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March 31, 2017

Scott Greenberg
Director, Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

**Re: Cherberg Dock Application – 9814 SE 33rd Street
CODE COMPLIANCE DISCUSSION**

Dear Mr. Greenberg:

This firm represents James and Nan Cherberg who reside at 9418 SE 33rd Street in the City of Mercer Island. This letter is being submitted in support of a new dock application pursuant to the current Shoreline Master Program. The purpose of this letter is to discuss a code compliance issue related to the Shoreline Master Program, Mercer Island Municipal Code 19.07.110. The code compliance issue relates to an amendment to 19.07.110 approved by the City Council on March 2, 2015. Ord. 15C-02. Specifically, a sentence was added to 19.07.110(E)(4) as follows: “Only one non-commercial, residential moorage facility per upland residential waterfront lot authorized.” See Appendix D at Section 1.

Factual Situation: The Cherbergs own a waterfront lot at 9418 SE 33rd Street with no dock—that is they have no right to use any existing dock. The adjacent waterfront property to the west is owned by the Griffiths at 9410 SE 33rd Street. The Griffiths have an existing dock close to their home that is partly on the Griffiths’ property and partly on the Cherbergs’ property (see Aerial Photo attached as Appendix A). The Griffiths’ dock starts on the Cherberg property and then in the water the Griffiths’ dock is located on both sides of the mutual property line—the lateral line in the water (see Diagram attached as Appendix B). The Diagram also shows in red the dock that the Cherbergs are proposing in the concurrently filed application. The Griffiths have exclusive use to their dock which was formalized in an Exclusive Dock Easement (copy attached as Appendix C¹). The Cherbergs have no right to access or use the Griffiths’ dock.²

Code Compliance Issue: Thus, an issue is raised as to whether the Cherbergs can seek to build their own residential dock exclusively serving their separate waterfront lot under 19.07.110(E)(4) because the Cherbergs do not have access to a neighbors’ dock that utilizes a portion of the Cherberg property?

Answer: This question needs to be answered in the affirmative—that the Cherbergs can build their own dock, for the following reasons.

¹ See in particular the diagram on last page indicating easement area with hatching.

² The proposed dock also avoids the landscape easement area also controlled by the Griffiths.

First, the facts demonstrate that only one “residential moorage facility” will exist “per upland residential waterfront lot” consistent with 19.07.110(E)(4). The Griffiths own a waterfront lot and will have a dock for their exclusive use. The Cherbergs own a waterfront lot and could build a dock for their exclusive use. There would be two upland waterfront properties and two docks. The wording “per upland waterfront lot” does not restrict in any way the location of a dock serving each waterfront lot. The common and ordinary reading of the provision allows the Cherbergs to build a dock for their own use.

Second, the intent is supported by the entire provision at MIMC 19.07.110(E)(4) which states as follows:

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 excluded].

The first sentence references “moorage facilities,” i.e. docks, as an accessory to dwellings. The second sentence then contains the specific language added in the City Council amendment on March 2, 2015. The premise of the first sentence is that each dwelling is allowed moorage facilities as an accessory use. Therefore, the second sentence qualifies the accessory moorage facilities use as being one dock per residential waterfront lot which for these single family homes means one dock per dwelling. Allowing the Cherbergs to build a dock is consistent with allowing each dwelling in the single family zone to have one dock as an accessory use.

Third, the intent of the City Council in amending this Code provision clearly supports the affirmative answer in this situation. The change was made by the City Council at its meeting on March 2, 2015, by reference to Exhibit 2, page 8, of the City Council Agenda Item (Exhibit 2 to Business of the City Council, AB 5045, March 2, 2015, copy attached as Appendix D). The transcript of the pertinent portion of the City Council meeting of March 2, 2015, has been prepared (attached as Appendix E). Council Member Cero referenced this provision on Exhibit 2, page 8, by stating: “This is when we limit one facility per lot.” The entire exchange is as follows:

MR. CERO: And then I have a question on Exhibit 2, Page 8, PDF Page 91. And I just want clarification on this. This is when we limit one facility per lot.

MR. GREENBERG: Okay.

MR. CERO: One dock, one facility, you know, and I want to understand the intent of that. So some folks have talked to me that there might be a neighbor or there is -- there are neighbors' docks that may straddle a property line, which potentially from this could be interpreted that that dock is both on

Property A and Property B, for instance. *So is the intent of this -- is that, in instances where a dock may straddle a property line, that one dock goes to one person's lot and that frees up or it get- -- it still enables --still enables the other person to build a lot -- to build a dock?*

MR. GREENBERG: I –

MR. CERO: Meaning -- I guess maybe another way of saying it is the intent is that if there's -- if there's -- *if a dock encroaches upon or straddles a property line, the intent is that two properties, two dock- -- two docks.*

MR. GREENBERG: *I would say I believe that's the intent, yeah.* If you have 500 waterfront lots, I think the intent would be that there could be up to 500 docks, but some people will have shared docks, and there might be some other circumstances there.

MR. CERO: Okay.

Transcript attached as Appendix E at page 6 lines 10-25 through page 7, lines 1-10 (emphasis added). The clarification is directly on point to the requested interpretation as stated in the highlighted sentence. The Council wanted clarification that this provision in 19.07.110(E)(4) was intended to allow a second dock on Parcel B for use by the owner of Parcel B when the first dock straddled the property line between Parcels A and B was used by the owner of Parcel A—“the intent is that two properties, two dock- -- two docks.” You provided the clarification to the City Council and agreed that indeed each waterfront lot was expected to have a dock under 19.07.110(E)(4) unless there was shared dock which is not the case here.

Fourth, this situation is not an isolated case on Mercer Island. There are other instances in which docks straddle property lines and are used exclusively by one lot. Sometimes that was not originally intended, but new surveys with better technology have revealed that the docks actually encroach over the property lines. In other situations, the encroaching may have been due to misunderstandings regarding lateral lines—the property lines extending into the Lake. Often the encroached upon lot may have its own dock that may or may not encroach on the next property line. The interpretation requested here—that each waterfront lot is entitled to one dock avoids problems in a manner that the City Council clearly intended. If a lot has a dock and the neighbor's dock encroaches over the property line, then the contrary interpretation would cause the docks to be non-conforming for both properties which at a minimum would prohibit expansion and might restrict maintenance, repair, and modification. There is nothing in the provision or in the Council's intent suggesting such an outcome which would cause such a severe restriction on dock owner rights.

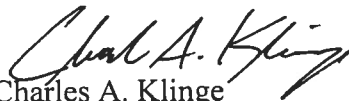
In summary, for the above reasons, the Cherbergs seek approval of the dock application based on 19.07.110(E)(4) allowing the Cherbergs to seek to build their own residential dock serving their

separate waterfront lot because the Cherbergs do not have access to a neighbors' dock that utilizes a portion of the Cherberg property.

Please contact me if you need clarification or have any questions.

Sincerely,

STEPHENS & KLINGE LLP


Charles A. Klinge
klinge@SKlegal.pro

Enclosures

- Appendix A: Aerial Photo
- Appendix B: Dock Diagram
- Appendix C: Exclusive Dock Easement
- Appendix D: Proposed Ord. 15C-02, Exhibit 2 to AB 5045 (3/2/2015)
- Appendix E: Transcript, Excerpts of City Council Meeting (3/2/2015)

cc: Kari Sand, City Attorney
Clients

Appendix A

Cherberg



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 12/21/2016

Notes:

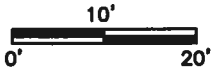


 King County
GIS CENTER

Appendix B

LAKE WASHINGTON

OUTER LIMITS OF SECOND CLASS SHORELANDS



APPROXIMATE POSITION OF LINE AS SHOWN ON APPROVED DOCK PLANS BY U.S. ARMY CORPS OF ENGINEERS DATED FEBRUARY 28, 1998 (PER TRIAD ASSOCIATES)

EXCLUSIVE DOCK EASEMENT REC. NO. 20120501001233

LANDSCAPE EASEMENT REC. NO. 20120501001236

EX FENCE
HAL GRIFFITH

JAMES CHERBERG

EX BRICK PAVERS

EX EDGE OF LANDSCAPE

JT GRAUE

EX SS EASEMENT

PROPOSED BOAT LIFT

PROPOSED BOAT LIFT

OHWM=21.85'

OHWM=ORDINARY HIGH WATER MARK (PER TRIAD ASSOCIATES)

CONCEPTUAL DESIGN NOT FOR CONSTRUCTION

LEGEND:



PROPOSED PIER (SEE SHEET 2 FOR DETAILED SITE PLAN)

EX ADJACENT BOAT LIFT

EX ADJACENT PIER

NOTE: PROPOSED PIER LAYOUT BASED ON DESIGN BY DIBBLE ENGINEERS, INC., OF KIRKLAND WASHINGTON, DATED JULY 20, 2016.

SITE SURVEY INFORMATION BASED ON SURVEY BY TRIAD ASSOCIATES TITLED LIMITED TOPOGRAPHIC SURVEY CHERBERG RESIDENCE, DATED SEPTEMBER 22, 2016 AND DOCK EXHIBIT DATED APRIL 14, 2016

APPLICANT: JAMES CHERBERG
9418 SE 33RD STREET
MERCER ISLAND, WA

PURPOSE: PRIVATE PIER

City of Mercer Island Shoreline Substantial Development Permit Application:
(11' OFFSET)



Layton & Sell, Inc., P.S.
Consulting Coastal & Civil Engineers
Redmond, Washington 98053
Office: (425) 825-1735

IN: LAKE WASHINGTON
AT: MERCER ISLAND
COUNTY: KING
STATE: WASHINGTON
DATUM: CORPS OF ENGINEERS 1919
LATITUDE: 47.582047° N
LONGITUDE: 122.211594° W

PROPOSED PIER WITH BOATLIFTS

DATE: 03/07/2017
REVISION DATE:
SHEET: 3 of 6

Appendix C

Return recorded document to:

Shannon Sperry

Lasher Holzapfel Sperry & Ebberson, PLLC

601 Union Street, Suite 2600

Seattle, Washington 98101-4000



20120501001233

LASHER HOLZAPF EAS 72.00
PAGE-001 OF 011
05/01/2012 11:39
KING COUNTY, WA

EXCLUSIVE DOCK USE EASEMENT

Grantor: Griffith, Hal E. and Joan, husband and wife

Grantee: Griffith, Hal E. and Joan, husband and wife

Legal Description: Gov. Lot 4, Sec. 7, Twp. 24 North, Range 5 East, W.M.
(abbreviated) Full Legal Descriptions on Pages 5-8

Tax Parcel Nos.: 413930-0360-04 and 413930-0405-01

THIS Exclusive Dock Use Easement is made this 18th day of April, 2012, by and between Hal E. Griffith and Joan Griffith (collectively the "Grantor") and Hal E. Griffith and Joan Griffith (collectively the "Grantee").

RECITALS

A. Grantors are the owners of certain real property legally described on Exhibit B attached hereto ("Parcel A").

B. Grantees are the owners of certain real property legally described on Exhibit A attached hereto ("Parcel B").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **Grant of Exclusive Dock Easement.** Grantor does hereby grant and convey to Grantee and its heirs, successors and assigns, for the benefit of Parcel B, an exclusive perpetual easement for dock use, access, ingress, egress and utilities, over, under and across Parcel A as legally described and cross-hatched on Exhibit C. Grantee may use this area for whatever purpose they desire. This exclusive easement also permits Grantee to keep any watercraft and related items temporarily or permanently on the dock space described on Exhibit C, and to use any waterways surrounding the dock for ingress or egress of watercraft.

2. **Maintenance and Liability Agreement.** The responsibility for and cost of maintenance and/or repair of any improvements, roadways and/or utilities constructed upon, under or within the easement granted herein shall be borne by the owners of Parcel B, their heirs, successors and assigns; provided, however, that where utility systems are used in common, no owner shall be liable for any portion of a commonly used utility system above or beyond said owner's point of connection to the same. Notwithstanding the above, Grantor agrees to provide any requested assistance related to gaining approval (City of Mercer Island or otherwise) for any maintenance or repairs related to the property included in this easement or the improvements thereupon.

3. **Duration.** The term of said easement shall be indefinite and shall continue until revoked by the mutual agreement of Grantor and Grantee or their heirs, successors or assigns. Said easement is intended to and shall run with the land and the benefits and burdens of the easement herein created shall pass to the heirs, successors and assigns of the parties in and to their respective properties benefited and burdened by these easements.

4. **Costs and Attorneys' Fees.** If any party hereto shall bring any suit, arbitration or other action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party, in addition to all costs and disbursements, such sum as the Court, or arbiter may determine to be a reasonable attorney's fee.

5. **Specific Performance.** If any party shall default in its obligations under this Agreement, the parties each acknowledge that it would be extremely difficult to measure the resulting damages. Accordingly, any nondefaulting party, in addition to any other rights or remedies, shall be entitled to restraint by injunction of a violation, or attempted or threatened violation, of any condition or provision of this Agreement, or to a decree specifically compelling performance of any such condition or provision. In such event, all parties hereto each expressly waive their defense that a remedy in damages or at law would be adequate.

6. **Documents.** Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

7. **No Termination Upon Breach.** No breach of this Agreement shall entitle either party to cancel, rescind or otherwise terminate this Agreement, provided, however, that this provision shall not limit or otherwise affect any other right or remedy which a party may have hereunder by reason of any breach of this Agreement.

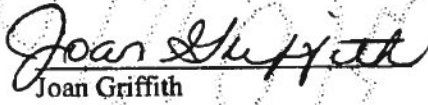
8. **Non-Merger.** The mutual ownership of Grantor and Grantee shall not be deemed to create a merger.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly signed as of the day and year first above written.

[Signatures on following page]


GRANTOR:


Hal Griffith


Joan Griffith

GRANTEE:


Hal Griffith


Joan Griffith

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Hal Griffith is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument and acknowledged it as the authorized agent of the party on behalf of whom instrument was executed to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 18 day of April, 2012.

Notary Public
State of Washington
King County
Oanh DeVore
My Commission Expires
Mar. 20, 2016

OANH DEVORE
(printed name):

NOTARY PUBLIC in and for the
State of Washington, residing at

Seattle

My Commission expires: May 20 2016

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Joan Griffith is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument and acknowledged it as the authorized agent of the party on behalf of whom instrument was executed to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 18 day of April, 2012.

Notary Public
State of Washington
King County
Oanh DeVore
My Commission Expires
Mar. 20, 2016

OANH DEVORE
(printed name):

NOTARY PUBLIC in and for the
State of Washington, residing at

Seattle

My Commission expires: May 20 2016

EXHIBIT A

PARCEL 1:

THAT PORTION OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 4 IN SAID SECTION DISTANT NORTH 89°57'00" WEST 276.00 FEET FROM THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, AS SHOWN ON ORIGINAL PLAT OF LAKEMONT, AN UNRECORDED PLAT, SAID SOUTHEAST CORNER BEING DISTANT NORTH 89°57'00" WEST 1,333.64 FEET FROM THE SOUTHEAST CORNER OF GOVERNMENT LOT 5 IN SAID SECTION 7; AND RUNNING THENCE NORTH 834 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE NORTH 89°57'00" WEST 50.00 FEET;

THENCE NORTH 695 FEET, MORE OR LESS, TO THE SHORELINE OF LAKE WASHINGTON;

THENCE SOUTHEASTERLY ALONG SAID SHORELINE 70 FEET, MORE OR LESS, TO A POINT WHICH BEARS NORTH FROM THE TRUE POINT OF BEGINNING, HERINAFTER REFERRED TO AS POINT "A";

THENCE SOUTH 650 FEET, MORE OR LESS, TO THE POINT OF BEGINNING; EXCEPT THE SOUTH 20 FEET THEREOF FOR ROAD;

TOGETHER WITH SECOND CLASS SHORELANDS ADJOINING.

(ALSO KNOWN AS TRACT 65, A REPLAT OF TRACTS "E", "F", "G", "H", "I", "J" AND "K" OF LAKEMONT, AN UNRECORDED PLAT.)

PARCEL 2:

BEGINNING AT A POINT 834 FEET NORTH AND 266 FEET WEST OF THE SOUTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, SAID POINT BEING 10 FEET EAST OF THE SOUTHWEST CORNER OF LOT D, LAKEMONT, ACCORDING TO THE UNRECORDED PLAT THEREOF;

THENCE NORTH 500 FEET ALONG A LINE 10 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT D;

THENCE AT AN ANGLE TO THE RIGHT, 13°26', TO THE SHORELINE OF LAKE WASHINGTON;

**EXHIBIT A
(continued)**

THENCE NORTHWESTERLY ALONG SAID SHORELINE TO POINT "A", SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID LOT D, AND SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 65, REPLAT OF TRACTS "E", "F", "G", "H", "I", "J" AND "K" OF LAKEMONT ACCORDING TO THE UNRECORDED PLAT THEREOF;

THENCE SOUTH ALONG THE WEST LINE OF SAID LOT D, ALSO BEING THE EAST LINE OF SAID LOT 65, TO A POINT WHICH IS WEST 10 FEET FROM THE POINT OF BEGINNING, BEING THE SOUTHWEST CORNER OF SAID LOT D, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 65;

THENCE EAST ALONG THE SOUTH LINE OF SAID LOT D 10 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 20 FEET THEREOF FOR ROAD;

TOGETHER WITH SECOND CLASS SHORELANDS ADJOINING.

EXHIBIT B

THAT PORTION OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 834 FEET NORTH AND 211 FEET WEST OF THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4;
THENCE WEST 65 FEET;
THENCE NORTH TO THE SHORE OF LAKE WASHINGTON;
THENCE SOUTHEASTERLY ON SAID SHORE LINE 150 FEET, MORE OR LESS, TO A POINT WHICH IS NORTH OF THE POINT OF BEGINNING;
THENCE SOUTH TO THE POINT OF BEGINNING; TOGETHER WITH ALL SECOND CLASS SHORE LANDS IN FRONT OF SAID PREMISES;
EXCEPT THE SOUTH 212.60 FEET;
EXCEPT THAT PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT 834 FEET NORTH AND 276 FEET WEST OF THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4;
THENCE NORTH TO A POINT 100 FEET SOUTH OF THE SHORE OF LAKE WASHINGTON AND WHICH POINT IS THE TRUE POINT OF BEGINNING;
THENCE CONTINUING NORTH 100 FEET TO THE SHORE OF LAKE WASHINGTON;
THENCE ON SAID SHORELINE SOUTHEASTERLY 50 FEET;
THENCE SOUTHWESTERLY TO A POINT 10 FEET EAST OF THE TRUE POINT OF BEGINNING;

THENCE SOUTH TO A LINE WHICH IS 834 FEET NORTH OF THE SOUTH LINE OF SAID GOVERNMENT LOT 4;
THENCE WEST ON SAID LINE 10 FEET;
THENCE NORTH TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH ALL SECOND CLASS SHORELANDS IN FRONT OF SAID PREMISES;

TOGETHER WITH A PERMANENT EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE FOLLOWING TRACT;

BEGINNING AT A POINT 834 FEET NORTH AND 256 FEET WEST OF THE SOUTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 24

**EXHIBIT B
(continued)**

NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY,
WASHINGTON;
THENCE WEST 10 FEET;
THENCE NORTH 212.60 FEET;
THENCE EAST 10 FEET;
THENCE SOUTH 212.60 FEET TO THE POINT OF BEGINNING;
EXCEPT THE SOUTH 20 FEET THEREOF FOR ROAD.

EXHIBIT C 1 of 3

DOCK EASEMENT AREA
LEGAL DESCRIPTION

COMMENCING AT A POINT 834 FEET NORTH AND 266 FEET WEST OF THE SOUTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, SAID POINT BEING 10 FEET EAST OF THE SOUTHWEST CORNER OF LOT D, LAKEMONT, ACCORDING TO THE UNRECORDED PLAT THEREOF;
THENCE NORTH 01°13'19" EAST (*DEED NORTH*) 500 FEET ALONG A LINE 10 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT D;
THENCE AT AN ANGLE TO THE RIGHT, 13°26', A DISTANCE OF 83.47 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 75°20'41" EAST A DISTANCE OF 1.00 FEET;
THENCE NORTH 39°16'39" EAST A DISTANCE OF 21.9 FEET, MORE OR LESS, TO THE SHORELINE OF LAKE WASHINGTON;
THENCE NORTHWESTERLY ALONG SAID SHORELINE TO POINT THAT BEARS NORTH 14°39'19" EAST FROM THE POINT OF BEGINNING;
THENCE SOUTH 14°39'19" WEST A DISTANCE OF 32.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

SITUATE IN THE CITY OF MERCER ISLAND, COUNTY OF KING AND STATE OF WASHINGTON.



CONCEPT ENGINEERING, INC.

455 Rainier Boulevard North
Issaquah, Washington 98027
(425) 392-8055, Fax: (425) 392-0108

CEI JOB NO. 31092
DATE: 3/29/12

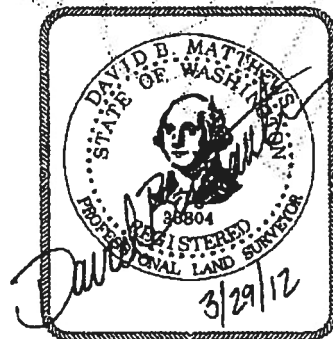
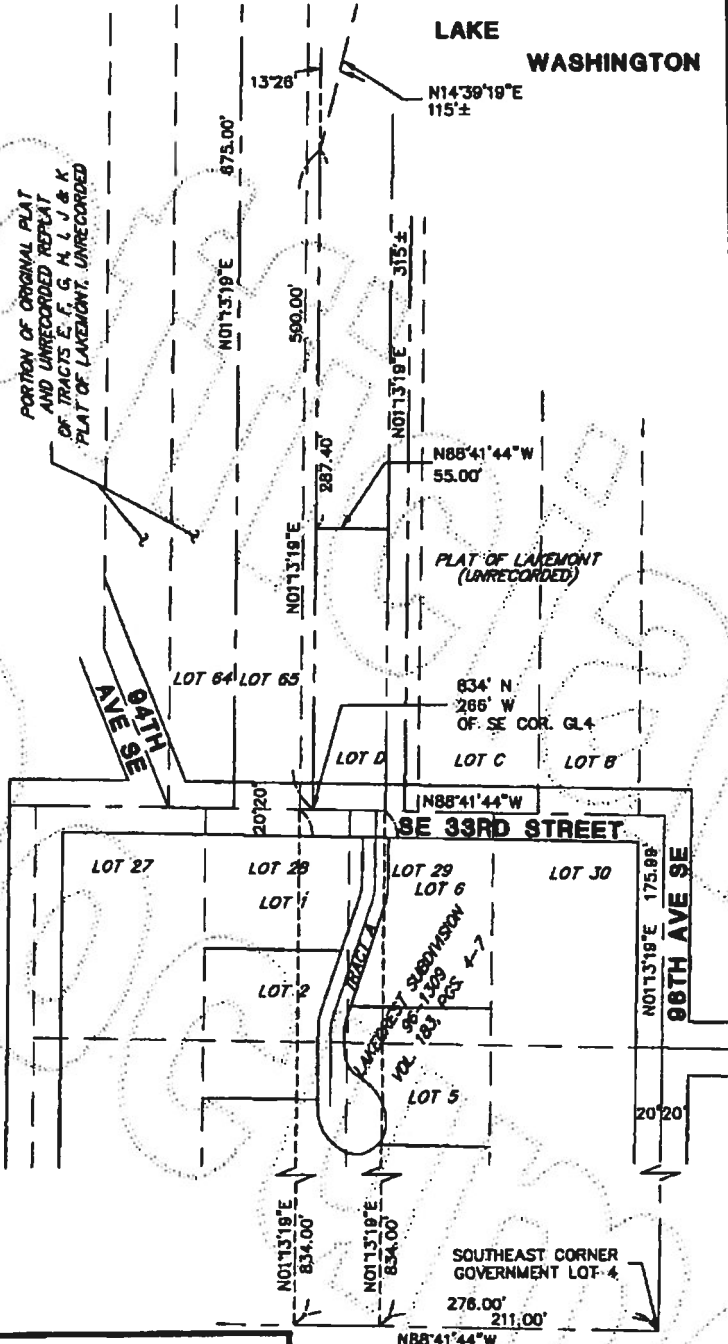


EXHIBIT C 2 of 3

LAKE WASHINGTON

PORTION OF ORIGINAL PLAT AND UNRECORDED REPEAT OF TRACTS E, F, G, H, I, J & K PLAT OF LAKE MONT, UNRECORDED



DOCK EASEMENT EXHIBIT
 NW 1/4, SE 1/4, S. 7, T. 24 N., R. 5 E., W.M.

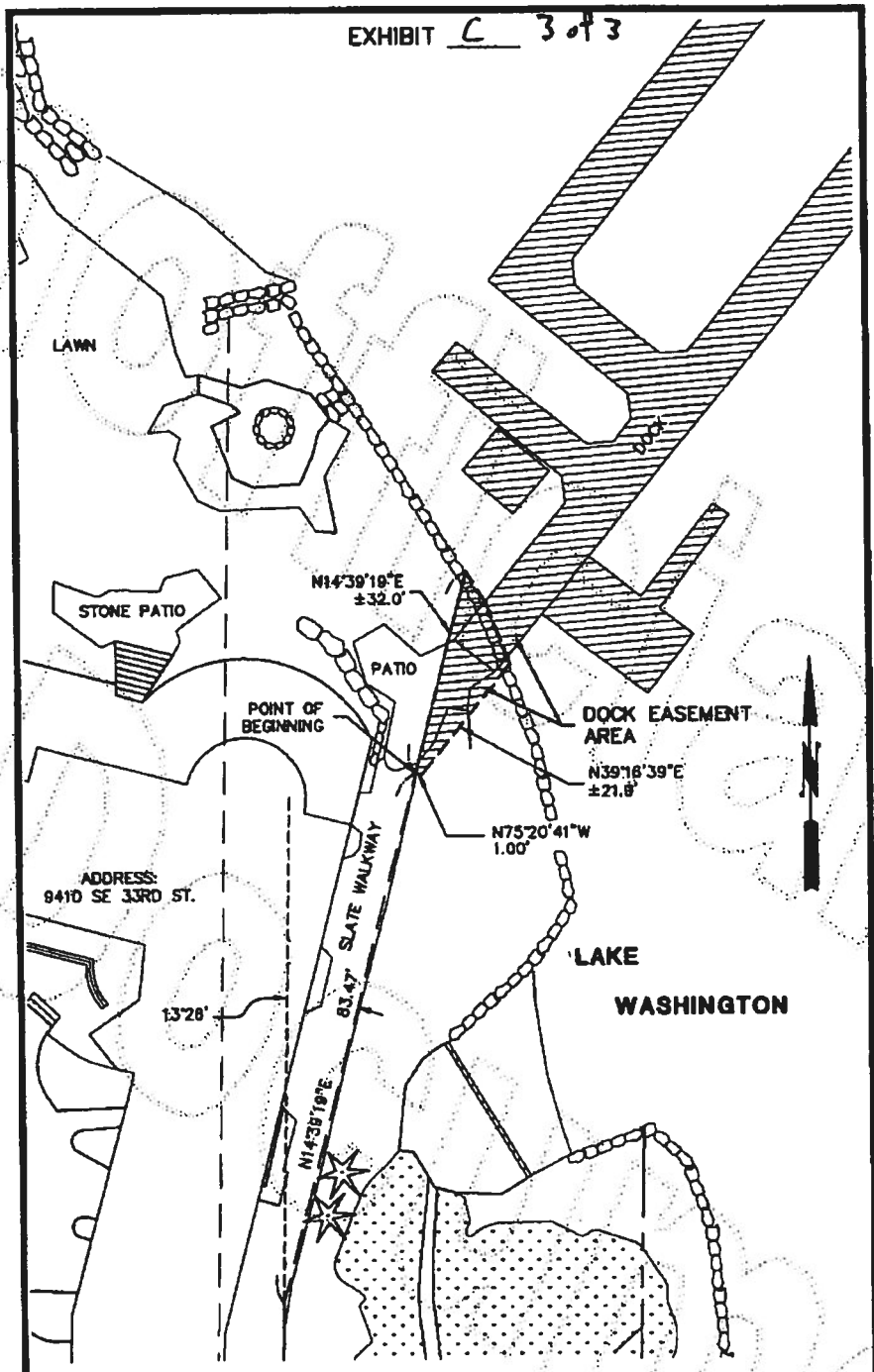


CONCEPT ENGINEERING, INC.
 455 Rainier Boulevard North
 Issaquah, Washington 98027
 (425) 392-8055 FAX (425) 392-0108

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DWN. BY	DATE	JOB NO.
DBM	3/29/12	31092
CHKD. BY	SCALE	SHEET
	1" = 100'	1 OF 2

EXHIBIT C 3 of 3



DOCK EASEMENT EXHIBIT
 NW 1/4, SE 1/4, S. 7, T. 24 N., R. 5 E., W.M.

CONCEPT ENGINEERING, INC.
 455 Rainier Boulevard North
 Issaquah, Washington 98027
 (425) 392-8055 FAX (425) 392-0108

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DWN. BY	DATE	JOB NO.
DBM	3/29/12	31092
CHKD. BY	SCALE	SHEET
	1" = 20'	2 OF 2

Appendix D

**CITY OF MERCER ISLAND
ORDINANCE NO. 15C-02**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING MICC 19.07.110, MERCER ISLAND SHORELINE MASTER
PROGRAM**

WHEREAS, in 1971 the State of Washington passed the Shoreline Management Act governing the adoption of Shoreline Master Programs, as currently set forth within Chapter 58 of Title 90 of the Revised Code of Washington, and subject to the Washington State Department of Ecology's administrative rules contained within Title 173 of the Washington Administrative Code; and

WHEREAS, in 1974 the City adopted its Shoreline Master Program; and

WHEREAS, in 2003 the State of Washington passed new guidelines for the development and updating of local Shoreline Master Programs, which require updating of Mercer Island's Shoreline Master Program; and

WHEREAS, in 2013, the Mercer Island City Council adopted Ordinance 13C-12 approving the Shoreline Master Program update upon approval by the Washington State Department of Ecology; and

WHEREAS, the approved Shoreline Master Program update was submitted to the Washington State Department of Ecology for review on December 17, 2013; and

WHEREAS, on February 4, 2014, the Washington State Department of Ecology submitted documents to the City containing required changes to the City-approved Shoreline Master Program update; and

WHEREAS, between February 2014 and November 2014 City of Mercer Island and Washington State Department of Ecology representatives met several times and agreed on use of incentives to allow increase in dock width from four feet to five feet within thirty feet of the ordinary high water mark; and

WHEREAS, on November 17, 2014, the City Council discussed proposed incentives to allow increase in dock width from four feet to five feet within thirty feet of the ordinary high water mark; and

WHEREAS, on February 6, 2015, the Washington State Department of Ecology conditionally approved the City's proposed Shoreline Master Program update with the changes provided below and in Ordinance 13C-12; and

WHEREAS, a State Environmental Policy Act Determination of Non Significance for the 2011 Shoreline Master Program update was issued on March 15, 2010; and

WHEREAS, in accordance with WAC 365-195-620, a notice of intent to adopt the proposed Mercer Island Shoreline Master Program was received by the State of Washington Department of Commerce on March 14, 2012.

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

Section 1. Amendments to Chapter 19.07.110 MICC, Shoreline Master Program.
 MICC 19.07.110(E)(4) "Standards Waterward of the OHWM" is hereby amended as follows:

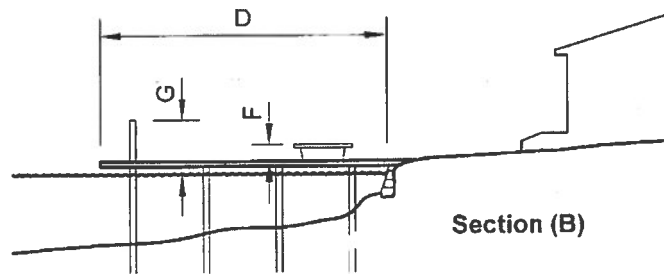
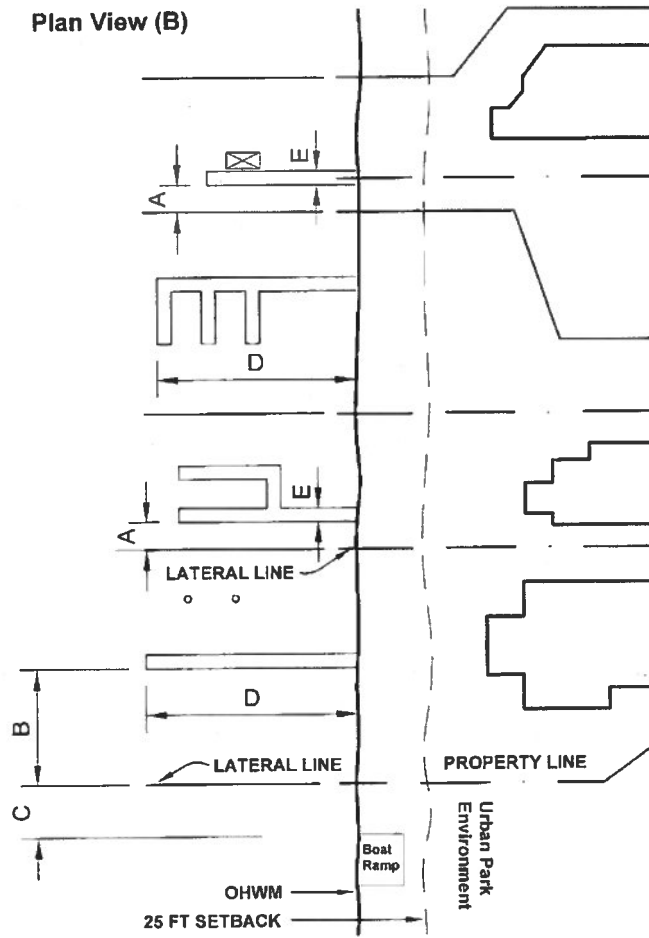
4. Standards Waterward of the OHWM. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots ~~with water frontage meeting or exceeding the minimum lot width requirements specified in Table D.~~ Only one non-commercial, residential moorage facility per upland residential waterfront lot authorized. The standards in Table D shall apply to development located waterward of the OHWM:

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

Setbacks for All Moorage Facilities, Covered Moorage, and Floating Platforms	A*	10 feet from the lateral line (except where moorage facility is built pursuant to the agreement between adjoining owners as shown in Figure B below) B Where a property shares a common boundary with the Urban Park Environment, the setback shall be 50 feet from the lateral line or 50% of the water frontage of the property, whichever is less.
Setbacks for Boat Ramps and Other Facilities for Launching Boats by Auto or Hand, Including Parking and Maneuvering Space	C	25 feet from any adjacent private property line
Length or Maximum Distance Waterward from the OHWM for Moorage Facilities, Covered Moorage, Boatlifts and Floating Platforms	D	Maximum 100 feet, but in cases where water depth is less than 11.85 feet below OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less
<u>Width of moorage facilities within 30 feet waterward from the OHWM</u>	E	Maximum 5-4 feet wide within 30 feet waterward from the OHWM and 6 feet wide thereafter, except for boat ramps and lift stations. <u>Width may increase to 5 feet if one of the following is met:</u> <u>1) Water depth is 4.85 feet or more, as measured from the OHWM; or</u> <u>2) A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements; or</u>

		<p>3) A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5); or</p> <p>4) The proposed project includes mitigation option A, B or C listed in Table E; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM or, a site specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. Moorage facility width shall not include pilings, boat ramps and lift stations.</p>
<u>Width of moorage facilities more than 30 feet waterward from the OHWM</u>	E	<u>Maximum 6 feet wide. Moorage facility width shall not include pilings, boat ramps and lift stations.</u>
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.		

Plan View (B)



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

<p>Minimum Water Frontage for Moorage Facility</p>	<p>H* I J</p>	<p>Single-family lots: 40 feet Shared – two adjoining lots: 40 feet combined 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>
<p>Covered Moorage</p>		<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 MICC 19.07.110(E)(5)(a) (b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage. (c) Building area: 600 square feet, however a covered moorage may be built larger than 600 square feet within the triangle subject to a shoreline conditional use permit (d) Covered moorage shall have open sides. (e) Prohibited in semi-private recreational tracts and noncommercial recreational areas. (f) Translucent canopies are required.
<p>*The letters in this column refer to the Plan View (C).</p>		

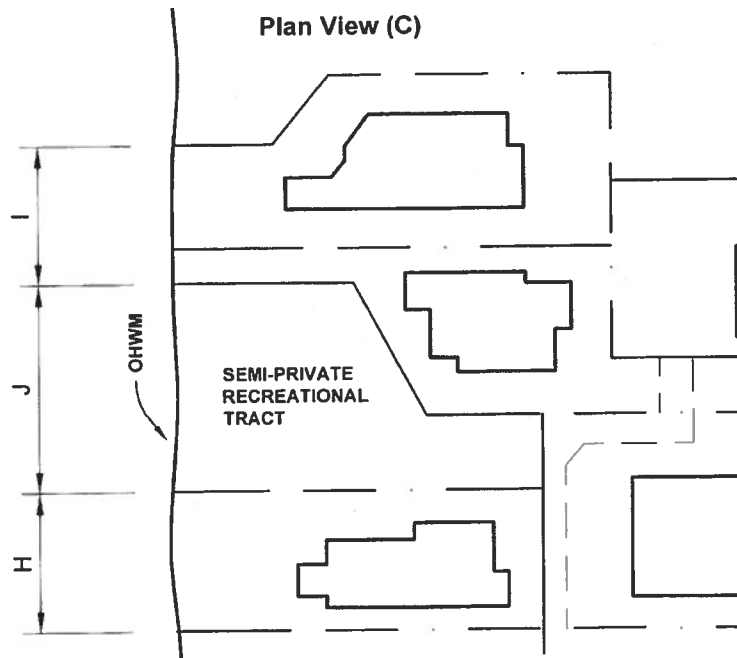


Table E. Dock Width Mitigation Options

Option A	Option B	Option C
<u>Includes at Least One of the Following:</u>	<u>Includes at Least Two of the Following:</u>	<u>Includes at Least Three of the Following:</u>
<u>1. Complete removal of existing bulkhead with shoreline restoration</u>	<u>1. Removal of 12 feet or 30% (lineal), whichever is greater, of existing bulkhead and creation of beach cove with shoreline restoration</u>	<u>1. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.</u>
<u>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.)</u>	<u>2. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.</u>	<u>2. Removal of all existing legally established piling treated with creosote or comparably toxic compounds</u>
<u>3. Replacement of two or more existing legally established individual moorage facilities with a single joint use moorage facility</u>	<u>3. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM</u>	<u>3. At least a 10% net reduction of existing legally established overwater coverage within the first 30 feet waterward from OHWM</u>
		<u>4. Removal of all legally established individual mooring piles within the first 30 feet waterward from the OHWM</u>

		<u>5. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM</u>
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Section 2. **Amendments to Chapter 19.07.110 MICC, Shoreline Master Program.**
 MICC 19.07.110(E)(6)(b) “Development Standards for Replacement, Repair and Maintenance of Overwater Structures, Including Moorage Facilities” is hereby amended as follows:

...

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

- i. All permit requirements of Federal and State agencies are met;
- ii. The area, width, or length of the structure is not increased, but may be decreased;
- iii. The height of any structure is not increased, but may be decreased; provided that the height above the OHWM may be increased as provided in 19.07.110(E)(6)(b)(v)(B) below;
- 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: 1) a net gain in ecological function, and 2) 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) piling are proposed, the applicant shall meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. All piling sizes are in nominal diameter;
- vi. Any paint, stain or preservative applied to components of the overwater structure must be leach resistant, completely dried or cured prior to installation. Materials shall not be treated with pentochlorophenol, creosote, CCA or comparably toxic compounds;
- vii. The applicant shall abide by the work windows for listed species established by the U.S. Army Corp of Engineers and Washington Fish and Wildlife;
- viii. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48 hours of the completion of construction. Woody vegetation components shall be planted in the fall or early winter, whichever occurs first. The applicant shall take appropriate measures to ensure revegetation success; and

ix. If more than 50% of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the 5 years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:

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

(B) The height above the OHWM for moorage facilities, except floats shall be a minimum of 1.5 feet and a maximum of 5 feet; and

(C) An existing moorage facility that is 5 feet wide or more within 30 feet waterward from the OHWM ~~may~~ shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in MICC 19.07.110(E)(4)(Table D).

Section 3. Amendments to Chapter 19.16 MICC, Definitions. MICC 19.16.010 "Definitions" is hereby amended as follows:

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 MICC 19.07.110

...

O

...

Ordinary High Water Mark (OHWM): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the department of ecology; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the State. To determine OHWM for a shoreline armoring project, a site-specific determination by a qualified professional is required. For determination of OHWM for measuring building setbacks, the OHWM corresponds with a lake elevation of ~~28.67 feet above sea level, based on the National Geodetic Vertical Datum of 1929 (NGVD 29). Alternatively, the identical OHWM corresponds with a lake elevation of 25.10~~ 18.6 feet above sea level, when based on North American Vertical Datum of 1988 (NAVD 88).

...

W

...

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

...

Section 4. **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 5. **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6. **Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall be transmitted to the Washington State Department of Ecology for review and approval. This ordinance shall become effective on the date that the Department of Ecology issues formal approval of the ordinance.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the ____ day of _____, 20__ and signed in authentication of its passage.

CITY OF MERCER ISLAND

Bruce Bassett, Mayor

Approved as to Form:

ATTEST:

Katie Knight, City Attorney

Allison Spietz, City Clerk

Date of Publication: _____

Appendix E

MERCER ISLAND CITY COUNCIL MEETING

Requested Excerpt of Meeting

March 2, 2015

Council Chambers of Mercer Island City Hall

Official Transcript of Recording

Reed Jackson Watkins

Court-Certified Transcription

206.624.3005

1 BOARD MEMBERS PRESENT:

2 Councilmember Bruce Bassett, Mayor

3 Councilmember Dan Grausz, Deputy Mayor

4 Councilmember Benson Wong

5 Councilmember Joel Wachs

6 Councilmember Mike Cero

7 Councilmember Jane Brahm

8 Councilmember Debbie Bertlin

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3 (Excerpt started at 10:44:58 p.m.)

4 MR. BASSETT: We move now to Agenda Bill 5045, Revision to
5 Shoreline Master Program Update, second reading.

6 Scott.

7 MR. GREENBERG: Thank you. Scott Greenberg, your
8 Development Services Group director.

9 Depending on what you do with this agenda bill tonight,
10 this could be the end of eight years of work on the
11 Shoreline Master Program.

12 I know that you have a lot on your plate and would want to
13 work on this some more, but ordinance before you tonight --
14 the ordinance before you tonight, along with Ordinance
15 13C-12 that you passed in December of 2013, comprise the
16 City's updated Shoreline Master Program. Those two
17 ordinances include everything that the Council formerly
18 requested from the Department of Ecology. Ecology has
19 agreed to those changes and sent them back to you as
20 recommended or required changes. That's just how they do
21 their process.

22 Draft Ordinance 15C-02, Exhibit 2 of your agenda bill,
23 contains three additional things meant for either
24 clarification or correction purposes. One, is we added
25 another "whereas" statement just to recognize that the

1 Department of Ecology did conditionally approve the
2 Shoreline Master Program on February 6th. So we just added
3 that as a fact.

4 Then there are two other things that were added. One
5 fairly minor is the definition of wetland manual. The
6 language there -- I don't know what happened, but something
7 just got deleted, I guess, by mistake. The language
8 read, "Identification and lineation of their boundaries."
9 It should read, "Identification of wetlands and delineation
10 of their boundaries." So I think that's what the intent
11 was. At least that's the language Ecology had us proposing
12 way back when. So I've checked that and added that into the
13 ordinance.

14 And then the third one is more of a technical correction
15 on the definition of ordinary high water mark. Without
16 getting into too much detail, there's several different
17 survey datum that can be used. There is a relationship
18 between the different datum, but the more common datum
19 that's used is NAVD 88, which was done in 1988. And that
20 equates to 18.6 feet above sea level is where the ordinary
21 high water mark is located on the shoreline of Lake
22 Washington. That's the number that staff has been using for
23 many years. And in an attempt to try to recalibrate that to
24 a datum at the locks, the number got -- basically just got
25 messed up. So the number that was in the SMP that you had

1 sent forward to Ecology for ordinary high water mark wasn't
2 even anywhere close to the 18.6 when it was converted to
3 that datum.

4 So what we've done is we've worked with Ecology on this.
5 They had seen this in several other cities. And our -- the
6 proposed datum of 18.6 is now consistent with other Lake
7 Washington cities, so -- and, again, it's exactly what we've
8 been using.

9 So with those three changes, the staff is recommending
10 that you adopt Ordinance 15C-02.

11 MR. BASSETT: I would entertain a motion.

12 MS. BERTLIN: I would move to adopt Ordinance No. 15C-02,
13 amending Mercer Island Civil Code 19.07.110, Mercer Island
14 Shoreline Master Program.

15 MR. WONG: Second.

16 MR. BASSETT: All right. Moved and seconded.

17 Discussion?

18 MR. CERO: I have a question, please.

19 MR. BASSETT: I'm sorry. I should have given you the
20 opportunity for questions first.

21 MR. CERO: I'm sorry. No worries.

22 MR. BASSETT: Go ahead.

23 MR. CERO: So that 18.6 -- you know, we -- I had that one
24 lot with the ordinary high water mark. Was that lot --
25 lot's -- it's apostrophe S -- ordinary high water mark,

1 according to this 18.6?

2 MR. GREENBERG: I'm trying to remember the exact -- the
3 exact case there, but I guess what I can tell you is that
4 when those plans were reviewed by staff, the 18.6 was the
5 mark that was used. I think there was some other issues
6 there, too, but that was the mark that was used, 18.6.

7 MR. CERO: Okay. If that's not the case, let me know,
8 please.

9 MR. GREENBERG: Okay.

10 MR. CERO: And then I have a question on Exhibit 2, Page
11 8, PDF Page 91. And I just want clarification on this.
12 This is when we limit one facility per lot.

13 MR. GREENBERG: Okay.

14 MR. CERO: One dock, one facility, you know, and I want to
15 understand the intent of that. So some folks have talked to
16 me that there might be a neighbor or there is -- there are
17 neighbors' docks that may straddle a property line, which
18 potentially from this could be interpreted that that dock is
19 both on Property A and Property B, for instance. So is the
20 intent of this -- is that, in instances where a dock may
21 straddle a property line, that one dock goes to one person's
22 lot and that frees up or it get- -- it still enables --
23 still enables the other person to build a lot -- to build a
24 dock?

25 MR. GREENBERG: I --

1 MR. CERO: Meaning -- I guess maybe another way of saying
2 it is the intent is that if there's -- if there's -- if a
3 dock encroaches upon or straddles a property line, the
4 intent is that two properties, two dock- -- two docks.

5 MR. GREENBERG: I would say I believe that's the intent,
6 yeah. If you have 500 waterfront lots, I think the intent
7 would be that there could be up to 500 docks, but some
8 people will have shared docks, and there might be some other
9 circumstances there.

10 MR. CERO: Okay.

11 MR. BASSETT: Any other questions, first?

12 Okay. I'm seeing none other discussion or comments.

13 Jane?

14 MS. BRAHM: Do most cities take eight years to redo their
15 SMP? Is this unusual or are we taking -- do we take our
16 time?

17 MR. GREENBERG: I don't know if it's -- if it's really
18 unusual. I think -- you know, I was involved before with
19 the city and we did ours in, like, five years, I think. But
20 there was some contentious issues that then went to the
21 Growth Management Hearings Board, so --

22 MS. BRAHM: Um-hmm.

23 MR. GREENBERG: -- it took them a little bit longer. But
24 cities like Bellevue, they're a little bit behind where we
25 are, I think, in their process. I don't know when they

1 started.

2 MS. BRAHM: Um-hmm.

3 MR. GREENBERG: And I think a lot of it has to do with how
4 old the SMP was that was being updated.

5 MS. BRAHM: Hmm.

6 MR. GREENBERG: Some cities, a handful probably, updated
7 their SMPs maybe five or 10, 15 years ago, so there was less
8 of a delta between their original SMP like we had --

9 MS. BRAHM: Um-hmm. Um-hmm.

10 MR. GREENBERG: -- and new thoughts about environmental
11 protection and shoreline protection that came out in the
12 early 2000s.

13 MS. BRAHM: Um-hmm. Thank you.

14 MR. GREENBERG: Um-hmm.

15 MS. BRAHM: I'm glad it's done.

16 MR. GREENBERG: Me, too.

17 MR. BASSETT: Debbie?

18 MS. BERTLIN: When is the next update due? Should we
19 start now?

20 MR. BASSETT: It's every seven years.

21 MS. BERTLIN: If it's every seven years, we are a year
22 late in starting our revisions on it.

23 MR. GREENBERG: Well, we'll come back to you in your next
24 budget process.

25 MS. BERTLIN: Okay.

1 MR. GREENBERG: Actually, I was -- I was talking with
2 somebody about that on staff earlier today. I think the
3 next update -- you know, it's seven, eight years from now --
4 will be less painful and a little bit less difficult,
5 because, again, you're starting with sort of a more
6 contemporary SMP to begin with. And then you only have to
7 go back and incorporate changes in the Shoreline Management
8 Act and rules since you're -- this SMP was adopted.

9 MR. CERO: Well, that's a good lead-in for what I want to
10 say on -- I kind of disagree with you. The SMP is a
11 constant ratcheting of regulations. And I'll not support
12 this. I haven't -- for that reason because my colleagues in
13 the Bellevue community -- if DOE or COE gets a unanimous
14 thumbs up from the Mercer Island SMP, that means quite a
15 bit -- that's a unanimous -- especially since our SMP is
16 more restrictive. I think that was the swan call of
17 Represent- -- now Representative Senn, making it more
18 restrictive on our citizens than it needs to be.

19 And what I anticipate, Scott, is that the next time it'll
20 be just as laborious to update because DOE will take the
21 level that they have, that they have obtained in
22 restrictions, and just ratchet up some more with no basis of
23 scientific causation of improving the environment, but just
24 to do it. And we've gone around and around over the last
25 eight years, and we've had experts testify to that fact.

1 Now, you know, there are two sides to every story, of
2 course, but that will be the basis of my not voting for
3 this, if for no other reason just so DOE can't use the
4 mantra that, well, it got a unanimous vote from Mercer
5 Island, so Bellevue and the other cities that are going
6 through this process won't be hamstrung with the precedent
7 that we set.

8 MR. BASSETT: Okay. Anyone else?

9 All in favor of the motion, signify by saying "aye."

10 MS. BRAHM: Aye.

11 MR. BASSETT: Aye.

12 MR. GREENBERG: Aye.

13 MR. GRAUSZ: Aye.

14 MR. WONG: Aye.

15 MR. WACHS: Aye.

16 MR. BASSETT: Opposed?

17 MR. CERO: Nay.

18 MR. BASSETT: Motion carries.

19 Scott, thank you very much --

20 MR. GREENBERG: You're welcome.

21 MR. BASSETT: -- for eight years' worth of work.

22 Particularly, thanks on trying to get us -- or creativity in
23 getting us through the last steps of this.

24 MR. GREENBERG: Thank you.

25 MR. BASSETT: There was some real conundrums we got stuck

1 on at the end there with dock width. And I think staff,
2 working with DOE managed to come up with some creative
3 solutions. And thank you very much for --

4 MR. GREENBERG: And I'd also just like to acknowledge the
5 work of Travis Saunders, our senior planner. He couldn't be
6 here tonight, but he's the one that started this proc- --
7 started with this process eight years ago. So he's lived,
8 you know, every change and every draft and every -- almost
9 every meeting on it. So he did a great job.

10 MR. BASSETT: Pass our thanks to him.

11 MR. GREENBERG: I will. Thank you.

12 (Excerpt concluded at 10:56:04 p.m.)

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STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I, the undersigned, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of August, 2015.

Angela J. Dutenhoffer

Angela Dutenhoffer, CET

