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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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## STAFF REPORT/DECISION

### REVISION TO SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT SHL 14-031

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**Project No.:** SHL14-031, SEP14-025, and 1501-218

**Description:** A request for a revision to Shoreline Substantial Development Permit, SHL14-031, pursuant to the requirements of WAC 173-27-100. The Applicant requests to modify the permitted 468 square foot grated dock by reducing it to 394 square feet, with 374 square feet over the water, and drive 16 new eight (8) inch epoxy coated steel piles to support the dock, instead of the original 20 piles. The revision eliminates the southeasterly finger pier that was part of the approved plan set. A new boatlift and personal watercraft lift will also be placed along the dock for moorage. The revision is subject to the settlement agreement between parties subject to the appealed shoreline substantial development permit, SHL14-031.

**Applicant's Agent/  
Applicant:** Kelsey Meyer (Seaborn Pile Driving) / James Cherberg

**Site Address:** The subject property is located at 9418 SE 33rd Street, Mercer Island WA 98040, within the southeast  $\frac{1}{4}$  of Section 7, Township 24 North, Range 5 East, W.M. Further identified by King County Assessor tax parcel number: 4139300405.

**Zoning District:** R-8.4

**Staff Contact:** Ryan Harriman, EMPA, AICP – Planning Manager

**Decision:** Approved with Conditions

**Exhibit List:**

Exhibit 1 – Staff Report/ Decision.

Exhibit 2 – Development Application, dated October 15, 2014;

Exhibit 3 – Letter of Incomplete Application, dated November 3, 2014;

Exhibit 4 – Application Resubmittal, January 23, 2015;

Exhibit 5 – Letter of Complete Application, dated February 6, 2015;

Exhibit 6 – Letter from City - 1501-218 Valid and Complete Building Permit Letter Cherberg, dated March 16, 2015;

Exhibit 7 – Notice of Application, dated March 30, 2015;

Exhibit 8 – Ordinance No. 99C-13, effective March 18, 2015;

Exhibit 9 – Ordinance No. 02C-09;

Exhibit 10 – Ordinance No. 05C-12;

Exhibit 11 – Ordinance No. 08C-01;

Exhibit 12 – Letter regarding Joint Use Agreement, dated July 7, 2015;

Exhibit 13 – Exclusive Dock Easement;

Exhibit 14 – Public Comments;

Exhibit 14.1 – Hal Griffith, dated April 13, 2015;

Exhibit 14.2 – Tom Graue, dated April 22, 2015;

Exhibit 14.3 – G. Richard Hill, Dated July 27, 2015;

Exhibit 14.4 – G. Richard Hill, dated June 6, 2017;

Exhibit 14.5 – Tom Graue, dated April 22, 2017;

Exhibit 14.6 – G. Richard Hill, dated January 29, 2018;

Exhibit 14.7 – Michael J. Murphy, dated August 4, 2022;

Exhibit 14.8 – Michael J. Murphy, dated September 23, 2022;

Exhibit 14.9 – Email chain between Charles Klinge, Stephens & Klinge, LLP Attorneys at Law and Travis Saunders, dated September 4, 2015 to September 16, 2015;

Exhibit 14.10 – Email chain between Jeff Thomas and Michael Murphy, Groff Murphy PLLC between November 30, 2022 and December 6, 2022;

Exhibit 14.11 – Email chain between Nicole Gaudette and Misty Blair, DOE, between May 05, 2017 and June 30, 2017;

Exhibit 14.12 – Public Comment - Email Chain between Nicole Gaudette, Tom Graue, and the Army Corps of Engineers, dated February 20, 2017 to May 11, 2017;

Exhibit 14.13 – Email to Scott Greenberg from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated July 30, 2018;

Exhibit 14.14 – Letter to Scott Greenberg from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, Dated March 31, 2017;

Exhibit 14.15 – Letter to Scott Greenberg from G. Richard Hill, McCullough Hill Leary, PS. Dated July 31, 2017;

Exhibit 15 – Cherberg Response to Public Comments, dated October 18, 2022;

Exhibit 16 – Letter from Karen Cobb, Frey Buck, P.S to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, January 18, 2022;

Exhibit 17 – Extension Requests:

Exhibit 17.1 – Email from Ted Burns, Seaborn Pile Driving Company requesting application be placed on hold, dated February 6, 2015;

Exhibit 17.2 – Letter to Travis Saunders from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated July 17, 2015;

Exhibit 17.3 – Letter to Travis Saunders from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated June 10, 2016;

Exhibit 17.4 – Email from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law to Travis Saunders, dated February 11, 2016;

Exhibit 17.5 – Letter to Scott Greenberg from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated May 10, 2017;

Exhibit 17.6 – Letter to Scott Greenberg from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 26, 2018;

Exhibit 17.7 – Letter to Evan Maxim from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 18, 2019;

Exhibit 17.8 – Letter to Evan Maxim from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 15, 2020;

Exhibit 17.9 – Email to Jeff Thomas and Don Cole from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law. Letter attached. Dated January 25, 2021;

Exhibit 17.10 – Email to Jeff Thomas and Don Cole from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law. Letter attached. Dated January 18, 2022;

Exhibit 17.11 – Email to Jeff Thomas from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, August 9, 2022, page 1 and 2;

Exhibit 18 – Extension Approvals:

Exhibit 18.1 – Email from Travis Saunders to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated August 11, 2015, extending permits to February 11, 2016;

Exhibit 18.2 – Email from Travis Saunders to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated February 12, 2016, extending permits to June 13, 2016;

Exhibit 18.3 – Email from Scott Greenberg to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated June 22, 2016, extending permits to June 13, 2017;

Exhibit 18.4 – Email from Nicole Gaudette to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated June 2, 2017, extending permits to February 13, 2018

Exhibit 18.5 – Letter from Nicole Gaudette to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated February 5, 2018, extending permits to February 13, 2019;

Exhibit 18.6 – Letter from Nicole Gaudette to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 28, 2019, extending permits to February 13, 2020;

Exhibit 18.7 – Letter from Don Cole to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 16, 2020 extending permits to February 12, 2021;

Exhibit 18.8 – Letter from Holly Mercier to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated February 2, 2021, extending permits to February 11, 2022;

Exhibit 18.9 – Letter from Holly Mercier to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated January 20, 2022, extending permits to August 11, 2022;

Exhibit 18.10 – Email from Don Cole to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated August 10, 2022, extending permits to February 10, 2023;

Exhibit 19 – Application Information and Proposed Development Description;

Exhibit 20 – Revised Development Application;

Exhibit 21 – Revised Plan Set, dated July 19, 2022;

Exhibit 22 – Joint Use Agreement signed by the Griffiths and the Applicant, dated August 1, 2022;

Exhibit 23 – Revised plan set, dated October 12, 2022;

Exhibit 24 – Letter from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, dated October 20, 2022;

Exhibit 25 – Ecological No Net Loss Assessment Report, dated October 2022;

Exhibit 26 – Lateral Line Agreement - Rec No 20160408000135;

Exhibit 27 – Recorded Survey - Lateral Line - Rec No 20160408900001 ;

Exhibit 28 – Mercer Island Code Compliance Matrix;

Exhibit 29 – SEPA Environmental Checklist;

Exhibit 30 – SEPA Threshold Optional Determination of Nonsignificance, dated December 27, 2022;

Exhibit 31 – Notice of Decision;

Exhibit 32 – Revision Submittal Form, submitted September 13, 2023;

Exhibit 33 - Letter from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law to Ryan Harriman, dated July 13, 2023;

Exhibit 34 – Revised Plan Set, dated June 30, 2023;

Exhibit 35 – Settlement Agreement;  
 Exhibit 36 – Revision Submittal Form, submitted September 1, 2023;  
 Exhibit 37 – Letter from Charles Klinge, Stephens & Klinge, LLP Attorneys at Law to Ryan Harriman, dated September 1, 2023;  
 Exhibit 38 – Revised Plan Set, dated June 30, 2023;  
 Exhibit 39 – SEP14-025 SEPA Addendum to ODNS, dated October 9, 2023;  
 Exhibit 40 – Staff Report/Decision on Revision to Shoreline Substantial Development Permit SHL 14-031, dated October 9, 2023; and  
 Exhibit 41 – Notice of Decision of Revision to Shoreline Substantial Development Permit SHL 14-031, dated October 9, 2023.

**Contact Information:**

Applicant’s Agent	Applicant	Contractor
Seaborn Pile Driving Company, C/O Madison Johnson, 1080 W Ewing St Building B, Seattle, WA 98119 Phone: 206-236-1700 Email: <a href="mailto:permits@seabornpiledriving.com">permits@seabornpiledriving.com</a>	James Cherberg 9418 SE 33rd Street Mercer Island, WA 98040 Phone: 206-861-6288 Email: <a href="mailto:can-cherberg@comcast.net">can-cherberg@comcast.net</a>	Seaborn Pile Driving Company, C/O Kelsey Meyer, 1080 W Ewing St Building B, Seattle, WA 98119 Phone: 206-236-1700 Email: <a href="mailto:permits@seabornpiledriving.com">permits@seabornpiledriving.com</a>

**Terms used in this decision:**

Term	Refers to, unless otherwise specified:
Applicant	James Cherberg
Applicant’s Agent	Seaborn Pile Driving Company
Proposed development	Cherberg Dock
Subject property	The site where development is located as defined in this staff report
City	City of Mercer Island
MICC	Mercer Island City Code.
Code Official	Community and Planning Development Director, City of Mercer Island or a duly authorized designee
SMP	Shoreline Master Program
SMA	Shoreline Management Act
SSDP	Shoreline Substantial Development Permit
SEPA	State Environmental Policy Act

**I. REVISED PROJECT DESCRIPTION**

A request for a revision to Shoreline Substantial Development Permit SHL14-031 pursuant to the requirements of WAC 173-27-100. The Applicant requests to modify the permitted 468 square foot grated dock by reducing it to 394 square feet, with 374 square feet over the water, and drive 16 new eight (8) inch epoxy coated steel piles to support the dock, instead of the original 20 piles (**Exhibit 38**). The revision eliminates the southeasterly finger pier that was part of the approved plan set. A new boatlift and personal watercraft lift will also be placed along the dock for moorage, see **Exhibit 38**. The revision was submitted pursuant to the settlement agreement (**Exhibit 35**) between parties to the Shorelines Hearing Board appeal of SHL14-031 and SEP 14-025.

## II. SITE DESCRIPTION AND CONTEXT

The subject property is zoned single-family residential, R-8.4, and is within the Urban Residential Environment. It is surrounded by single-family residential development and the adjacent shoreline properties are also within the Urban Residential Environment. The subject property has shoreline on its northern boundary with single-family homes to the east and west along the shoreline. The only existing structures on the property are the house and a few outbuildings. The shoreline is armored with a basalt bulkhead with a beach cove. Planting beds are present along the waterward edge of the bulkhead with a lawn landward of the planting beds. The substrates along the shore are sand with gravel. No aquatic vegetation was present at the time of the site visit. The neighboring shorelines are landscaped with bulkheads and docks.

## III. BACKGROUND

1. The Applicant submitted the request for a Shoreline Substantial Development Permit with SEPA review to develop the proposed dock on October 15, 2014 (**Exhibit 2**).
2. On November 3, 2014, the City issued a Notice of Incomplete Application (**Exhibit 3**). The Applicant resubmitted the application materials on January 23, 2015 (**Exhibit 4**) and the City began processing the application after it was deemed complete for review on February 6, 2015 (**Exhibit 5**).
3. On March 16, 2015 the City issued a letter (**Exhibit 6**) to the Applicant's agent indicating that the city received a valid and complete building permit submittal on March 13, 2015, permit number 1501-218.
4. On March 30, 2015, the City issued the Notice of Application (**Exhibit 7**).
5. The City adopted a new SMP with an effective date of March 18, 2015, however, since the Applicant submitted a complete building permit prior to the effective date of the new SMP, the proposed development is vested and will be reviewed under the regulations in effect at the time the valid and complete building permit application. The 1999 SMP regulations in Ordinance 99C-13 (**Exhibit 8**) remain the source of the applicable vested SMP regulations effective on March 13, 2015.
6. The 1999 SMP regulations were amended by Ordinance Nos. 02C-09 (**Exhibit 9**), 05C-12 (**Exhibit 10**), and 08C-01 (**Exhibit 11**). Ordinance Nos. 02C-09 at Section 7, page 7, changed the allowed height of fences (**Exhibit 9**). Ordinance No. 05C-12 at Section 6, page 17, renumbered the Shoreline Management Master Program from MICC 19.07.080 to 19.07.110 (**Exhibit 10**). Ordinance No. 08C-01 at Section 3, pages 8-13, made minor changes to the use table and administrative procedures (**Exhibit 11**). None of these minor changes affect review of the proposed development.
7. The City issued a letter on July 7, 2015 indicating that MICC 19.07.110(D)(2)(Table B) requires an agreement between the Applicant and the adjoining property owners, Hal and Joan Griffith ("Griffiths"). A draft of an agreement was provided to the City on January 23, 2015; however, it did not contain signatures from the Griffiths. Additionally, the City reviewed the agreement

and had several comments, which needed to be addressed in the final, signed agreement. **(Exhibit 12).**

8. The Applicant owns a waterfront lot at 9418 SE 33rd Street, which has a joint-use dock. The Applicant, however, is precluded by a private Exclusive Dock easement from accessing and using said dock. The private easement grants the Griffiths the exclusive rights to the joint-use dock **(Exhibit 13)**. The Griffiths own adjacent waterfront property to the west at 9410 SE 33rd Street.
9. Several public comments were received during the public comment period and throughout the years while litigation between the Applicant and Griffiths was pending over the agreement required under MICC 19.07.110(D)(2)(Table B) referenced above in Section III, Paragraph 7. All public comments and correspondence are contained in **Exhibit 14**. The Applicant's legal counsel responded to all comments received in a letter to the City dated October 18, 2022 **(Exhibit 15)**.
10. The legal dispute between the Applicant and the Griffiths, King County Superior Court No. I5-2-10983-9 SEA, arose over whether the Griffiths were contractually bound to sign the agreement required under MICC 19.07.110(D)(2)(Table B). The Superior Court and Court of Appeals ruled for the Applicant ordering the Griffiths to sign the agreement, and the Griffiths' Petition for Review in the Supreme Court was denied. Please refer to the January 18, 2022 letter from Karen Cobb, Frey Buck, P.S to Charles Klinge, Stephens & Klinge, LLP Attorneys at Law, **Exhibit 16**.
11. The applications were placed on hold pending the outcome of the litigation based on timely requests from the Applicant **(Exhibits 17.1 -Exhibit 17.11)**. The City, in response to these extension requests, issued several extensions for the proposed development **(Exhibit 18.1 to Exhibit 18.10)**.
12. The Applicant's Agent uploaded updated plans and materials and submitted them to the City on August 5, 2022. The following items were included in the submittal:
  - Application Information and Proposed Development Description **(Exhibit 19)**;
  - Revised Development Application **(Exhibit 20)**;
  - Revised Plan Set, dated July 19, 2022 **(Exhibit 21)**; and
  - A Joint Use Agreement signed by the Griffiths and the Applicant, dated August 1, 2022. **(Exhibit 22)**;
13. On October 28, 2022, the Applicant's Agent uploaded additional updated plans and materials and submitted them to the City. This included the following submittal items:
  - A revised plan set, dated October 12, 2022 **(Exhibit 23)**;
  - A letter from Charles Kling, dated October 20, 2022, outlining the vesting and compliance matrix **(Exhibit 24)**;
  - A letter from Charles Kling, dated October 18, 2022, addressing the public comments received **(Exhibit 15)**;

- An Ecological No Net Loss Assessment Report, prepared by Northwest Environmental Consulting, LLC, dated October 2022 (**Exhibit 25**);
  - Lateral Line Agreement - Rec No 20160408000135 (**Exhibit 26**);
  - Recorded Survey - Lateral Line - Rec No 20160408900001 (**Exhibit 27**);
  - A Mercer Island Code Compliance Matrix (**Exhibit 28**); and
  - SEPA Environmental Checklist (**Exhibit 29**).
14. On December 27, 2022, the City approved SHL14-031 and SEP14-025 and transmitted the decision to the Washington State Department of Ecology. See the approved plan set in **Exhibit 23**.
  15. On January 13, 2023, SHL14-031 and SEP14-025 were appealed to the Shorelines Hearing Board (SHB) under SHB Case No.23-001.
  16. On July 13, 2023 the Applicant submitted an application for revision, a letter, and draft plans to the City to inquire as to the process for modification of SHL 14-031. (**Exhibits 32, 33, and 34**).
  17. On August 30, 2023, the Applicant, Appellant, and City entered into a settlement agreement in the above referenced Shorelines Hearing Board appeal no. 23-001. **Exhibit 35**.
  18. On September 1, 2023 the Applicant submitted an application for a revision to the shoreline substantial development permit, SHL14-031. (**Exhibits 36, 37, and 38**).

#### **IV. FINDINGS OF FACT**

##### **A. Application Procedure**

1. An application for a Shoreline Substantial Development Permit was received by the City of Mercer Island on October 15, 2014 (**Exhibit 2**). On November 3, 2014, the City issued a Notice of Incomplete Application (**Exhibit 3**). The Applicant resubmitted the application materials on January 23, 2015 (**Exhibit 4**) and the City began processing the application after it was deemed complete for review on February 6, 2015 (**Exhibit 5**).
2. Pursuant to section 19.15.030 MICC Table A, applications for Shoreline Substantial Development Permits are Type III reviews, which require a notice of application, a 30-day public comment period, and a notice of decision.
3. The City of Mercer Island issued notice of application on March 30, 2015 for this Shoreline Substantial Development Permit consistent with the provisions in MICC 19.15.090, which include the following methods: a mailing sent to neighboring property owners within 300 feet of the subject parcels; a notice sign posted on the subject parcels; and publication in the City of Mercer Island's weekly permit bulletin. The notice of application began a 30-day comment period, which took place between March 30, 2015 to April 29, 2015 (**Exhibit 7**).
4. The City approved SHL14-031 and SEP14-025 on December 27, 2022, and transmitted the decision to the Washington State Department of Ecology. See the approved plan set in **Exhibit 23**. On January 13, 2023, SHL14-031 and SEP14-025 were appealed to the Shorelines Hearing Board (SHB) under

SHB Case No.23-001. The Applicant, Appellant, and City entered into a settlement agreement in the aforementioned appeal, **Exhibit 35**.

5. An application for a revision to the Shoreline Substantial Development Permit, SHL14-031, was received by the City of Mercer Island on September 1, 2023 (**Exhibits 36, 37, and 38**).
6. The proposed revision constitutes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. A revision to the permit, pursuant to the provisions of WAC 173-27-100 is required.
7. Pursuant to WAC 173-27-100, when an applicant seeks to revise a permit, the City shall request from the applicant detailed plans and text describing the proposed changes.
  - a. If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the Shorelines Management Act, the City may approve a revision.
  - b. "Within the scope and intent of the original permit" means all of the following:
    - i. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
    - ii. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
    - iii. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
    - iv. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
    - v. The use authorized pursuant to the original permit is not changed; and
    - vi. No adverse environmental impact will be caused by the project revision.
8. City Staff have reviewed the revision pursuant to the criteria contained in WAC 173-27-100 and find the submitted revision to meet the criteria as being within the scope and intent of the original permit:
  - a. No additional over water construction is involved; instead, the proposed revision reduces the previously proposed overwater construction by approximately 100 square feet.
  - b. Ground area coverage and height are not being increased;
  - c. The proposed revision does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
  - d. The proposed revision does not add or revise landscaping.
  - e. The use authorized pursuant to the original permit has not changed; and
  - f. No adverse environmental impact will be caused by the project revision; instead, the proposed revision reduces the footprint and impact of the currently permitted dock.
9. Several comments were received regarding the Shoreline Substantial Development Permit and SEPA review (**Exhibits 14.1 and 14.15**).

B. State Environmental Policy Act (SEPA)



1. The Applicant submitted a SEPA Environmental Checklist as part of the original application and revised it throughout the life of the project (**Exhibit 29**). Based on the information provided in the SEPA Environmental Checklist and associated documents, the SEPA responsible official for the City issued a SEPA Threshold Determination of Nonsignificance concurrently with this decision on December 27, 2022 (**Exhibit 30**). The SEPA Responsible Official for the Lead Agency issued a SEPA Addendum on October 9, 2023, to memorialize the revision to the proposed development. (**Exhibit 39**)

C. No Net Loss of Ecological Function

1. The Applicant submitted a No Net Loss report, documenting that no net loss will be achieved through grating on the dock, shoreline plantings associated with the project, and use of best management practices during construction (**Exhibit 25**). A not net loss report was not a requirement of the vested SMP.

**Staff Finding:** The proposed development minimizes construction effects on the environment by following the prescribed fish window and using Best Management Practices to prevent construction spills, turbidity, and floating debris from escaping the area. The construction crew will retrieve all dropped items from the bottom and dispose of them properly. The effects of construction will be short term.

**Staff Finding:** Temporary impacts from noise and disturbed sediments will occur during construction.

**Staff Finding:** The Applicant proposes to implement a shoreline planting plan, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, the plan adds five native trees and seven native shrubs to the shoreline that will provide natural shading that will improve shoreline conditions at the subject property in the long-term and provides an ecological lift above the current state. The Applicant has also opted to pay into the In Lieu Fee program that will be used for conservation projects that benefit salmon in King County.

**Staff Finding:** The proposed development has been designed to meet current residential dock standards and will use Best Management Practices to reduce project impacts. The conservation measures are designed to improve ecological functions or prevent further degradation of habitat and will result in No Net Loss of ecological functions.

D. Consistency with the Shoreline Management Act

1. The Washington State Legislature enacted the SMA in 1971 (Chapter 90.58 RCW) to provide a uniform -set of rules governing the development and management of shoreline areas. As a basis for the policies of the SMA, the Legislature incorporated findings that the shorelines are among the most valuable and fragile of the state's resources, that they are under ever increasing pressure of additional uses and that unrestricted construction on the privately or publicly owned shorelines of the state is not in the best public interest. The Legislature further finds that coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state, while, at the same time, recognizing and protecting private property rights consistent with the public interest.

**Staff Finding:** The proposed development, as conditioned, is consistent with the provisions of the SMA. The proposed development protects the public interest associated with the

shorelines of the state, while, at the same time, protects private property rights consistent with the public interest.

E. Consistency with the Shoreline Master Program

1. A Substantial Development Permit (SDP) is required for any development within a shoreline jurisdiction not covered under a Categorical Exemption. Compliance with all applicable federal and state regulations is also required.

**Staff Finding:** This decision, as conditioned, grants a revision to an issued SDP for the proposed development. A condition of approval, requiring documentation of state and federal approval be provided to the City prior to building permit issuance, remains a condition of the issued permit. As conditioned, this standard is met.

2. The SMP regulations are supplemental to the City of Mercer Island Comprehensive Plan, the Mercer Island Development Code and various other provisions of City, State and Federal laws. Applicants must comply with all applicable laws prior to commencing any use, activity, or development.

**Staff Finding:** The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete. Ord. 13C-12 adopted the SMP as an element of the Comprehensive Plan in 2013, before the application was submitted. The shoreline development regulations were consistent with the SMP goals and policies adopted by Ord. 13C-12. The SMP is part of the City of Mercer Island Comprehensive Plan, and the proposed development is consistent with the SMP. The City of Mercer Island Comprehensive Plan ensures shoreline protection through the implementation and enforcement of the SMP and other applicable shoreline regulations. Consequently, as conditioned, the proposed development is consistent with the comp plan.

**Staff Finding:** The approval of the revision to proposed development remains conditioned on obtaining a building permit prior to construction. A condition of approval, requiring documentation of state and federal approvals be provided to the City prior to building permit issuance, remains a condition of the approved permit. As conditioned, this standard is met.

3. In the 1999 SMP regulations, the Use Regulations are set forth at pages 106-114 of Ordinance No. 99C-13 (**Exhibit 8**) —former Section MICC 19.07.110(D). The 1999 Use Regulations in former Section MICC 19.07.110.D are the precursor to the current Shoreland Development Standards in MICC 19.13.050, with rules for development landward and waterward of OHWM. The key regulations for a new dock are in Table B, “Requirements for Moorage Facilities and Development Located Waterward From the OHWM” at pages 109-112 of Ordinance No. 99C-13.



TABLE B. REQUIREMENTS FOR MOORAGE FACILITIES AND DEVELOPMENT LOCATED WATERWARD FROM THE OHWM

SETBACKS FOR ALL MOORAGE FACILITIES, COVERED MOORAGE, LIFT STATIONS AND FLOATING PLATFORMS	*	A 10' from the lateral line; B 35' from adjoining moorage structures: (except where moorage facility is built pursuant to the agreement between adjoining owners as shown in Figure B below); C 50' or 50% of the water frontage of the property, whichever is less, from the common boundary of the subject property Urban Park of Conservation Environment.
SETBACKS FOR BOAT RAMPS AND OTHER FACILITIES FOR LAUNCHING BOATS BY AUTO OR HAND, INCLUDING PARKING AND MANEUVERING SPACE.	D	25' from any adjacent private property line
LENGTH OR MAX. DISTANCE WATERWARD FROM THE "OHWM" FOR MOORAGE FACILITIES, COVERED MOORAGE, LIFT STATIONS AND FLOATING PLATFORMS	E	Max. 100', but in cases where water depth is less than 10' from the mean low water, length may extend up to 150' or to the point where water depth is 10' at mean low water, whichever is less
WIDTH	F	Max. 8'; does not apply to boat ramps, lift stations, or floating platforms
HEIGHT LIMITS FOR PIERS AND DOCKS	G	5' above the elevation of the OHWM
HEIGHT LIMITS FOR WALLS, HANDRAILS AND STORAGE CONTAINERS LOCATED ON PIERS	H	3' above the decking of the moorage facility
HEIGHT LIMITS FOR MOORING PILES, DIVING BOARDS AND DIVING PLATFORMS	I	10' above the elevation of the OHWM

\* The letters in this column refer to the Plan View and Section diagram.

- The first box in Table B of the 1999 SMP regulations relates to Setbacks for Docks and had three parts, A, B, and C. The 1999 Table B parts A and C are the same as the current A and B in the current version of the SMP, MICC 19.13.050 - Table D, which requires a 10-foot setback for docks, covered moorages, and floating platforms from the lateral line and the 50-foot or 50 percent rule where a property shares a common boundary with the Urban Park Environment.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, will be more than 10-feet from the lateral line. This standard is met. Additionally, the subject property does not share a common boundary with the urban park environment. This standard is met.

**Staff Finding:** The Applicant provided a Lateral Line Agreement (**Exhibit 26**) between the Applicant and James Graue, III, owner of the residence located at 9422 SE 33rd Street. The Applicant also provided a copy of the recorded Lateral Line Survey (**Exhibit 27**) that memorialized the agreement between both parties. The Agreement clearly shows the agreed lateral line that was agreed upon between the Applicant and Mr. Graue.

5. The second box in Table B of the 1999 SMP regulations, part D, relates to setbacks for boat ramps. The current version of the SMP, MICC 19.13.050 - Table D contains the same requirement.

**Staff Finding:** Not applicable. No boat ramps are involved with the proposed development.

6. The third box in Table B of the 1999 SMP regulations, part E, relates to length with a maximum of 100-feet plus an exception.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, complies with the 100-foot maximum length.

7. The fourth box in Table B of the 1999 SMP regulations, part F, relates to dock width with a maximum of 8-feet in width applicable to all parts of the dock.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, complies with the current requirements of maximum 4-feet within 30-feet of OHWM and 6-feet beyond that point, and subsequently the proposed development also complies with the applicable maximum 8-foot width.

8. The fifth box in Table B of the 1999 SMP regulations, part G, relates to height of docks with a maximum height of 5-feet above OHWM.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, complies with the maximum dock height of 5-feet above OHWM.

9. The sixth box in Table B of the 1999 SMP regulations, part H, relates to height of walls, handrails, and storage containers located on piers with a maximum height of 3-feet above the decking.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, complies with the applicable requirement of no more than 3-feet above the decking. MICC 19.13.050 - Table D contains a different requirement at box 6, part F. The proposed development also complies with the current requirements of maximum 3.5-feet on dock and maximum 4-feet on ramps.

10. The seventh box in Table B of the 1999 SMP regulations, part I, relates to height of mooring piles, diving boards, and diving platforms with a maximum height of 10-feet above OHWM.

**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, does not propose diving boards, diving platforms, or moorage piles in which the piles would have their tops above the water and be used for tying off mooring lines. MICC 19.13.050 - Table D contains the same requirement at part G.

11. The eighth box in Table B of the 1999 SMP regulations, at page 111, part J, relates to minimum water frontage of 40-Feet.

**Staff Finding:** The subject property, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, is greater than 40-feet wide and is consistent with the requirement in part J. Requirements in parts K and L do not apply as the proposed development is not a shared dock or within a semi-private recreational tract. MICC 19.13.050 - Table D contains the same requirement at part H.



CHAPTER 19.07

CRITICAL LANDS

TABLE B (CONT.). REQUIREMENTS FOR MOORAGE FACILITIES AND DEVELOPMENT LOCATED WATERWARD FROM THE OHWM

MINIMUM WATER FRONTAGE FOR MOORAGE FACILITY	J	Single Family lots: 40'
	K	Shared - two adjoining lots: 40' combined.
	L	Semi-private recreational tracts: 2 families: 40';  3-5 families: 40' plus 10' for each family more than 2;  6-10 families: 70' plus 5' for each family more than 5;  11-100 families: 95' plus 2' for each family more than 10;  101+ families: 275' plus 1' for each family more than 100

\* The letters in this column refer to the Plan View.

12. The ninth box in Table B of the 1999 SMP regulations, at page 112, relates to covered moorage. The new Table D contains a revised requirement.



CHAPTER 19.07

CRITICAL LANDS

TABLE B (CONT.). REQUIREMENTS FOR MOORAGE FACILITIES AND DEVELOPMENT LOCATED WATERWARD FROM THE OHWM (CONT.)

COVERED MOORAGE	<p>Permitted on single-family residential lots subject to the following:</p> <p>(a) Max. height above the OHWM: 20'; 20' to 25' subject to deviation process (Part C2.)</p> <p>(b) Location/Area Requirements: See Figure A for single-family lots Figure B for shared moorage. Outside the triangle subject to deviation process (Part C2.)</p> <p>(c) Building Area: 600 square feet. 50% of the permitted covered Building areas larger than 600 square feet are subject to conditional use permit within the triangle or variance outside the triangle</p> <p>(d) Covered Moorage shall have open sides.</p> <p>Prohibited in semi-private recreational tracts, commercial and non-commercial recreational areas.</p>
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**Staff Finding:** The proposed development, as illustrated in **Exhibit 23** and as revised, depicted in **Exhibit 38**, does not propose a covered moorage. These criteria are not applicable to the proposed development.

- F. Consistency with the Review criteria for substantial development permits, WAC 173-27-150
1. A substantial development permit shall be granted only when the development proposed is consistent with:
    - a. The policies and procedures of the act;
    - b. The provisions of this regulation; and
    - c. The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

**Staff Finding:** WAC 173-27-150 specifies the approval criteria for shoreline substantial development permits. Based on the provisions of WAC 173-27-150, the proposed development, as revised, is consistent with the policies and procedures of the act (SMA), the provisions of this regulation, and the applicable master program adopted.

2. Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

**Staff Finding:** The City adopted a new SMP with an effective date of March 18, 2015, however, since the applicant submitted a complete building permit prior to the effective date of the new SMP, the proposed development and revision thereto, are vested and will be reviewed under the regulations in effect at the time the valid and complete building permit application. The 1999 SMP regulations in Ordinance 99C-13 (**Exhibit 8**) remain the source of the applicable vested SMP regulations effective on March 13, 2015.

**Staff Finding:** The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program. The City is attaching conditions of approval to the revised permit to ensure consistency with the SMA and SMP.

## V. CONCLUSIONS OF LAW

### Applicable Decision Criteria & Conclusions

The following conclusions are hereby made based on the findings of fact listed above in sections I through IV:

1. Subject to the following Conditions of Approval, the proposed development meets the Mercer Island Shoreline Master Program MICC 19.07.110 Table B - requirements for development located waterward from the Ordinary High Water Mark.
2. The proposed development is consistent with the City of Mercer Island Comprehensive Plan in place at the time the application was deemed complete.
3. The proposed development as conditioned meets the applicable requirements of the Shoreline Management Act under RCW 90.58 & WAC 173-27.
4. The application materials adequately discuss the existing conditions and impacts of the site.
5. The proposed development as conditioned would not have a probable significant adverse environmental impacts.
6. Any of the above listed findings of fact that are conclusions are hereby incorporated as conclusions.

**VI. CONDITIONS OF APPROVAL**

1. The proposed development shall be in substantial conformance with **Exhibit 38** and all applicable development standards contained within Chapter 19.13 Mercer Island City Code (MICC).
2. All required permits shall be obtained prior to the commencement of construction. The Applicant is responsible for obtaining any required permits or approvals from the appropriate local, state, and federal agencies.
3. The Applicant is responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state and federal government agencies.
4. Construction of the proposed development shall not be authorized, nor may begin within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).
5. A City of Mercer Island Building Permit shall be required for construction of the proposed development. The Building Official may require an appropriate performance bond in an amount to be determined prior to Building Permit issuance to ensure all required vegetation installation is completed in compliance with applicable code requirements.
6. Construction of the proposed development shall only occur during approved fish windows by local, state and/or federal government agencies.
7. Construction of the proposed development shall only occur during approved construction hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.
8. To ensure quick response from emergency services workers, a house number must be conspicuously posted at the end of the dock. The numbers must be made of durable material, be at least six inches in height, and contrast with the color of the building upon which it is placed.
9. Any violation of applicable code requirements during construction of the proposed development will result in code compliance action by the City of Mercer Island as determined by the Code Official.
10. Prior to building permit issuance, the Applicant shall provide verification of the location of the Ordinary High Water Mark (OHWM). Verification shall be by providing the surveyed location of the OHWM as defined in MICC 19.16.010(O).
11. Prior to building permit issuance, the Applicant shall provide the City with an affidavit stating that the Applicant has field located the sewer lake line and the location on the site plan (as revised) is the actual location within Lake Washington. The affidavit shall acknowledge that the Applicant is responsible for any damages to the sewer lake line caused by the construction of the proposed development. Please note: Damage can occur from pile driving, grounding the barge or securing it with vertical steel shafts (spuds), and other possible impacts from the project.

12. The Applicant shall provide the City with development plans that reflect the field verified location of the sewer lake line pre-construction prior to permit issuance. If the lake bed is being disturbed, please contact Fish and Wildlife and the U.S. Army Corps of Engineers, as a permit may be required. Please note: Field verification should be performed with due care as the sewer lake line is pressurized in some locations and the pipe material could be prone to damage.
13. The Applicant shall provide development plans based upon a pre-construction field survey locating the sewer lake line, and shall deliver the results to the City in one of the formats listed below, ranked from top to bottom, (a) being the top preferred method:
  - a. A hand-drawn or plotted as-built of the lake line location with accurate distance measurements to multiple visible and permanent reference points. Reference points can include dock corners, utilities, structures, stairs, etc.
  - b. A CAD file including the lake line and surveyed area in WGS-1984 or Washington State Plane North coordinate systems.
  - c. A CAD file including the lake line and surveyed area in an assumed coordinate system, including multiple visible and permanent reference points.
  - d. A list of coordinates denoting the lake line location, in WGS-1984 or Washington State Plane North coordinate systems.
  - e. If none of the above options are viable, the City will consider reasonable efforts to provide field verification of the sewer lake line. Possible constraints that may make field verification nonviable includes, but is not limited to, the following: if the sewer pipe is too deep to locate or if there are fish window constraints.

If a coordinate system is used, the survey must be performed using high accuracy GPS or total station (half-foot accuracy). This excludes cellphone or handheld GPS surveys.

14. Prior to building permit issuance, the Applicant shall provide documentation of approval of the proposed scope of work from state and federal agencies, including the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.
15. The Applicant shall inform the Mercer Island Maintenance Department at (206) 275-7608 of the anticipated start date of in-water work prior to commencement of construction.
16. Piles, floats or other structures in direct contact with water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology. N.W. Regional Office: (425) 649-7000 and the City of Mercer Island (206) 275-7605.
17. 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 this 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. A single extension before the end of the time limit may be granted if a request for extension has been filed before the expiration date.



18. The Applicant shall abide by the work windows for listed species established by the U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife.

**VII. DECISION**

Based upon the above noted Findings of Fact and Conclusions of Law, the proposed Revision to Shoreline Substantial Development Permit SHL14-031, as depicted in **Exhibit 38**, is hereby APPROVED WITH CONDITIONS. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130 and all other applicable appeal regulations.

Approved this 9th day of October 2023.

*Ryan Harriman*

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Pursuant to RCW 90.58.180, any person aggrieved by the issuance of this decision may seek review from the Shorelines Hearings Board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).