATIVE C – NO CHANGE

The Planning Commission is not required to amend MICC 19.15.030. All five land use review actions would remain as currently typed if MICC 19.15.030 is not amended.

STAFF RECOMMENDATION

Staff recommends Alternative B. The programmatic solution is an effective way to disseminate information about land use review actions without substantially increasing the amount of time committed to the review of routine land use review actions like SDLWs, Final Short Plats, and Tree Removal Permits. Combining the permit web map and instructions for searching mybuildingpermit.com to the CPD Weekly Permit Bulletin will accomplish the goal of making permit information more widely available without requiring any changes to the City Code. This is preferable to amending the code because the web map can be fine-tuned in the future to provide the pertinent information without requiring a legislative action such as amending the City Code. This approach utilizes the existing resource of electronic permit records to address the issue raised in the original docket proposal without an ongoing commitment of additional City resources.

1 **19.15.030 - Land use review types.**

2
3 There are four categories of land use review that occur under the provisions of the development code.

4
5 A. *Type I.* Type I reviews are based on clear, objective and nondiscretionary standards or
6 standards that require the application of professional expertise on technical issues.

7
8 B. *Type II.* Type II reviews are based on clear, objective and nondiscretionary standards or
9 standards that require the application of professional expertise on technical issues. The
10 difference between Type I and Type II review is that public notification shall be issued for Type
11 II decisions.

12
13 C. *Type III.* Type III reviews require the exercise of discretion about nontechnical issues.

14
15 D. *Type IV.* Type IV reviews require discretion and may be actions of broad public interest.
16 Decisions on Type IV reviews are only taken after an open record hearing.

17
18 E. The types of land use approvals are listed in Table A of this section. The required public
19 process for each type of land use approval are listed in Table B of this section.

20
21 F. *Consolidated permit processing.* An application for a development proposal that involves the
22 approval of two or more Type II, III and IV reviews may be processed and decided together,
23 including any administrative appeals, using the highest numbered land use decision type
24 applicable to the project application. The following permits and land use reviews are excluded
25 from consolidated review and approval:

26
27 1. Building permits associated with the construction of one or more new single-family
28 dwellings on lots resulting from the final plat approval of a short subdivision or long
29 subdivision.

30
31 2. Building permits associated with shoreline conditional use permits and shoreline
32 variance.

33
34 3. Project SEPA reviews shall be processed as a Type III land use review.

35
36 4. When a review is heard by multiple decision bodies, the higher decision body will
37 make the final decision, and the lower decision body will review the project at a public
38 meeting and issue a recommendation that will be reviewed by the higher decision body.
39 The higher decision body will either adopt the recommendation as part of the permit
40 conditions, will remand the recommendation back to the lower body for further
41 consideration, will amend the recommendation, or will deny adoption of the
42 recommendation and will adopt their own permit conditions. The hierarchy of decision
43 bodies is as follows, from highest to lowest:

44
45 a. City council;

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47 b. Hearing examiner;

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c. Design commission.

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Table A. Land Use Review Type			
Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> • Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption ¹ • Critical area review 1 • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat ^{2,3} • Code official design review • Accessory dwelling unit • Parking modification ⁷ (reviewed by city engineer) • Small wireless facility deployment • <u>Seasonal development limitation waiver</u> • <u>Final short plat</u> 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical area review 2 • Public agency exception • Temporary encampment ⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit ⁵ • Shoreline substantial development permit ¹ • Shoreline revision (substantial development) ¹ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking modifications ⁷ (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP) ⁶ • Shoreline variance ⁶ • Shoreline revision (variance and SCUP)

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- 1 Appeal will be heard by the shorelines hearings board.
- 2 Decision is made by city council after discussion at a public meeting.
- 3 A notice of decision will be issued for a final long plat.
- 4 A public meeting is required.

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5 Major single-family dwelling building permits are subject only to the notice of application process. A notice of decision will be provided to parties of record.

6 Hearing examiner will forward a recommendation to the Washington State Department of Ecology for Ecology's decision.

7 Parking modifications are issued pursuant to the provisions of MICC 19.11.130.

Table B. Review Processing Procedures				
	Type I	Type II	Type III	Type IV
	No Notice of Application No Notice of Decision Code Official	Public Notification No Notice of Application No Notice of Decision Code Official	Notice of Application Notice of Decision Code Official	Notice of Application Public Hearing Notice of Decision Hearing Examiner/Design Commission
Preapplication meeting required	No	No	Yes	Yes
Letter of completion (within 28 days)	No	No	Yes	Yes
Public Notification	No	Yes	No	No
Notice of Application (mailing and posting)	No	No	Yes	Yes

Table B. Review Processing Procedures				
	Type I	Type II	Type III	Type IV
Public Comment Period	None	None	30 days	30 days
Public Hearing (open record pre-decision)	No	No	No	Yes
Notice of Decision	Code Official	Code Official	Code Official	Hearing Examiner ² or Design Commission
Notice of Decision	No	No	Yes	Yes
Appeal Authority	Hearing Examiner ¹	Hearing Examiner or Design Commission (code official design review)	Hearing Examiner	Superior Court or Shoreline Hearings Board (shoreline permits)

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1 Appeals of final short plat approvals shall be to superior court. Appeals of shoreline exemptions shall be to the shoreline hearings board.

2 The hearing examiner will provide a recommendation to ecology for decisions on shoreline conditional use permits and shoreline variances.

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WEEKLY BULLETIN FREQUENTLY ASKED QUESTIONS

IF I OBJECT TO THE PROPOSED WORK, HOW CAN I COMMENT?

There are criteria in the MICC for which the application is reviewed. If the proposal meets the criteria required by City Code, the City must approve the permit. If the proposal does not meet the criteria, the applicant is notified and has the option to revise the proposed design. If you provide comments within the specified comment period, they will be forwarded to the appropriate reviewer, and you will become a party of record. Written comments can specifically address how the proposed work does not meet one or more of the criteria listed in the Applicable Development Regulations. The City will accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or if no open record predecision hearing is provided, prior to the decision on the project land use review.

WHAT ARE THE CRITERIA FOR APPROVAL OF A PERMIT?

The criteria for review of a permit are found within the Mercer Island City Code and are listed in the Applicable Development Regulations section of the bulletin. Here is a link to the City Code. Please feel free to call or email the staff contact listed on the front of the notice, and we will be happy to discuss the review process in more detail.

WILL THERE BE A PUBLIC HEARING ON THIS APPLICATION?

Public Hearings are only required for Type 4 permits. For a list of Type 4 (IV) permits, please refer to MICC 19.15.030 Table A. The public bulletin for each project will state under the Public Hearing section if a hearing is required.

WHO CAN I CONTACT TO GET MORE INFORMATION?

The contact information for the planner assigned to each specific project is listed on the bottom of the first page of each notice. You can call or email the planner assigned to the project using the provided contact information. You can also call the "Planner helpline" for zoning related questions at 206-275-7729. Additional resources available on-line include:

<http://www.mercergov.org/>: Staff directory, city regulations, and additional information about permits

<http://www.mybuildingpermit.com>: Follow the status of a specific permit by address or permit number

[Mercer Island Map Portal](#): A tool to search for site-specific information

I WANT TO ACCESS AND REVIEW SPECIFIC PROJECT DOCUMENTS.

Please click on the associated link under "Project Documents" on each Public Notice to access the folder with the project documents associated with the application. The project documents available through this link contain most, but may not contain all the publicly available information for each project. For example, when a project is updated with a different project design, older designs may be removed from the public folder to avoid confusion. Each folder will be updated when there is a project revision.

I WANT TO LEARN MORE ABOUT SEPA

What is SEPA?

SEPA is an acronym for the State Environmental Policy Act and is a review that is intended to act as a “safety net” in protecting the environment. Following SEPA review, the City must issue a determination of Significance, Non Significance, or a Mitigated Determination of Non Significance. Applicants for a SEPA review must complete a SEPA [checklist](#), and may need to prepare additional mitigation to avoid a “probable significant impact” to the environment.

When is a project SEPA exempt?

The state Department of Ecology establishes categorical exemptions to SEPA review, which are generally described here: [WAC 197-11-800](#). For example, a shoreline dock may be SEPA exempt if the dock was legally established and normal maintenance and repair is proposed. However, SEPA is required if the dock will expand or if a new dock is being built.

Where can I find more information?

Please check out the Washington State Department of Ecology SEPA [website](#) and the SEPA [handbook](#). Another useful page is the SEPA form templates found [here](#).

I APPRECIATE RECEIVING THESE NOTICES. HOW DO I AUTOMATICALLY GET A COPY OF ALL PUBLIC NOTICE OF APPLICATIONS AND DECISIONS?

Simply send us an e-mail request and we will email a link to any future notice of applications and decisions that are published in the city’s Weekly Permit Bulletin. Currently, the request can be sent to andrea.larson@mercerisland.gov.

I WOULD LIKE TO SEARCH PERMIT RECORDS ONLINE.

Not all land use review actions are required to be posted in the weekly permit bulletin. Those land use review actions that are not listed in this bulletin can be searched online using the Mercer Island Online Permit Record Map or www.mybuildingpermit.com. Please follow these instructions for searching online records.

Mercer Island Online Permit Record Map

The link below will direct you to the Mercer Island Online Permit Record Map. The permit data displayed on the web map is pulled directly from the City’s electronic permit data, meaning the permit information shown is updated as new applications are entered into the system. Instructions for using the search features on the map can be viewed by clicking the information button on the map.

The information button is at the bottom of the map and looks like this:



Mercer Island Online Permit Record Map: <LINK>

MyBuildingPermit.com Project Search

Online permit records can be searched at <https://permitsearch.mybuildingpermit.com/>. Searching online permit records only takes the following steps:

1. Select “Mercer Island” from the jurisdiction dropdown menu.
2. Click on the “Project Info” tab at the top of the search page.
3. The “Project Name/Description” field is optional. It can be left blank unless searching for a specific project.
4. Select the permit type you would like to search for from the “Permit Type” dropdown. For example, tree removal permits are listed under the “Tree” type.
5. The “Permit Status” field can narrow searches by the status. This field is optional. “Permit Status” can be left blank unless searching for a specific project.
6. Use the “Date Type” to limit your search to permits either “applied”, “issued”, or “finalized”. Use the “Applied” option to search for permits that are still in review. Use the “Issued” option to see permits that have been issued; these permits have been approved. The “Finalized” option will show permits that have had a final inspection and approval. Please note: not all permits will be finalized, only those requiring a final inspection will be finalized. For example, tree removal permits don’t always require a final inspection and so may not show up as finalized.
7. Use the “From” and “To” fields to define the dates you want to search between.
8. After the search is conducted, results will display below the search fields. You have the option of downloading the records to an Excel spreadsheet.

Permit/Application Status Search

Jurisdiction:* Mercer Island Step 1 * - Indicates a required field

Search by: Project Info Step 2 Location People

Project Name/Description (partial match): Step 3

Permit Type: TREE Step 4

Permit Status: -- Select Statuses -- Step 5

Date Type: Issued Step 6

From: Step 7

To:

Jurisdiction is a required field

Permit #	Description	Address	Type	Status	Applied Date
▶ 2109-169	REMOVE 1 TREE rpl w 2 trees/r...	4126 100TH AVE SE	TREE	ACTIVE	09/22/2021
▶ 2112-066	Remove 1 Tree rpl w 3 Trees	8937 SE 56TH ST	TREE	ACTIVE	12/07/2021
▶ 2112-118	REMOVE 1 TREE rpl w 2 Trees	4215 HOLLY LN	TREE	ACTIVE	12/13/2021
▶ 2112-251	REMOVE 6 TREES rpl w 8 restor...	3606 GALLAGHER HILL RD	TREE	ACTIVE	12/29/2021

Total: 4 records

Step 8