

Critical Areas Questions for permit #2112-249

From: **Rosemary Baker** | rosemary@convergentecosystems.com

Wednesday, Mar 23, 2022, 12:02 PM

To: **andrew.leon@mercerisland.gov**

Hello Andrew,

I am the wetland biologist hired by Edward and Catherine Moran for their single-family residential development proposal at 5028 West Mercer Way (see attached screen shot for location). I am working on providing the additional streams and stream buffers information for their critical areas review and I have some questions for you.

1) There is a piped, seasonal stream section (purple) running beneath the off-site access driveway to the north of my clients property. I verified this feature on the ground. It is completely piped along the north side of the property and it follows a pretty significant gradient under the north side of the driveway. Your code states that piped streams or stream sections do not have buffers; however, I was told by the architect on this project you communicated to him that because this stream could in theory be day lit someday you will regulate it as an un-piped stream and apply a buffer anyway. I wanted to check if this info was correct? That would mean you are applying a 60' buffer to a piped stream section that does not have a functional buffer. Additionally, if it were ever day lit it would mean the driveway access to this cluster of homes and portions of the residential landscaping would have to be removed. In this particular stretch of stream this does not seem to be a real option for future restoration. Not without a take on several private properties along this driveway access.

Additionally, a relatively new home was built just to the north (5020 West Mercery Way) which would be even closer to the piped mapped stream in question. It appears the building footprint is within ~40' of where the piped stream section is located (including the BSBL). Can you please share the approved critical areas report for that property or any additional information you have on what/how it was approved?

2) Also, there is a ditch on the east side of West Mercery Way between the roadway and the Moran's property. A section of that ditch held an area with potential wetland conditions and I would like to understand the precedences the City has with artificial wetlands or ditch wetlands in your major arterial right-of-ways. It's clear the feature I encountered would not be there if it were not for stormwater drainage from the driveway as well as the ditch construction and water detention from West Mercer Way.

I will see if I can catch you by phone to discuss these items as well.

Look forward to speaking with you. Thank you,

Rosemary Baker, MEH, PDC, LAP

Principal Ecologist & Wetland Biologist

Holistic Landscape Designer

Clarity Coach to Entrepreneurs and Eco-Leaders
Professional Environmental Consulting, Design, & Coaching

Website: convergent.eco

Email: Rosemary@convergentecosystems.com

Phone: (206) 909-3575



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RE: Critical Areas Questions for permit #2112-249

From: **Andrew Leon** | andrew.leon@mercerisland.gov

Friday, Mar 25, 2022, 4:35 PM

To: **Rosemary Baker** | rosemary@convergentecosystems.com

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov

Hello,

Please see my responses to your questions [in blue](#) below.

Thanks,

Andrew Leon

Planner

City of Mercer Island – Community Planning and Development Department

206-275-7720 | mercerisland.gov/cpd

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From: **Rosemary Baker** |
rosemary@convergentecosystems.com

To: **Andrew Leon** |
andrew.leon@mercerisland.gov

Wednesday, Mar 23, 2022,
12:03 PM

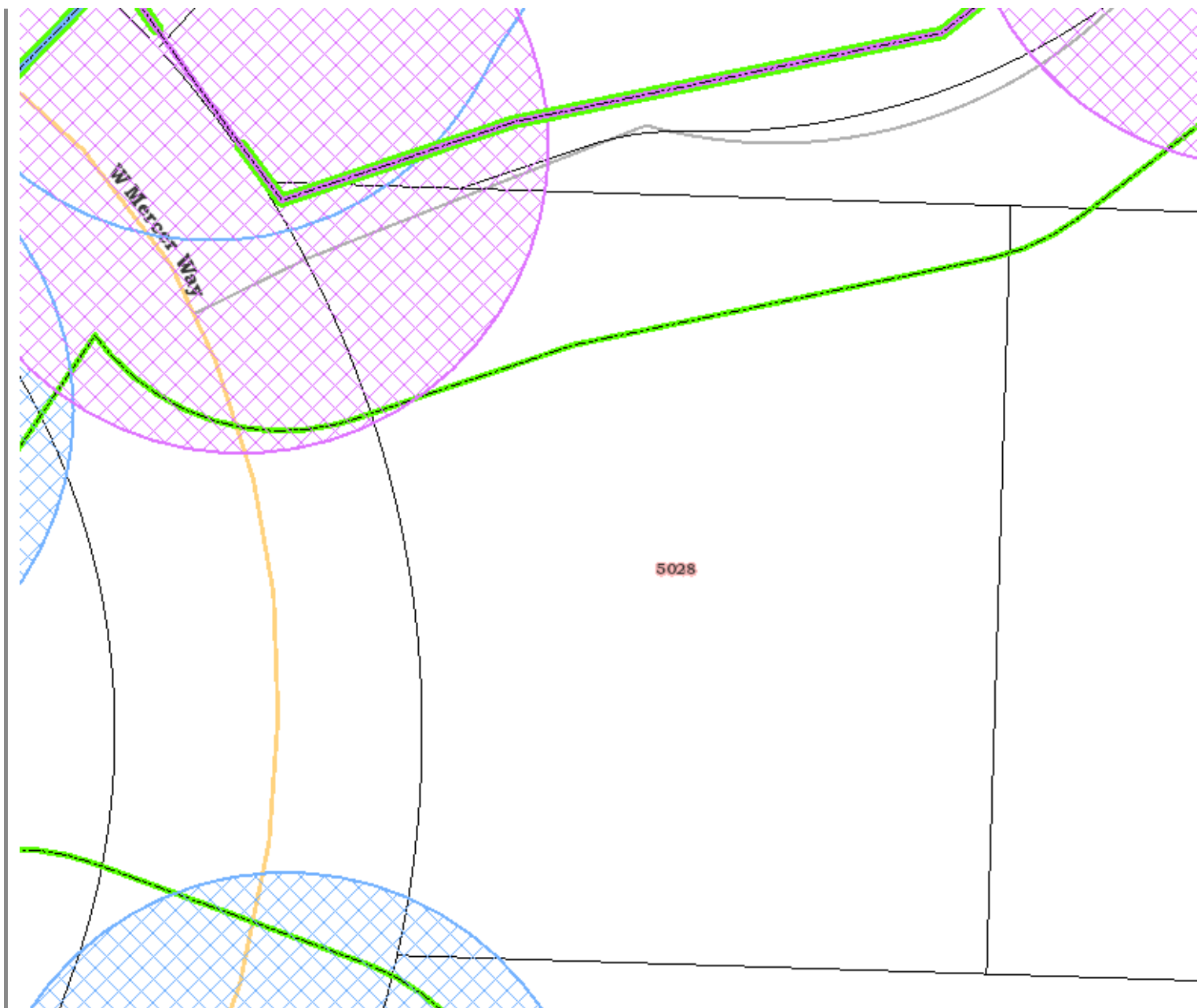
Hello Andrew,

I am the wetland biologist hired by Edward and Catherine Moran for their single-family residential development proposal at 5028 West Mercer Way (see attached screen shot for location). I am working on providing the additional streams and stream buffers information for their critical areas review and I have some questions for you.

1) There is a piped, seasonal stream section (purple) running beneath the off-site access driveway to the north of my clients property. I verified this feature on the ground. It is completely piped along the north side of the property and it follows a pretty significant gradient under the north side of the driveway. Your code states that piped streams or stream sections do not have buffers; however, I was told by the architect on this project you communicated to him that because this stream could in theory be day lit someday you will regulate it as an un-piped stream and apply a buffer anyway. I wanted to check if this info was correct? That would mean you are applying a 60’ buffer to a piped stream section that does not have a functional buffer. Additionally, if it were ever day lit it would mean the driveway access to this cluster of homes and portions of the residential landscaping would have to be removed. In this particular stretch of stream this does not seem to be a real option for future restoration. Not without a take on several private properties along this driveway access.

The City of Mercer Island GIS shows that there are two segments of watercourses that affect this property (see below):

- A Type Ns Watercourse along West Mercer Way. This watercourse segment requires a 60-foot buffer (purple hashed area in the screenshot below). Lot coverage and hardscape is not allowed within the watercourse buffer and structures must be set back 10 feet from the edge of the buffer. Buffers may be averaged or reduced under the provisions set forth in MICC 19.07.180(C)(4) and (5), respectively. Please note that if you are proposing buffer averaging or reduction, a Critical Area Review 2 (CAR2) is required. Prior to accepting a CAR2 application, a pre-application meeting is required.
- A piped Type Ns watercourse. This watercourse does not have a buffer, but it does have a 50-foot setback (area within the green lines in the screenshot below). The piped watercourse setback is intended to leave room for the piped watercourse to eventually be daylighted. Daylighting may not be feasible in all circumstances, but the setback is still required in case future development allows it. Please refer to MICC 19.07.180(C)(6) for the regulations for piped watercourses. There are provisions for reducing the piped watercourse setback. Note that the buffer for daylighted sections of piped watercourses is 15 feet, not 60 feet as you state above.



Additionally, a relatively new home was built just to the north (5020 West Mercery Way) which would be even closer to the piped mapped stream in question. It appears the building footprint is within ~40' of where the piped stream section is located (including the BSBL). Can you please share the approved critical areas report for that property or any additional information you have on what/how it was approved?

The neighboring house at 5020 West Mercer Way was constructed in 1978, prior to the initial adoption of the City of Mercer Island's critical area regulations. The current critical area regulations were not in place at that time, and no critical area report was received for the house's construction. The construction of the neighboring house within a Type Np watercourse buffer and piped Type Ns watercourse setback cannot be used as a precedent to exempt this project from critical area review. It is simply an example of a legal non-conforming site.

2) Also, there is a ditch on the east side of West Mercery Way between the roadway and the Moran's property. A section of that ditch held an area with potential wetland conditions and I would like to understand the precedences the City has with artificial wetlands or ditch wetlands in your major arterial right-of-ways. It's clear

the feature I encountered would not be there if it were not for stormwater drainage from the driveway as well as the ditch construction and water detention from West Mercer Way.

If you discover wetlands on the property, you will need to show them (and any associated buffers) on the site plan. The wetlands will also need to be addressed in the critical area report. In order to be considered artificial wetlands, and therefore not regulated under MICC 19.07.190, the wetlands will need to meet the following conditions:

“Wetlands do not include artificial wetlands, such as irrigation and drainage ditches, grass-lined swales, canals, landscape amenities, and detention facilities or those wetlands, created after July 1, 1990, that were unintentionally created as a result of the construction of a road or street unless the artificial wetlands were created to mitigate the alteration of a naturally occurring wetlands.”

If you believe that the wetlands are not regulated for other reasons, you can include that analysis in your Critical Area Study. Any determination about the wetlands will need to be verified by the city’s environmental consultant during their peer review.

I will see if I can catch you by phone to discuss these items as well.

Look forward to speaking with you. Thank you,

Rosemary Baker, MEH, PDC, LAP

Principal Ecologist & Wetland Biologist

Holistic Landscape Designer

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RE: Critical Areas Questions for permit #2112-249

From: **Rosemary Baker** | rosemary@convergentecosystems.com

Friday, Mar 25, 2022, 6:23 PM

To: **Andrew Leon** | andrew.leon@mercerisland.gov

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov

Hi Andrew,

Appreciate your thorough and thoughtful reply and clarifications. Very helpful. I spent more time with Mercer Island's code and am beginning to understand piped stream setbacks more and how they apply and what's allowed within them. Was not advocating for exempting this project by requesting info on the house to the north. A neighbor I spoke with said the home at 8250 had recent construction of some kind. There was fresh landscaping along their slope on the east, uphill side of the un-piped section of the Ns stream at the NW corner so I thought there would be a CAR in the record. Good to know there is not. FYI, while I was at the site, there was evidence of recent daylighting (erosion control BMPs within the ditch and fresh gravel in the ditch bottom) in that small, un-piped stream section, wasn't there a recent daylight or improvement project on it? It sure looked like it.

As it was explained to me by the architect, the applicants can only access this property by a driveway easement located at the NW corner - where they have legal access and a driveway easement. They cannot apparently put in a driveway further uphill along the existing driveway where it will be entirely out of the Type Ns buffer but I am working with them to adjust the location and reduce impacts to the max that is feasible. I will document everything I found on-site including the small, unregulated ditch wetland and propose what we can in working with the City's code.

Thanks so much,

Rosemary Baker, MEH, PDC, LAP

Principal Ecologist & Wetland Biologist

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RE: Critical Areas Questions for permit #2112-249

From: **Andrew Leon** | andrew.leon@mercerisland.gov

Tuesday, Mar 29, 2022, 2:31 PM

To: **Rosemary Baker** | rosemary@convergentecosystems.com

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov

Hello,

There is not permit history of work to daylight the piped watercourse. Since the daylighting was not reviewed, the 45-foot piped watercourse setback would still apply. The 45-foot piped watercourse setback could be replaced by a 15-foot watercourse buffer for the open portions of the watercourse if you can demonstrate in your analysis that the following conditions of MICC 19.07.180(C)(6)(c) are being met:

- a. The watercourse channel will be stable and is not expected to cause safety risks or environmental damage.
- b. No additional impact nor encumbrance by watercourse buffer or critical area setback is added to properties neighboring the applicant(s) property.

Thanks,

Andrew Leon

Planner

City of Mercer Island – Community Planning and Development Department

206-275-7720 | mercerisland.gov/cpd

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RE: Critical Areas Questions for permit #2112-249

From: **Rosemary Baker** | rosemary@convergentecosystems.com

Thursday, Mar 31, 2022, 10:11 AM

To: **Andrew Leon** | andrew.leon@mercerisland.gov

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov

Hi Andrew,

Thank you for confirming there is no daylighting project in the record for this section of watercourse.

In regards to the rest of your answer. When I read that section of the code, it appears to apply to when an applicant themselves is proposing a daylighting project on their own property. The Moran's are not proposing a daylighting project. They legally can't as no section of the piped watercourse is on their property - just so there isn't misunderstanding around that.

And so I am clear - are you saying if we can provide documentation that the off-site condition of that stream section meets the criteria of stream daylighting and the conditions within MICC 19.07.180(C)(6)(c) then the City may allow a change on it's buffer from 60' to 15'?

If so, you can also see on your critical area mapping that stream section still remains encompassed by the watercourse setbacks of the sections above and below as well as the 60' buffer on the Type Np stream - so it would remain well protected.

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RE: Critical Areas Questions for permit #2112-249

From: **Andrew Leon** | andrew.leon@mercerisland.gov

Tuesday, Apr 5, 2022, 1:18 PM

To: **Rosemary Baker** | rosemary@convergentecosystems.com

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov

Hello,

That's correct. If you can document that the off-site conditions of the daylighted, piped watercourse meet the standards of MICC 19.07.180(C)(6)(c), the 60-foot setback can be changed to a 15-foot buffer. Please note that a 10-foot setback from the edge of the buffer would still be required under MICC 19.07.180(C)(7).

Thanks

Andrew Leon

Planner

City of Mercer Island – Community Planning and Development Department

206-275-7720 | mercerisland.gov/cpd

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RE: Critical Areas Questions for permit #2112-249

From: **Rosemary Baker** | rosemary@convergentecosystems.com

Tuesday, Apr 5, 2022, 3:20 PM

To: **Andrew Leon** | andrew.leon@mercerisland.gov

Cc: **Tim McHarg** | tim.mcharg@mercerisland.gov, **Edward Moran** | edmoran82@gmail.com

Ok great. Thank you for confirming this Andrew. We will be moving forward with this approach for the re-submittal on the critical areas.

Rosemary Baker, MEH, PDC, LAP

Principal Ecologist & Wetland Biologist

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