

**WCI Response to Mercer Island Pre-App Notes PRE20-010**

**Rosen, Doug - 5995 SE 30th St**

**NOTE TO MERCER ISLAND:** Please see WCI responses below **in blue**. Please review the following project using the revised Mercer Island Shoreline Master Plan effective 7/9/20. Please note for building review, the plan set size has been changed to 11x17. Thusly, there are only 7 pages (instead of 9) so some of the pre-app notes cite old page references.

**Planning Comments:**

Planning Contact: Lauren.Anderson@mercergov.org or 206-275-7704.

1. Lot Coverage (landward of the OHWM):

i. Based on lot slope

ii. Calculated by totaling the following:

1. All drivable surfaces (driveway, parking pad, turn-arounds, etc. regardless the material type; e.g.

pervious driveway counts towards lot coverage)

2. Roof line (includes eaves and covered decks)

iii. Allowed a maximum of 9% of the lot area can be hardscape

1. Hardscape includes: patios, uncovered steps, walkways, decks, retaining walls, rockeries, bulkheads, stairs, etc.

2. Retaining walls count towards hardscape calculation

2. Critical area constraints (landward of the OHWM):

a. There is seismic and potential landslide hazard along the shoreline – if there is any work within the shoreline (landward of the OHWM) then the project shall comply with MICC 19.07.160 geological hazardous areas. Any alteration to a geological hazardous area (erosion, steep slope, seismic, landslide) requires compliance with MICC 19.07.160 [new critical areas code which went into effect 8/1/2019.

b. Lake Washington is not a critical area and has its own code requirements in the Shoreline Master Program (SMP)- (19.07 current SMP and 19.13 new SMP pending Ecology's approval)

3. Shoreline

a. Setbacks from OHWM (0-25 feet, 25-50 feet and 200 feet from the OHWM)

b. Impervious Surface % within setbacks: 10% within the 0-25 foot setback and 30% within the 25-50 foot setback. No structures are allowed within the 0-25 foot setback. Please refer to MICC 19.16 definition of impervious.

**WCI Response #1:** Regarding impervious surfaces, legally nonconforming cabana permit history can be found in response #6 below.

4. Exempt from Shoreline Substantial Development permit (SDP):

a. WAC 173-27-040:

i. (1)(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

ii. (1)(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

iii. (2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars [\$7,047 currently], if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

**WCI Response #2:** Per WAC 173-27-040 Developments exempt from substantial development permit requirement: ...Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

Proposed work complies with the scope described above.

## 5. SEPA Exemptions:

### a. WAC 197-11-800 SEPA Exemptions

i. (3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

**WCI Response #3:** The proposed project complies with WAC 197-11-800, and it categorically exempt under WAC 197-11-800(3) Repair, remodeling and maintenance activities.

(3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks).

Proposed work complies with the scope described above.

- (a) Dredging of over fifty cubic yards of material;
- (b) Reconstruction or maintenance of groins and similar shoreline protection structures;
- (c) Replacement of utility cables that must be buried under the surface of the bedlands; or
- (d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

**6. Non-conforming issues / items:**

a. There are no records of a permit for the existing dock – however Aerial Imagery from 1963 shows a dock there. Between 1963-1978 a boatlift and finger pier were added.

b. Boat canopy:

i. The existing boat cover is not a translucent canopy – as seen in Aerial Imagery. The proposed plans indicate that a translucent canopy will be added – please provide more details. Page 9 shows the cover looking more like a roof structure.

**WCI Response #4:** Please see page 5 of the plan set for moorage cover details. CrystaLite translucent panels provide approved-light transferring properties per pervious DFW, NOAA and USACE approvals. Please see Exhibit 9 for more details on moorage cover materials.

ii. Need to illustrate compliance with the covered moorage triangle requirements. Is the proposed translucent canopy within that triangle? If not, it is not allowed.

**WCI Response #5:** Pier and moorage cover location are legally nonconforming, as shown in response#6.

iii. According to the City's Aerial Imagery the (nonconforming) boat cover (nontranslucent) has been present since 1985.

c. The dock is built within the 10 foot lateral line setback.

d. The dock width exceeds the maximum allowed. The maximum allowed per MICC 19.07.110(E) is 4 feet within 0-30 feet waterward from the OHWM and 6 feet when the dock is more than 30 feet from the OHWM.

e. The platform lift was installed between 1985 and 1992.

f. As discussed in the meeting, please provide permits indicating the finger pier, covered moorage area, and platform lift were approved (legally nonconforming). If you don't have the permits, then please indicate that the nonconforming area met the code at the time of installation. If that can't be done, it would be considered illegally nonconforming. The L-shaped dock was built prior to 1960 – that portion is automatically legally nonconforming.

The areas in question are the finger pier extensions, moorage cover, and platform lift.

**WCI Response #6:** Please see the following historic permits and aerial photography:

**Finger pier extensions:**

- Exhibit 1 Email 1-15-20 Nicole Gaudette legal nonconforming status
- Exhibit 2 1952-3-15\_M51-10\_6-14\_zoom (with arrow)
- Exhibit 3 MI Aerial 1963
- Exhibit 4 Permit 6-11-76 Repair Existing Dock

**Covered Moorage:**

- Exhibit 5 Permit 5-29-1985 Pier rebuild (in kind) Seaborn Pile Driving

**Platform Lift:** Currently we are unable to provide old permit documents for this element.

## Cabana:

- [Exhibit 6 Permit 2-10-1969 Bldg permit #69-24 \(Cabana\)](#)
- [Exhibit 7 Permit# 1104-061 4/11/2011 Replace foundation under existing cabana, 96 sf deck](#)

## 7. Easements:

a. All of the sewer easements and recording numbers need to be shown on all sheets within the plan set. This includes easements landward and waterward of the OHWM within the 0- 25 foot setback. If the owner wants to do any shoreline work (e.g. add a pathway, stairs, cove, etc.) it would be best to include it in this application – as that work requires a shoreline permit (shoreline exemption permit usually, but could require an SDP).

b. The estimated sewer lakeline location needs to be shown and labeled on all sheets. The following note needs to be added: “The sewer lakeline will be field verified prior to building permit approval.” The sewer lakeline field location affidavit will be a condition of approval and is required for projects that result in lakebed disturbance. Refer to Attachment A, sewer lakeline condition language and affidavit. Refer to Attachment B, sewer easement locations.

**WCI Response #7:** Note added to page 1 and sewer lake line affidavit also attached (See Exhibit 10).

## 8. Response to applicant questions:

a. We have submitted detailed permit history and aerial shots to prove that this dock existed prior to 9/26/1960 and was properly permitted during a revision. If the attached letter does not prove legal nonconforming status, what else do you require in order to retain the location and design of this pier?

i. Only the portion of the dock that was shown prior to 1960 is legally nonconforming. Since 1960 it looks like the following was added: a finger pier, platform lift, and a covered moorage area (roof not a canopy). There is no record of a permit for these additions, thus if it did not conform to the code at the time then it is illegally nonconforming and would have to come into compliance. The portions that are illegally nonconforming, that means that it would need to be included in the scope of work to become permitted.

ii. Per MICC 19.01.050(A)(3): Structures, sites and uses that were not in conformance with all applicable code provisions in effect at the time of their creation are illegal and shall be brought into compliance with all applicable provisions of this code.

iii. In addition, using MICC 19.07.110(E)(6)(b) or (c) requires the dock to come into conformance with the minimum dock width standards. This means that the portions of the dock that are above the maximum would need to be reduced. In addition, the moorage cover would need to comply with the current standards – there are regulations on the size, location, and that it has to be a translucent canopy.

iv. MICC 19.07.110(B)(1): Legal Nonconforming Uses and Structures May Continue.

Overwater uses and structures and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that nonconformance with the standards and regulations of this section is not increased. A structure, site or use may be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost under any of the circumstances set forth in this section. If legal nonconforming status is lost, the structure, site or use must be brought into conformance with all applicable code requirements.

v. MICC 19.01.050(A)(2): All structures, sites and uses that lawfully existed prior to September 26, 1960, shall be considered legally nonconforming. Structures, sites and uses that were constructed or initiated after September 26, 1960, that were in conformance with all applicable code provisions in effect at the time of their creation

but are not in compliance with current land use codes as a result of subsequent changes in code requirements are deemed to be legally nonconforming structures, sites and uses.

b. Is this project exempt from SEPA and Substantial Development requirements?

i. Refer to Planning notes above on WAC 197-11-800 and WAC 173-27-040. If the project scope is normal maintenance and repair, then the proposal most likely is exempt.

c. What other permit applications will Mercer Island require?

i. A building permit will be required, unless it is just a “repair” of the decking surface.

d. Can you suggest a logical sequence for other permit application submittals to other agencies (such as WDFW and USACE?)

i. If the proposal is going to use MICC 19.07.110(E)(6)(c) Alternative Development Standards, then this would be the following sequence of submittals:

1. SEPA, SDP and/or Shoreline Exemption Permit

9. Land Use Application Process and Estimated Timeline:

a. Required land use approvals

i. SEPA, SDP and/or Shoreline Exemption

b. If SEPA is required, consolidated review is recommended

c. Summary of procedural steps for a Shoreline Exemption permit:

i. Submit electronic application

ii. Review begins

iii. Review comments will be sent out if needed

iv. Appeal period

d. Summary of procedural steps for an SDP and SEPA:

i. Pre-App

ii. Submit application electronically

iii. Application Completeness Check

iv. Public Notice of Application: NOA sign, 300 foot mailing, email to Shoreline distribution

list (stakeholders), and a 30 day public comment period

v. Review begins

vi. Review comments may be sent out if needed

vii. Notice of Decision

viii. Appeal period (21 days from Ecology’s date of filing)

e. Please refer to MICC 19.15.150 for expiration of approvals.

i. Except as stated below, or as otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if construction or substantial progress toward construction of a development proposal for which a land use review approval has been granted must be undertaken within two years of the date of notice of decision of the land use review. Where no

construction activities are involved, the use or activity shall be commenced within three years of the date of notice of decision of the land use review.

ii. SDP expiration: Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years of the effective date of a shoreline permit. Where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.

iii. Responsibility for knowledge of the expiration date shall be with the applicant.

f. Description of timeline:

i. Review cycle (first review ~60 days, second review ~30 days, etc.) OR Overall, we estimate about 3-6 months from application to issuance of a decision, dependent on a number of factors (applicant responsiveness, quality of materials, accuracy of design to code, etc.). If you choose the Alternative Development Standards, the process can take up to a year because it requires Army Corps of Engineers and Fish and Wildlife permit approvals prior to SDP approval. We have received feedback that it is taking the Army Corps about 1 year to issue a permit.

10. General comments:

a. If using MICC 19.07.110(E)(6)(b): The height of the dock must be 1.5 feet about the OHWM to the bottom of the dock. The height of the dock shall be measured from the OHWM to bottom of the dock – however it looks like the height isn't measured to the lowest part of the dock. Is fascia proposed?

**WCI Response #8:** Per previous conversations with Melaina Wright/NOAA, dock height is properly measured from the top of the water to the lowest longitudinal element on the dock. Please see WCI Response #11 for height detail.

i. Discussed in the meeting: when submitting, please provide the email from Army Corps

of Engineers stating how they measure the dock height from the OHWM. (in relation to the 1.5 foot minimum dock height requirement in 19.07.110(E)(6)(b))

**WCI Response #9:** This was provided to Mercer Island planners on 2/20/20.

b. On the plans please illustrate the following:

i. Existing improvements along the shoreline within 0-50 feet of the OHWM. This includes the following: bulkhead, cove, walkway, cabana, etc.

ii. Indicate compliance with the 10% maximum allowed impervious surface area within the 0-25 foot setback. In addition, no structures are allowed. Please verify that the cabana is located outside the 25 foot setback. If it is located in the setback, if its illegally nonconforming (unpermitted or didn't meet the code at time of installation) it needs to be moved or removed.

**WCI Response #10:** Please see page 13 for impervious surfaces percentages. As previously discussed, cabana is legally nonconforming structure and thusly is exempt from current impervious structure restrictions.

iii. Provide a shoreline planting plan if needed for no net loss of ecological function.

**WCI Response #11:** Please see Exhibit 8, "NNL Rosen Mercer Island Final" for No Net Loss report.

iv. 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. Please note compliance on the plan set.

**WCI Response #12:** No vegetation is proposed to be removed. See page 1 of the plan set for compliance statement.

c. Provide a narrative on how the project complies with MICC 19.07.110(E)(6)(b) or (c). From looking at the plans since the dock is being raised it looks like the project will be using (b). Since the proposal is to replace 100% of the decking, the project must comply with 19.07.110(E)(6)(b)(iv)

**WCI Response #13:** Noting the recent MI SMP changes, please see the following:

- **Light-Transmitting Decking:** Page 2 of the plan set indicates Sunwalk decking. This grating is manufactured by True Harbor and has previously been approved by USACE for past projects because it provides “light penetration that is the same or more compared to grating with 60% open area”. Data sheets and/or test results are also available upon request.
- **Minimum Height:** Substructure repair does not exceed 50% threshold. Per the new MI SMP revisions eff 7/9/20, project no longer is required to be raised to a minimum 1’6” from OHWL. Additional information available upon request.
- **Maximum Walkway Width:** Existing and proposed walkway width for the first 30 feet is 5’ 9”, as indicated in existing and proposed Section Detail A-A on page 3. Per the new MI SMP revisions eff 7/9/20, project no longer is required to be raised to a minimum 1’6” from OHWL. Additional information available upon request.

d. The plans (sheet 2 of 10) show the existing collapsed moorage cover on land – please add a note clarifying why it was moved to that location and reference the Emergency Permit #.

**WCI Response #14:** Page 1 of the plan set indicates the collapsed timber moorage cover was removed on USACE permit# NWS-2019-577. Add'l permit details available upon request.