

November 3, 2021

Jeff Thomas, Planning Director
Lauren Anderson, Planner
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
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Re: Code Interpretation Request – Mercer Island Beach Club, PRE21-019

Dear Mr. Thomas and Ms. Anderson:

The Mercer Island Beach Club (“**MIBC**”), located at 8326 Avalon Drive, is in the process of preparing a permit application to redevelop and replace a portion of an existing private recreational marina, all waterward of the Ordinary High Water Mark (“**OHWM**”). The MIBC property (the “**Property**”) is located in the Urban Residential Environment and is subject to the City’s Shoreline Master Program, codified in MICC Ch. 19.13 (the “**SMP**”). The MIBC proposes to redesign, reconfigure, replace and upgrade most of its existing marina for watercraft moorage, and to replace and update the swim dock, and the perimeter floats/log booms around the swimming area (the “**Proposal**”).

Introduction and the City’s Request for a Code Interpretation

The MIBC designed the Proposal to provide an important improvement over the existing facilities, and to result in enhanced recreational and ecological benefits. The Proposal was designed to meet state and federal requirements which limit structures within the shallower nearshore area within 30 feet from the OHWM. Among the benefits of this design is the protection of juvenile salmonids from predatory bass and perch. The MIBC Proposal reconfigures all but the access walkways to the marina and swim dock 40 feet or more from the shoreline, allowing unobstructed passage of juvenile salmonids along the shoreline, safe from predator fish.

However, as MIBC prepared the Proposal, and as discussed in the pre-application meeting, while the Mercer Island City Code (“**MICC**” or “**Code**”) contains clear standards regulating improvements for single or small shared residential docks, and clear standards for regulating improvements to larger public access facilities in public parks, and even standards for “semi-private waterfront recreational areas” that

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benefit specific upland lots, the Code does not list club uses, nor include any development standards regulating improvements for larger private club facilities like the MIBC. Following the pre-application meeting for the Proposal, City Staff further analyzed the Code, and requested a Code Interpretation application to address the permissibility of the uses, the permit process for the Proposal, and how to determine the appropriate development standards. Specifically, City Staff requested a Director's interpretation, stating in an email the following:

For a Director's Interpretation, please include the following:

- *Development Application (with the "code interpretation request" box checked under "other land use")*
- *Project narrative*
- *Preliminary plan set*
- *A detailed request for the interpretation:*
 1. *Are commercial docks allowed? Is an expansion allowed? What about swim docks? Log booms?*
 2. *If so, what is the process? A Shoreline Variance or Shoreline Conditional Use Permit?*
 3. *What standards apply?*

The City understands that commercial moorage facilities (aka marinas) aren't addressed in the SMP, however we agree that it should be an allowed use.

...

- *When submitting the Director's Interpretation with item #1 above, please state how each of the three (commercial dock/marina, swim dock, and log boom) may fit under the allowed waterward uses table B in the SMP. For example, it appears the marina meets the definition of moorage facility but it is unclear where a swim dock would fit. We can discuss this further after the Director's Interpretation application has been submitted.*

See enclosed email from Lauren Anderson to MIBC on July 16, 2021. This letter is the detailed request for the Code Interpretation.

When evaluating a Code Interpretation, the City is to consider the following criteria under MICC 19.15.160(A):

1. The plain language of the code section in question;
2. Purpose and intent statement of the chapters in question;
3. Legislative intent of the city council provided with the adoption of the code sections in question;
4. Policy direction provided by the Mercer Island comprehensive plan;
5. Relevant judicial decisions;
6. Consistency with other regulatory requirements governing the same or similar situation;
7. The expected result or effect of the interpretation; and
8. Previous implementation of the regulatory requirements governing the situation.

**Does the MICC Authorize:
MIBC’s Docks, Expansion of those Docks, Swim Docks, and/or Log Booms?**

The MIBC provides recreational facilities and programming for its members, and under its existing City-issued Conditional Use Permit, membership is limited to a maximum of five hundred families. As a legally existing use with a legally created marina, the MIBC is authorized to maintain, repair, renovate, remodel and completely replace its facilities, so long as all nonconformances with the current standards stated in Ch. 19.13 MICC are not increased. MICC 19.13.020.A. The current Proposal replaces most of the marina facilities,¹ including a significant reconfiguration that will improve ecological function of the lake, as well as the function of the marina for boat operators and passengers. Because replacement of existing uses is allowed so long as nonconformances are not increased, the plain language of the Code supports the City issuing a Code Interpretation under MICC 19.15.160(A)(1), that the Proposal uses are allowed.

In addition, the detailed analysis requested by City Staff is provided here.

First, while the term “commercial dock” has been used, the new moorage docks and marina are more properly within the definition of a “Moorage Facility.” This is because a “Commercial Recreational Area” is defined as a “recreational area maintained and operated for a profit.” MICC 19.16.010. The MIBC is a Washington Nonprofit Corporation and does not operate its facilities commercially for a profit.² In contrast, a “Moorage Facility”³ is defined to mean “any device or

¹ Existing floating docks E and F, as well as the existing boat ramp, will remain.

² While not directly relevant to the current permitting issues, we also note that the MIBC’s moorage facility, including the existing boat ramp, has historically been used to provide emergency lake access and landing for both municipal and public watercraft in cases of marine emergency.

structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.” MICC 19.16.010. Accordingly, the MIBC marina should be deemed a Moorage Facility and not a commercial dock.

That the MIBC Moorage Facility is an allowed use is stated in the City’s Shoreline Master Program, at MICC 19.13.040, Table B which provides that “moorage facilities and covered moorages 600 square feet or less” are permitted outright, whereas “covered moorage larger than 600 square feet” is allowed only with a Shoreline Conditional Use Permit (“SCUP”). The Proposal includes no covered moorage. Therefore, pursuant to the plain language of the Code, the MIBC Moorage Facility, regardless of size, should be deemed permitted outright.⁴ Pursuant to the Code Interpretation criterion that instructs a reviewer to follow the plain language of the Code, the City should issue an Interpretation determining that the Moorage Facility is a permitted use in the Urban Residential Environment and on the Property. MICC 19.15.160(A)(1).

Second, with respect to whether an expansion of the MIBC Moorage Facility is allowed, this issue should be reviewed not as part of this Code Interpretation, but with the permit applications. Specifically, to the extent “expansion” of otherwise permitted uses is part of the Proposal, the expansion should be allowed, subject to conditions to be imposed via a SCUP. We want to clarify that the Proposal does not expand or increase the number of available moorage slips. The current Proposal does slightly expand the overall square footage of pier and dock surfaces; however, this increase is necessary to meet current design and safety standards. Because of the newer materials to be used, and the reconfiguration of the facilities farther from the OHWM, the expanded surface area will actually reduce the amount of shading over the water, and there will be a reduction in overwater coverage within 30 feet waterward from OHWM. We acknowledge that the SMP development standards, at MICC 19.13.050.F.2 limit increases of the area, width, or length of over-water structures, as well as changes in the location of such structures. However, none of the development standards set specific limits for the MIBC type of Proposal. For example, the Proposal re-orientes the moorage facilities, and that re-orientation means that member families will share the same access dock, rather than split use across three access docks. Because much more foot traffic will now be using that single dock, the dock is proposed to be wider than that City’s maximum width for a residential dock. These types of detailed issues, linked to MIBC’s unique Proposal, should be reviewed as part of the subsequent SCUP and Development Standard analysis described below, and not as part of this Code Interpretation.

³ While not fully open to the public, the MIBC facilities might also be deemed to be a “Public Access Pier”, which is a “structure which is constructed waterward of the OHWM and intended for public use.” MICC 19.16.010.

⁴ By analogy, even a “Public Access Pier” is listed as a permitted use on MICC 19.13.040, Table B.

With respect to whether “swim docks” are permitted, MICC 19.13.040, Table B states, “floating platforms” and “mooring piles, diving boards and diving platforms” are permitted outright on the Property. The “swim dock” plainly falls within these permitted uses. Therefore, pursuant to the Code Interpretation criterion that instructs a reviewer to follow the plain language of the Code, the swim dock is a permitted use in the Urban Residential Environment and on the Property. MICC 19.15.160(A)(1).

Finally, a “log boom” is not defined in the Code. Here, the MIBC has an existing log boom defining the edges of the swim area, and the Proposal replaces that log boom with another, in a somewhat modified location. The log boom is accessory to the allowed swim dock, and the log boom exists for the safety of both the MIBC members swimming in the lake, and adjacent boaters who need to know where the swim area ends. Such log booms or similar floating elements defining safety areas are not expressly discussed in MICC 19.13.040, Table B. However, a stated purpose of the SMP is to adopt development standards that protect the health, safety, welfare, values and property interests of City and its residents. MICC 19.13.010.C. Therefore, pursuant to the Code Interpretation criterion that instructs a reviewer to issue Interpretations that further the legislative intent of the city council, the log boom should be ruled to be a permitted use, or at least a permitted accessory use, in the Urban Residential Environment.

Should a Shoreline Conditional Use Permit or a Shoreline Variance be used?

As described above, the Proposal includes permitted uses, plus an expansion of the moorage facilities. However, as stated above and described below, many of the Code’s development standards are simply missing or plainly inapplicable to a new marina providing moorage facilities to hundreds of Mercer Island families, let alone to the redevelopment of most of an existing marina. Therefore, City Staff asked whether a SCUP or a Shoreline Variance was the best tool to close this gap. Neither a SCUP, nor a Shoreline Variance have codified procedures or criteria in the Mercer Island City Code, Shoreline Master Program. The SMP does explain that “[a]ll proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act.” MICC 19.13.010(B). Given this directive, it is appropriate, and arguably required, to turn to the State Shoreline Management Act, Chapter 90.58 RCW (the “SMA”), and the State’s implementing regulations in WAC 173-27. We recommend that the City adopt a Code Interpretation under which the Proposal will be processed as a SCUP pursuant to the applicable framework set forth in Chapter 173-27 of the Washington Administrative Code (“WAC”), together with the sole SCUP criterion found in the City’s Code.

The SCUP is a better choice than the Variance for the following reasons. A standard conditional use permit under MICC 19.06.110.A is to be used to evaluate the particular characteristics and location of certain uses relative to the development and design standards of the Code, and the review is to determine if the development should be permitted after weighing the public benefit and the need for the use, with the potential impacts that the use may cause. As explained in WAC 173-27-160, the purpose

of a SCUP is to provide “a system within the master program which allows flexibility in the application of use regulations”, and in approving a conditional use, “special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.” In contrast, a standard variance under MICC 19.06.110 is typically used to vary from a numeric standard. And a Shoreline Variance under WAC 173-27-170 is limited to granting relief from specific bulk, dimensional or performance standards set forth in the SMP. Because the Code simply does not include specific bulk, dimensional or performance standards directly applicable to all parts of the MIBC Proposal, a Variance cannot be used because there is no starting point from which to evaluate the Variance.

Here, the City needs to review the MIBC Proposal for far more than a potential modification of specific numerical standards. The City’s Shoreline Master Program addresses the MIBC uses, but simply does not contain applicable standards to assure consistency of the Proposal’s uses with the SMP and the State Shoreline Management Act. This drives a need to use the “flexibility” that is inherent in a SCUP. Using the SCUP, the City’s review can confirm that the moorage facilities, swim dock, and associated log boom are appropriately located, in light of the limited and lacking development and design standards that should be applied to the Proposal, and that the development standards are applied with flexibility necessary to protect the health, safety, welfare, values and property interests of the city of Mercer Island and its residents, as called for in MICC 19.13.010. The SCUP gives the City the needed flexibility to approve the revised location and design of the MIBC marina and to impose special conditions to ensure consistency with the intent of the City’s SMP.

To evaluate the SCUP application, and in light of the missing standards for designing a marina for a large community club like MIBC, we recommend that the City use the specific review criteria of WAC 173-27-160, together with the sole CUP criterion found in City Code, such that MIBC must demonstrate all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

In addition to the above review criteria, the City should require MIBC satisfy the sole SCUP specific application requirement set forth in the City Code: the requirement to prepare a plan demonstrating no net loss of ecological function. *See* MICC 19.13.020(C)(2).

The approval criteria for a Mercer Island Code Interpretation include “[c]onsistency with other regulatory requirements governing the same or similar situation.” MICC 19.15.160(A)(6). The Code also instructs the Director to consider the “[p]urpose and intent statement of the chapters in question.” MICC 19.15.160(A)(2). MICC 19.13.010 states “[i]t is the purpose and intent of this chapter to achieve the shoreline master program (SMP) mandates of the state of Washington...”, i.e., the mandates of the SMA and its implementing regulations in the WACs. Therefore, pursuant to these Code Interpretation criteria, the City should approve a Code Interpretation applying the SCUP process, and using the WAC framework set forth above for processing the Proposal.

What Development Standards Apply?

WAC 173-27-160 instructs that a SCUP is intended to provide “a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.” This directive to apply regulations in a flexible manner is consistent with the City’s SMP Code section allowing use of “Alternative Development Standards” in lieu of the standards that apply to the plainly regulated residential docks, public facilities or semi-private recreational tracts. *See* MICC 19.13.050(F)(3). The City’s Alternative Development Standards section allows the director to “approve moorage facilities not in compliance with the development standards [stated previously in the Code]”, provided other agencies with jurisdiction approve the alternative design and various requirements are satisfied. *Id.* This framework provides the type of flexibility mandated in WAC 173-27-160.

For the MIBC Proposal, the closest applicable City development standards are those found in MICC 19.13.150.F.2, *Development standards for replacement, repair and maintenance of overwater structures, including moorage facilities*. However, even those standards are not a perfect match for the Proposal, as those standards seek to limit the relocation of any structure 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. Here, the MIBC Proposal completely relocates in-scope structures, and we believe will result in a net gain in ecological function and greater conformity with new overwater structure standards by moving moorage into deeper water and consolidating access to the moorage to a single location. To achieve those positive results, the MIBC Proposal was not designed to comply with the standard that “The area, width, or length of the structure is not increased.”#Likewise, the MIBC Proposal cannot be approved under the City’s current Alternative Development Standards,

because those Standards require compliance with dock widths that will not function well for the relocated and reconfigured marina.

Again, the City's development standards simply do not include standards that directly apply to the replacement and redesign of most of an existing marina serving a 500-family member club like the MIBC. We recommend that the MIBC Proposal be reviewed under the flexibility allowed by a SCUP, and that the development standards should match what is permissible by U.S. Army Corps of Engineers ("Corps") and the Washington State Department of Fish and Wildlife ("WDFW") under WAC Chapter 220-660. For example, if the Corps and WDFW will approve dock widths of 10 feet, then the City's SCUP should also allow those dock widths for the MIBC Proposal, even though doing so may result in an increase in the area, width or length of the existing structures. Likewise, the Corps and WDFW are expected to support the Proposal because the reconfigured marina is further from the OHWM, and because the Proposal reduces the existing three access points to one, which combine to improve ecological values. These approaches and similar aspects of the Proposal are appropriate and supported by the Code Interpretation criterion regarding "consistency with other regulatory requirements governing the same or similar situation." MICC 19.15.160(A)(6). This framework will allow the City to exercise proper discretion in reviewing the Proposal so as to assure the goals and intent of the SMP and SMA are satisfied, and to evaluate and approve elements of the MIBC Proposal that do not precisely meet the City's detailed standards for smaller residential docks, or larger public facilities in public parks, and do not fully meet the standards for replacement of existing overwater structures because the marina Proposal includes a notable redesign and relocation.

Conclusion and MIBC Request for Code Interpretation

For all of the above reasons, we request the City issue a Code Interpretation that:

1. All uses in the MIBC Proposal are allowed uses.
2. The MIBC Proposal will be processed as a SCUP pursuant to the applicable framework set forth in WAC Ch. 173-27 of the Washington Administrative Code, together with the sole SCUP criterion found at MICC 19.13.020(C)(2), requiring a plan showing no net loss of ecological function.
3. The MIBC Proposal will be reviewed under the flexibility allowed by a SCUP, including that the applicable development standards will match not what is in the City's SMP for smaller residential docks or larger public parks, but instead what is permissible by U.S. Army Corps of Engineers ("Corps") and the Washington State Department of Fish and Wildlife ("WDFW").

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In the event the City has any questions or concerns regarding this request, we would welcome the opportunity to discuss the matter further. Thank you in advance for your time and consideration, and we look forward to working with you on this exciting project.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Bainbridge Rogers", followed by a horizontal line extending to the right.

Nancy Bainbridge Rogers

NBR:alw

Enclosures:

Email from Lauren Anderson to MIBC on July 16, 2021.
WAC 173-27-160, -180, -190, -200, and -210

----- Forwarded message -----

From: Lauren Anderson <Lauren.Anderson@mercergov.org>

Date: Fri, Jul 16, 2021 at 12:20 AM

Subject: RE: MI Beach Club Marina - Pre app notes

To: Grant Goodall <ggoodall@gmail.com>

Cc: Gardner Morelli <gardner.morelli@gmail.com>, Katie Boissoneault <generalmanager@mibeachclub.com>

Hi Grant,

In response to your previous email about applying for a Director's Interpretation, please include the following:

- Development Application (with the "code interpretation request" box checked under "other land use")
- Project narrative
- Preliminary plan set
- A detailed request for the interpretation:
 1. Are commercial docks allowed? Is an expansion allowed? What about swim docks? Log booms?
 2. If so, what is the process? A Shoreline Variance or Shoreline Conditional Use Permit?
 3. What standards apply?

The City understands that commercial moorage facilities (aka marinas) aren't addressed in the SMP, however we agree that it should be an allowed use.

In regards to revising the pre-app notes, that is no longer needed as it's not a revision but more of a follow up item. Please note the following:

- When submitting the Director's Interpretation with item #1 above, please state how each of the three (commercial dock/marina, swim dock, and log boom) may fit under the allowed waterward uses table B in the SMP. For example, it appears the marina meets the definition of moorage facility but it is unclear where a swim dock would fit. We can discuss this further after the Director's Interpretation application has been submitted.

Please let me know if you have questions – we can schedule a phone call next week if needed. We look forward to your future submittal.

Thank you for your patience. Due to limited staffing and being out sick I have been trying my best to keep up. We are in the process of hiring a Principal Planner and are excited to have them join our team soon.

Sincerely,

Lauren Anderson
Planner
City of Mercer Island - Community Planning & Development
206.275.7704 | mercerisland.gov/cpd

Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no "walk in" permit service; staff are working remotely and services are being continued via remote operations. More information is available on the City's website: mercerisland.gov/cpd. Please contact us by phone for general customer support at 206-275-7626.

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).

From: Grant Goodall <ggoodall@gmail.com>
Sent: Thursday, July 15, 2021 2:14 PM
To: Lauren Anderson <Lauren.Anderson@mercergov.org>
Cc: Gardner Morelli <gardner.morelli@gmail.com>; Katie Boissoneault <generalmanager@mibeachclub.com>
Subject: Re: MI Beach Club Marina - Pre app notes

Hi Lauren - Is there an update on the revised meeting notes and next steps for us? Thank you.

WAC 173-27-160 Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

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

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

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

(3) 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.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-160, filed 9/30/96, effective 10/31/96.]

WAC 173-27-180 Application requirements for substantial development, conditional use, or variance permit. A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, the following information:

(1) The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.

(2) The name, address and phone number of the applicant's representative if other than the applicant.

(3) The name, address and phone number of the property owner, if other than the applicant.

(4) Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

(5) Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.

(6) A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.

(7) A general description of the property as it now exists including its physical characteristics and improvements and structures.

(8) A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

(9) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

(a) The boundary of the parcel(s) of land upon which the development is proposed.

(b) The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

(c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

(d) A delineation of all wetland areas that will be altered or used as a part of the development.

(e) A general indication of the character of vegetation found on the site.

(f) The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings,

paved or graveled areas, roads, utilities, septic tanks and drain-fields, material stockpiles or surcharge, and stormwater management facilities.

(g) Where applicable, a landscaping plan for the project.

(h) Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

(i) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

(j) Quantity, composition and destination of any excavated or dredged material.

(k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

(l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

(m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-180, filed 9/30/96, effective 10/31/96.]

WAC 173-27-190 Permits for substantial development, conditional use, or variance. (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-190, filed 9/30/96, effective 10/31/96.]

WAC 173-27-200 Department review of conditional use and variance permits.

(1) After local government approval of a conditional use or variance permit, local government shall submit the permit to the department for the department's approval, approval with conditions, or denial. The department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110.

(2) The department shall review the complete file submitted by local government on conditional use and variance permits and any other information submitted or available that is relevant to the application. The department shall base its determination to approve, approve with conditions or deny a conditional use permit or variance on consistency with the policy and provisions of the act and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.

(3) Local government shall provide timely notification of the department's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-200, filed 9/30/96, effective 10/31/96.]

WAC 173-27-210 Minimum standards for conditional use and variance permits. Pursuant to RCW 90.58.100(5) and 90.58.140(3), the criteria contained in WAC 173-27-160 and 173-27-170 for shoreline conditional use and variance permits shall constitute the minimum criteria for review of these permits by local government and the department. Local government and the department may, in addition, apply the more restrictive criteria where they exist in approved and adopted master programs.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-210, filed 9/30/96, effective 10/31/96.]