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LAW FIRM, PLLC

November 18, 2020

Robin Proebsting, Senior Planner
Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040
Robin.proebsting@mercerisland.gov
With copy to: eileen@madronalaw.com; jeff.thomas@mercerisland.gov

Re: 7025 N. Mercer Way / Tax Parcel No. 7355700191

Dear Ms. Proebsting:

Per your email dated November 6, 2020, please accept the following documents as an application for a Critical Area Review 1.

Attached you will find:

1. Application Coversheet. A completed development application coversheet, indicating that a Critical Area Review 1 is being sought is attached as *Attachment A*.
2. Project Narrative. A project narrative in the form of the letters previously provided to the City of Mercer Island attached as *Attachment B*.
 - a. To summarize, there is no “project” but rather, my client is trying to sell the property located at 7025 N. Mercer Way (“Property”). The Type “Ns” watercourse designation has negatively impacted the value of the Property. Therefore, the City is requested to correctly interpret the City’s ordinance as it relates to the Property. This application for a Critical Area Review 1 is being submitted in compliance with the City’s prior emails.
3. Site Plan. Again, there is no “project” and therefore, no “site plan.” However, attached as *Attachment C* is a scaled diagram of the Property and relevant features.

The required fee has already been submitted to the City as acknowledged in your email.

Thank you for your time and attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,



Kristen C. Reid
Attorney at Law
Enclosures

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



CITY USE ONLY

PROJECT#	RECEIPT #	FEE

Date Received:

Received By:

DEVELOPMENT APPLICATION

STREET ADDRESS/LOCATION		ZONE
COUNTY ASSESSOR PARCEL #'S		PARCEL SIZE (SQ. FT.)
PROPERTY OWNER (required)	ADDRESS (required)	CELL/OFFICE (required) E-MAIL (required)
PROJECT CONTACT NAME	ADDRESS	CELL/OFFICE E-MAIL
TENANT NAME	ADDRESS	CELL PHONE E-MAIL

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use		<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	OTHER LAND USE
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	<input type="checkbox"/> Short Plat- Final Plat
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	OTHER LAND USE
DESIGN REVIEW	SHORELINE MANAGEMENT	<input type="checkbox"/> Accessory Dwelling Unit
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Noise Exception
WIRELESS COMMUNICATION FACILITIES	SUBDIVISION LONG PLAT	<input type="checkbox"/> Reclassification of Property (Rezoning)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Transportation Concurrency (see supplemental application form)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input type="checkbox"/> Planning Services (not associated with a permit or review)
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Zoning Code Text Amendment
	VARIANCES (Plus Hearing Examiner Fee)	<input type="checkbox"/> Request for letter
	<input type="checkbox"/> Variance	<input type="checkbox"/> Temporary Commerce on Public Property

ATTACHMENT A

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November 3, 2020

Jeff Thomas, Interim Director
Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040
Jeff.thomas@mercerisland.gov

Re: 7025 N. Mercer Way / Tax Parcel No. 7355700191

Dear Mr. Thomas:

Thank you for your email and letter dated October 23, 2020 (“Letter”). I have attempted to set up a time to discuss this case over the phone with you but have had no success. Therefore, please consider this letter as a formal response to the issues raised in this case.

Overview of Issue and Relief Sought

Ultimately, the issue in this case is the City’s improper designation of a Type “Ns” Watercourse shown on the IGS website. This designation has negatively affected the value of the property located at 7025 N. Mercer Way (“Property”). For your convenience, the Type “Ns” Watercourse shown on the IGS website (and accompanying buffer) looks as follows:



The Type “Ns” Watercourse are defined terms. Watercourse is defined as:

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ATTACHMENT B

Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed, banks, or sides throughout substantially all its length, along which surface waters, *with some regularity (annually in the rainy season)*, naturally and normally flow in draining from higher to lower lands. ***This definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water runoff devices, or other courses*** unless they are used by fish or to convey waters that were naturally occurring prior to construction. (emphasis added)

Type “Ns” is defined as:

Type Ns, which include all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. ***Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters.*** (emphasis added)

In the prior letters sent to the City dated September 11, 2020 and September 30, 2020 (*Exhibit 1*), it clearly shows this area is at most a stormwater runoff device and more likely simply a landscape feature. Surface waters do not flow with any regularity.¹ Additionally, the pictures also show the area affecting the Property (in pink in the picture above) is connected to a pipe that leads to Lake Washington. That pipe is underground. Therefore, by the City’s own definition, this cannot be a Type “Ns” because it is not physically connected by an aboveground channel system to a Type S, F, or Np waters. The pipe is not an aboveground connection to Lake Washington. The Department of Ecology also confirmed there is no evidence the area is a designated Type “Ns” watercourse.²

City’s Discretion

In your Letter, the City of Mercer Island (“City”) is declining to make a code interpretation pursuant to Mercer Island City Code (“MICC”) 19.15.160(A) regarding this designation. It is true the cited code section uses the permissive “may” rather than “shall.” However, in refusing to exercise discretion, the City has abused that discretion. This is due to the fact that the larger issue remains – my client continues to be damaged by the City’s designation of a Type “Ns” watercourse without any basis to do so. This was made clear in the prior two letters to the City. Both are attached as *Exhibit 1* for your reference.

Delay

¹ Please see *Exhibit 2* which is a letter from the City of Mercer Island dated August 29, 1997 stating this area “is primarily a feature that is a dry riverbed most of the time, with minimal water even in heavy rain.” There has been no significant environmental or ecological change to this area since that time.

² See page 4 of the letter dated September 11, 2020, *Exhibit 1*.

Additionally, rather than the City exercising discretion to correct this error early on, the City initially required a preapplication meeting which would have added additional weeks to the ongoing delay of this project. Please see the email from Patrick Yamashita dated September 24, 2020 attached as *Exhibit 3* (“Email”). In the Email, the City made it clear that “we cannot proceed any further with your request until we have a complete application consistent with MICC 19.15.” In response, and in an effort to proceed in an expeditious manner, my client filled out the development application but pointed out there is no need for a preapplication meeting. The City agreed to waive the preapplication meeting but then issued the Letter refusing to grant the relief sought.

Critical Area Review 1

Now we have come full circle – the City is requiring my client to fill out more forms rather than address the straightforward issue at hand. This time, the City is citing to MICC 19.07.090(A) which is a “Critical Area Review 1.” This requires (pursuant to subsection (A)(3)): 1) a completed development application coversheet; 2) project narrative, “describing the proposed scope of work”; 3) scaled site plan “showing the proposed work”; and 4) any additional information required by the City. Given the language used requiring a “scope of work,” this process does not seem to be applicable to the facts present here. There is no proposed “scope of work” because my client has been unable to sell the Property. She has been unable to sell the Property because of the City’s designated Type “Ns” Watercourse buffer that impairs its redevelopment.

In the event the City is not requiring a scope of work with the application, all of the information required under MICC 19.07.090(A) has already been submitted to the City:

1. Completed Development Application. My client has previously submitted a completed development application. The only difference is the development application has the “Code Interpretation” box checked rather than the “Critical Area Review 1” box.
2. Project Narrative. This letter and the prior two letters serve as the “project narrative.”
3. Scaled Site Plan. The scaled site plan was originally included as an attachment to the September 11, 2020 letter and additionally, the GIS map showing the Type “Ns” watercourse could also serve as the site plan.
4. Fee. The fee amount for a Critical Area Review 1 appears to be \$708.60 which is significantly less than the amount previously submitted.

Again, my client requests the City either remove the Type “Ns” Watercourse designation from the City’s IGS website or provide an explanation as to how the City came to the conclusion that this area fits the Type “Ns” Watercourse designation.

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7025 N. Mercer Way
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Conclusion

This is a straightforward and simple issue. The City has designated the area to the west of the Property as a Type “Ns” Watercourse when in fact it does not meet the definition of a Type “Ns” Watercourse and there is no basis to do so. Showing this on the City’s GIS mapping has significantly affected my client’s ability to sell or develop the Property. The City has now been made aware of this issue and has not acted at all to correct the mistake. Therefore, the City’s acts appear intentional but at a minimum, negligent which may subject the City to liability in the form of claims for negligence, negligent misrepresentation, project delay, and/or tortious interference with business expectancy.³

Thank you for your time and attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,



Kristen C. Reid
Attorney at Law

Enclosures

³ See Westmark Development Corporation v. City of Burien, 140 Wn.App. 540, 166 P.3d 813 (2007). See also RCW 64.40.020.

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September 30, 2020

Patrick Yamashita, Interim Director
Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040
patrick.yamashita@mercerisland.gov

Re: 7025 N. Mercer Way / Tax Parcel No. 7355700191

Dear Mr. Yamashita:

Thank you for your email dated September 24, 2020 (“Email”). Please consider this letter as a formal response to the issues you have raised.

Preapplication Meeting

First, your Email cites the Mercer Island City Code (“MICC”) which states that a code interpretation is a “Type III” land use decision which requires a preapplication meeting. However, a preapplication meeting may be waived by the code official pursuant to MICC 19.15.050.C. In this case, a preapplication meeting is unnecessary. The letter previously sent to you (which is attached hereto for reference) sets forth the facts in this case. Ultimately, this is a straightforward and simple issue – the City of Mercer Island (“City”) has designated an NS watercourse without any supporting basis to do so. For these reasons, please accept this letter as a formal request to waive the preapplication meeting.

Application Fee

Second, your Email also sets forth the application fee of \$2,268.48 for the code interpretation which purportedly covers the first six hours of staff time. As stated above and explained in detail in the attached letter, this is a simple issue requiring only minimal staff time, if any. Therefore, I would assume this is merely a deposit and the unused amount will be refunded to my client.

Delay Damages

Finally, time is of the essence. The City’s NS watercourse determination listed on the City GIS Portal website is effectively a slander on title. This continues to negatively affect the marketability and value of the property. Delay in resolving this uncomplicated issue results in increasing damages to my client. Thus, this issue needs to be resolved as quickly as possible. Therefore, please let me know if you need anything further from me to process this request. Attached hereto

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EXHIBIT 1

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Patrick Yamashita
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Page 2

is the completed City's form application for the code interpretation and a check for the application fee in the amount of \$2,268.48.

Thank you for your time and attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,



Kristen C. Reid
Attorney at Law

Enclosures

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September 11, 2020

Patrick Yamashita, Interim Director
Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040
patrick.yamashita@mercerisland.gov

Re: 7025 N. Mercer Way / Tax Parcel No. 7355700191

Dear Mr. Yamashita:

Please accept this letter as a request for interpretation of MICC 19.07.180 and MICC 19.16.010, definition of “Watercourses” as applied to the facts in this case. This request is based on the authority granted to you under MICC 19.15.160. If the Water Feature as defined in this letter is a watercourse, it should not be classified as an Ns water or should not apply based on statutory or constitutional protections.

FACTS

In 2013 Carol Anne Cook (sometimes known as Carol Anne Cosacchi) conveyed her ownership interest in property located at 7025 N. Mercer Way, Mercer Island, Washington, to Carol Anne Cook and Maureen Mayo, as Trustees of the Carol Anne Cook Revocable Living Trust. Carol Anne Cook is no longer competent, and, therefore, Maureen Mayo is acting as the sole trustee for the trust. I will refer to the real property subject to this interpretation request as the “Cosacchi Property”.

Carol Anne Cosacchi currently resides in a memory care facility and does not have adequate resources to pay the monthly fees for the memory care facility. The trustee, Maureen Mayo (“Mayo”) attempted to sell the Cosacchi Property in order to generate enough income to continue to enable Carol Anne Cosacchi to remain in the memory care facility.

On February 13, 2020, Mayo signed an agreement with D. K. Legacy Development, LLC (“DK”) to purchase the Cosacchi Property for One Million Six Hundred Thousand Dollars (\$1,600,000). The agreement included a contingency to confirm that the property was suitable for the buyer’s intended redevelopment of the Cosacchi Property. As part of their due diligence, DK learned from the City that the ravine to the west of the Cosacchi Property (“Ravine”) contained water features that are designated by the City as a watercourse (“Water Feature”) as defined in the MICC 19.16.010. The Water Feature was classified by the City as a Type Ns watercourse. Attached

hereto as “Attachment 1” is a printout from the City of Mercer Island GIS system showing the Cosacchi Property and the designated Ns watercourse.

The buffer and buffer setback (“Buffer”) for a Type Ns watercourse negatively impacts the Cosacchi Property. DK advised Mayo’s realtor that the watercourse Buffer, even with buffer averaging, significantly reduced the value of the Cosacchi Property. In response Mayo made an offer to reduce the purchase price by Three Hundred Thousand Dollars (\$300,000), but that was not adequate to induce DK to complete the purchase. DK exercised its feasibility contingency and terminated the purchase agreement. Based on the City’s current interpretation of Mercer Island City Code Chapter 19.16 (“Code”), the Cosacchi Property is reduced in value by at least Three Hundred Thousand Dollars (\$300,000).

The Attachment 1 shows the Buffer associated with the Type Ns watercourse. Also attached are photographs of the Ravine (Attachment 2). The Ravine is located on adjacent properties and has been landscaped. The rock lined swale, ivy and shrubs within the Ravine are all artificial landscape features placed in the Ravine by the neighboring property owners (Attachment 2 - Photo 2).

There is also a large structure that is shown in the photograph and described in the attached letter (Attachment 3) from Martin Weiss that is apparently located within the property at 1824 or 1818 70th Avenue S.E. (“Structure”). Any drainage from the land south of the Structure would need to be conveyed in underground culverts.

At the northern boundary of N. Mercer Way, stormwater from the Ravine, adjacent properties, and stormwater drainage from N. Mercer Way, enter a culvert under N. Mercer Way that takes the stormwater approximately 400’, in underground pipes, to Lake Washington. (Photo 1)

The Cosacchi Property drainage has minimal impact on the Ravine. Water from the house on the Cosacchi Property and other impervious improvements go into the N. Mercer Way drainage system or sheet flow to the northeast corner of the Ravine, in the same area where the N. Mercer Way stormwater is discharged into the Ravine.

Prior to human modification, the drainage system that includes the Ravine would have been approximately 800’ long. Of that total length 200 feet are in the Ravine and only a small portion of the Ravine receives stormwater from improvements located in the Building Area shown on the attached map.

The Cosacchi Property also has four exceptional trees as defined in the Mercer Island City Code 19.16.010 Exception Trees (“Exceptional Trees”). The Mercer Island City Code requires retention of these Exceptional Trees.

Other factors influence residential development on the Cosacchi Property:

1. The Roanoke Inn is located immediately south of the Cosacchi Property. The Roanoke Inn during the summer months, has outdoor dining and outdoor music that would make it undesirable to have a residence near the south boundary line of the Cosacchi Property.
2. Locating a house on the south half of the Cosacchi Property would also be difficult because of the location of an Exceptional Tree that would limit the area in which to locate a house.
3. The Cosacchi Property has vehicle access to N. Mercer Way. The Cosacchi Property driveway is at a curve in N. Mercer Way that limits sight distance. A house on the Cosacchi Property must be set back from N. Mercer Way a distance adequate to allow vehicles to turn around to avoid having to back onto N. Mercer Way.

Attached is a map showing the Cosacchi Property, the Exceptional Trees with dripline for each tree, the Structure, the existing house and related structures, a portion of the Water Feature, the most valuable Building Area, the buffer and buffer setback, based on the City's interpretation of the Code and potential buffer averaging line (Attachment 4).

Constructing a residence within the Buffer will have no impact on the Ravine or any watercourse that is in the Ravine. A fence separates the Cosacchi Property from the Ravine, stormwater from the Building Area will either sheet flow to the northwest corner of the Cosacchi Property or is directed to the N. Mercer Way stormwater system, all of which go into a pipe to Lake Washington. In the event of new construction, current stormwater rules will mitigate any stormwater impacts to the Ravine. Residential use of the Cosacchi Property will have no adverse impact on whatever minimal environmental functions and values the Ravine and Water Feature still retains.

ISSUES

1. Is the Water Feature an Ns water as defined in 19.16.010 of the Code?
2. Is the Code as applied by the City in this case, a violation of RCW 82.02?
3. Is the application of the Code in this case a constitutional taking?

ARGUMENT

1. Water Feature does not meet definition of a Type Ns water. If the Water Feature is a watercourse as defined in the Code, it should not be classified as Type Ns. Section 4 of the definition of watercourses in section 19.16.010 of the Code contains the definition of a Type Ns water. To be classified as a Type Ns water, a watercourse must be physically connected above

ground to a higher classification water. The clear and unambiguous language of the Code reads as follows: “Ns waters must be physically connected by an **aboveground** channel system to Type S, F, or Np waters.” (emphasis added)

The water that runs into the Ravine flows into a culvert that is approximately ten feet below the surface of W. Mercer Way that goes under N. Mercer Way and continues underground in pipes to Lake Washington. The Water Feature has no aboveground connection to Lake Washington or any other water type. Therefore, the Water Feature cannot be a Type Ns watercourse.

a. DNR Determination. Additionally, the definition of a Type Ns water comes directly from the Department of Natural Resources (“DNR”) and WAC 222-16-031. The DNR maintains a Water Type Map to document and track various watercourses within the state. The Water Type Maps can be used by local jurisdictions in deciding whether watercourses exist in a particular area. In this case, the DNR does not show any watercourse within the area and does not consider the Water Feature to be any type of watercourse. This was verified via a phone call to Betty Burton of the DNR who can be reached at (360) 688-4197. She stated that no watercourse is documented in that area and the below-ground pipe would not meet the definition of a watercourse. She suggested that if anyone had any questions about this, they are welcome to contact her supervisor, Carla Fosberg, Forest Practices Coordinator at (425) 466-2102.

b. Interpretation. MICC 19.15.160 grants to the code official the power to interpret the Code as applied to individual property within the City. In making that interpretation the code official is instructed to consider certain factors. The first one of those factors listed reads “The plain language of the code section in question.” The language of the Code requiring connection to an aboveground channel system to a higher classification water is clear and unambiguous. The lack of an aboveground connection to a higher class means the Water Feature cannot be a Type Ns water.

2. Violation of RCW 82.02. Imposing the Buffer on the Cosacchi Property is a violation of RCW 82.02.020. based on the facts in this case. The code official in interpreting the Code is instructed to consider relevant judicial decisions.

RCW 82.02.020 prohibits the City from imposing “any tax, fee, or charge either direct or indirect” on land development, including construction of residential buildings. The Washington State Supreme Court in *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wash.2d 740, 49 P.3d 867, interpreted RCW 82.02.020 in a similar situation. The City of Camas imposed a requirement that thirty percent of the land within a subdivision be open space. The Supreme Court ruled that such a requirement was an indirect tax, and, therefore, a violation of RCW 82.02.020, because the City of Camas failed to show that imposition of the open space condition was “reasonably necessary” as a result of the proposed development. In other words, imposing a condition that restricts use of land is unlawful unless the City can show conditions imposed are reasonable when compared to the impacts from the development.

In this case the City cannot sustain its burden. Redevelopment of the Cosacchi Property will not in any way further degrade the Ravine or the Water Feature. The functions and values of the Ravine and the Water Feature would be unchanged by redevelopment of the Cosacchi Property within the Buffer, as there is currently a residence and other structures located within the Buffer as shown on the attached map. A new residence will not further impair any environmental function or value that the Water Feature may have.

RCW 82.02.020 was adopted in response to *Dolan vs. City of Tigard*, discussed in section 3 below. In determining whether a condition is reasonably necessary to preserve a critical area, the benefit gained by the City must be compared to the damage caused by a development restriction. The financial damage done to the landowners far exceeds any nominal benefit that the City gains by protecting a critical area that is no longer in a natural state.

3. Constitutional Taking. The U.S. Supreme Court in *Dolan vs. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, established the principle of “rough proportionality” in the context of a constitutional taking. The Court determined that requiring a store owner to dedicate a bike path on an adjacent flood plain was not roughly proportionate to the nature and extent of the impact of the proposed development and was therefore a constitutional taking.

In *Dolan*, supra, the court explained the concept of rough proportionality as follows:

No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development’s impact.

Any environmental protection that the Buffer provides to the Ravine and Water Feature is insignificant as compared to the diminished value of the Cosacchi Property.

CONCLUSION

It is not clear to me to what extent the City has made an individual determination of the conditions of the Cosacchi Property and the extent of the damage to the Cosacchi Property caused by the Buffer.

If the City need additional information to complete its analysis, please let me know and I will provide that information to you.

No further analysis is necessary if the Water Feature is not a watercourse.¹ Additionally, if the Water Feature is a watercourse, it cannot be classified as Type Ns as it does not meet the definition

¹ It is not clear to me that the Water Feature is a watercourse as defined in the Code. The first sentence of the definition must apply to a historical watercourse since substantially all of its length has no bed, banks, or sides, because it is in

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Patrick Yamashita
7025 N. Mercer Way
September 11, 2020
Page 6

of an Ns water. If the City has a theory on how an underground culvert can be construed as an aboveground connection it would be helpful to know.

I realize I have conveyed quite a bit of information in this letter. Therefore, after you have had a chance to review it, I would like to talk to you, or, if you prefer, your legal counsel.

Please feel free to give me a call.

Sincerely,



Kristen C. Reid
Attorney at Law

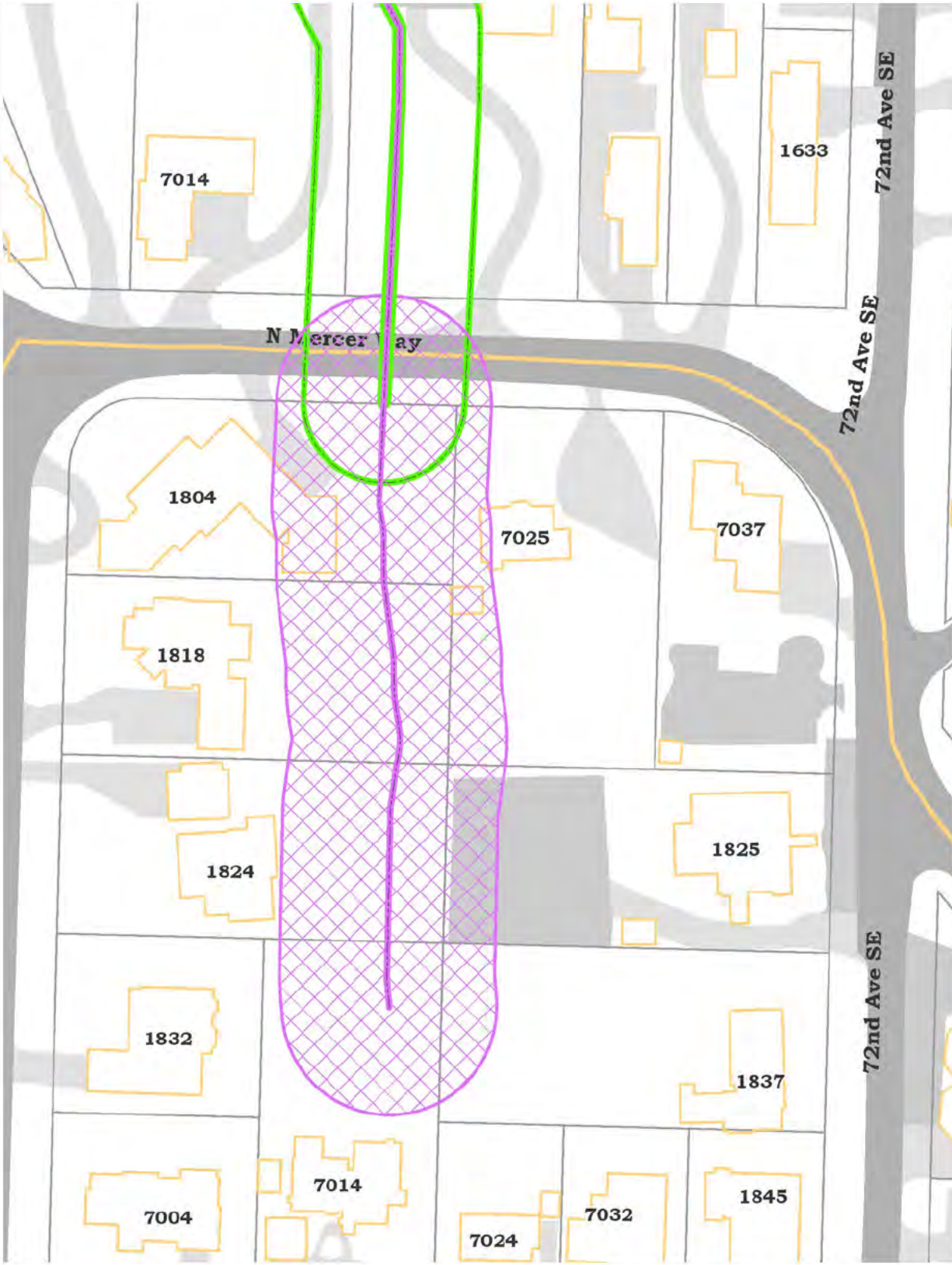
Enclosures

a culvert. Assuming the definition refers back to a historical watercourse that may have existed prior to human activity, the definition exempts various things, including stormwater runoff devices. The Water Feature is designated as part of the City stormwater system, which would exempt it from being a watercourse, subject only to the last clause of the watercourse definition that excludes an exemption if it is used “. . .to convey waters that were naturally occurring prior to construction.” Read broadly this language would eliminate all of the exemptions described in the watercourse definition. Such an interpretation would be inconsistent with the rules of statutory construction. A good argument can be made that Water Feature is not a watercourse as defined in the Code. I did not further analyze that issue because this matter can be resolved by giving the Water Feature / watercourse an appropriate classification designation.

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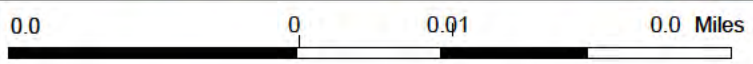
TELEPHONE 360.734.6390 FAX 360.671.0753

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- ### Legend
- Unpiped Watercourse**
 - Type "F" = Fish
 - Type "Np" = Non-Fish
 - Type "Ns" = Non-Fish (Unverified)
 - Type "Np" (Unverified)
 - Type "Ns" (Unverified)
 - Piped Watercourse**
 - Watercourse Buffer/S**
 - Type "F" = 120-Ft Buffer
 - Type "Np" = 60-Ft Buffer
 - Type "Ns" = 60-Ft Buffer
 - Type "Np" Unverified =
 - Type "Ns" Unverified =
 - Piped Type F/Np/Ns =
 - Address**
 - Building
 - Property Line
 - Docks
 - Freeway
 - Major Street
 - Street
 - Paved Driveway
 - Paved Road
 - Paved Parking Area
 - Parks
 - Lake Washington

1:1,000



Disclaimer: These maps were developed by the City of Mercer Island and are intended to be a general purpose digital reference tool. These maps are not an accepted legal instrument for describing, establishing, recording or maintaining descriptions for property concerns or boundaries. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially in regard to labeling of surveyed dimensions, or agreement with official sources such as records of survey, or mapped locations of features.

Notes



Photo 1. Just south of North Mercer Way. Start of piped stream segment.



Photo 2. Looking north from south end of neighboring property, house number 1804.



Photo 3. One of the observed drain pipes from adjacent homes.

September 10, 2020

Dear Kristen,

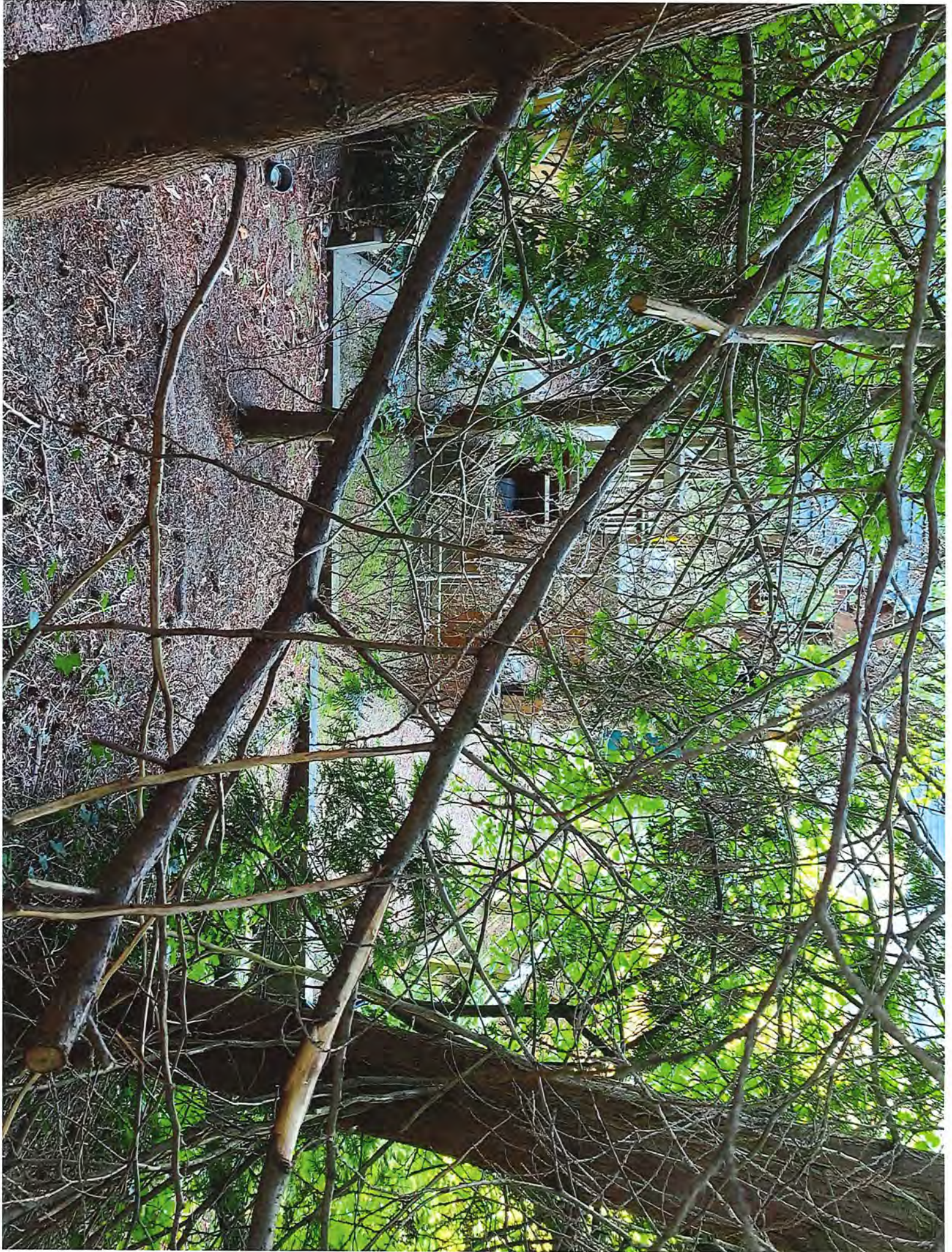
Attached is a photograph showing a wooden structure that is located in the center of the ravine that lies to the west of the Cosacchi property. The structure appears to be a play area and is located immediately south of the south boundary line of the Cosacchi property. This structure partially obstructs any surface water from draining to the north.

Best,

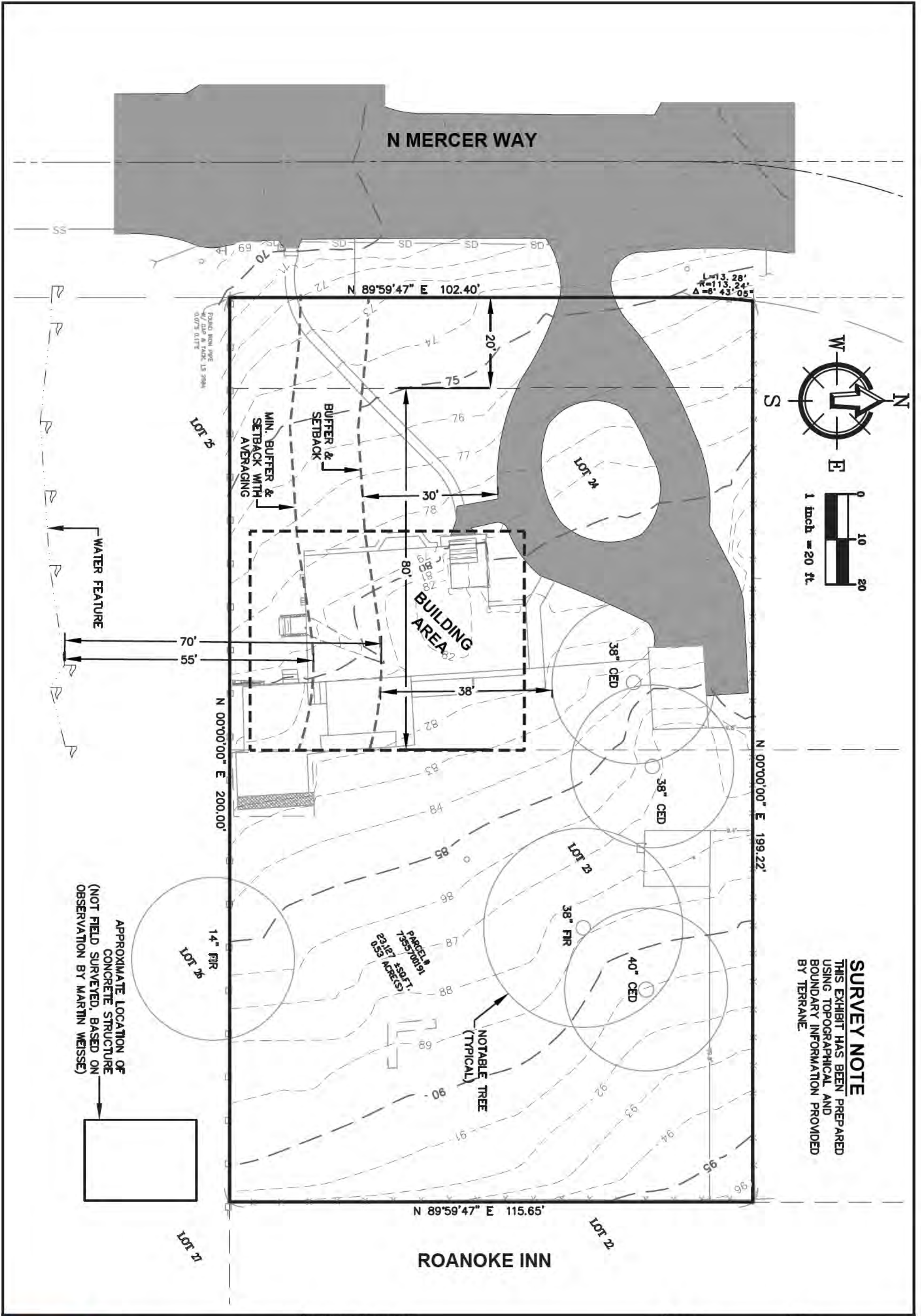
Martin Weiss

Office (425) 392-1211 • Fax (425) 391-8465

Some offices are independently owned and operated.



ATTACHMENT 3



SURVEY NOTE
 THIS EXHIBIT HAS BEEN PREPARED
 USING TOPOGRAPHICAL AND
 BOUNDARY INFORMATION PROVIDED
 BY TERRANE.

APPROXIMATE LOCATION OF
 CONCRETE STRUCTURE
 (NOT FIELD SURVEYED, BASED ON
 OBSERVATION BY MARTIN WEISSE)

220 W. Champion Street, Suite 200 t: 360.650.1408
 Bellingham, WA 98225 f: 360.650.1401



FREELAND
 & ASSOCIATES

SHEET CONTENTS

DEVELOPABLE AREA EXHIBIT

JOB #	DATE
20122	9-3-2020
DRAWING #	SHEET NAME
20122SP1.DWG	EX1

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



CITY USE ONLY

PROJECT#	RECEIPT #	FEE

Date Received:

Received By:

DEVELOPMENT APPLICATION

STREET ADDRESS/LOCATION 7025 North Mercer Way		ZONE residential R-15
COUNTY ASSESSOR PARCEL #'S 7355700191		PARCEL SIZE (SQ. FT.) 23129
PROPERTY OWNER (required) Carol Anne Cook Revocable Living Trust	ADDRESS (required) 7025 North Mercer Way, Mercer Island, WA	CELL/OFFICE (required) 360-734-6390 E-MAIL (required) kristen@belcherswanson.com
PROJECT CONTACT NAME Kristen C. Reid	ADDRESS 900 Dupont Street, Bellingham, WA 98225	CELL/OFFICE 360-734-6390 E-MAIL kristen@belcherswanson.com
TENANT NAME	ADDRESS	CELL PHONE E-MAIL

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

29 sept 20

DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

Please see attached letter

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use		<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	OTHER LAND USE
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	<input type="checkbox"/> Short Plat- Final Plat
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	OTHER LAND USE
DESIGN REVIEW	SHORELINE MANAGEMENT	<input type="checkbox"/> Accessory Dwelling Unit
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input checked="" type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Noise Exception
WIRELESS COMMUNICATION FACILITIES	SUBDIVISION LONG PLAT	<input type="checkbox"/> Reclassification of Property (Rezoning)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Transportation Concurrency (see supplemental application form)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input type="checkbox"/> Planning Services (not associated with a permit or review)
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Zoning Code Text Amendment
	VARIANCES (Plus Hearing Examiner Fee)	<input type="checkbox"/> Request for letter
	<input type="checkbox"/> Variance	<input type="checkbox"/> Temporary Commerce on Public Property

BELCHER SWANSON LAW FIRM, PLLC
900 DUPONT STREET
BELLINGHAM, WA 98225
TELEPHONE: 360-734-6390

5968

98-770/1251

DATE 9-30-20

PAY TO THE ORDER OF City of Mercer Island \$ 2,268.48

Two Thousand Two Hundred Sixty-Eight Dollars and forty-eight Cents DOLLARS



BANK OF THE PACIFIC

FOR Maureen Mayo

[Handwritten Signature]

⑈005968⑈ ⑆ [REDACTED] ⑆



**DEVELOPMENT SERVICES DEPARTMENT**

9611 S.E. 36th St. • Mercer Island, WA 98040-3732

(206) 236-5300 • FAX: (206) 236-3599

August 29, 1997

Martin and Betty DeLaurenti
1804 70th Avenue SE
Mercer Island, WA 98040

RE: Watercourse Setback Deviation

Dear Mr. And Mrs. DeLaurenti:

The Planning Commission at a Public Hearing on August 20, 1997 approved your request for a watercourse setback deviation.

The deviation allows for the intrusion of 3 feet into a watercourse corridor of an access ramp to an accessory dwelling unit.

The city made findings that the watercourse is primarily a landscape feature that is a dry riverbed most of the time, with minimal water even in heavy rain.

The watercourse is located almost 70' from the neighbor's house most effected by the construction and the ramp located approximately 97' from the property line.

There is a six foot fence separating the properties with lush screening provided by existing landscaping.

The Planning Commission adopted the findings of fact as presented by staff and made the conclusion that the request is compatible with the general intent and purpose of Zoning Code Section 19.04.110(d)(5) as set forth in Zoning Code Section 19.04.110(A).

A copy of this letter has been placed with the building plans that are currently under review. You will be notified when the review is complete and the permit ready for issuance.

It was a pleasure working with you and I look forward to seeing your finished project.

Sincerely,

A handwritten signature in cursive script that reads "Susan Davidson".

Susan Davidson

Cc: Steve Wilcox



From: [Patrick Yamashita](#)
To: [Kristen Reid](#)
Cc: [Jeff Thomas](#); [Holly Mercier](#)
Subject: RE: Request for Director's Interpretation (Code Interpretation)
Date: Thursday, September 24, 2020 3:06:42 PM

Ms. Reid,

I've done some research regarding code interpretations. According to [MICC 19.15.030](#), code interpretations are a Type III land use review and requires a preapplication meeting. [Pre-application meetings](#) are scheduled every other Tuesday and the meeting fee is \$523.24. Following the pre-application meeting, you may apply for the code interpretation along with payment of the \$2,268.48 fee. It covers the first six hours of staff time. Additional time spent is charged at \$141.72/hr. We will commence our review once the application is deemed complete. A notice of application will be published in the weekly bulletin, posted on the site, and mailed to property owners in the surrounding area. Refer to Table B in MICC 19.15.030 for more information on the review processing procedures for code interpretations (a Type III review). If you want to schedule a pre-application meeting feel free to contact our Permit Services Manager Holly Mercier (copied on this email). Here is a link to our [fee schedule](#) in case you need more information about fees.

Please understand that we cannot proceed any further with your request until we have a complete application consistent with MICC 19.15.

[Patrick Yamashita, PE](#) – working remotely

City Engineer

Interim Director

City of Mercer Island - Community Planning & Development

206.275.7722 | mercerisland.gov/cpd

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

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

From: Patrick Yamashita
Sent: Tuesday, September 22, 2020 4:46 PM
To: Kristen Reid <kristen@belcherswanson.com>
Subject: RE: Request for Director's Interpretation

Ms. Reid,

As I mentioned in my email on September 11, we have received your September 11 email and will

respond after we look into your request.

Patrick Yamashita, PE – working remotely

City Engineer

Interim Director

City of Mercer Island - Community Planning & Development

206.275.7722 | mercerisland.gov/cpd

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From: Kristen Reid <kristen@belcherswanson.com>

Sent: Tuesday, September 22, 2020 10:34 AM

To: Patrick Yamashita <Patrick.Yamashita@mercergov.org>; Katy James <Katy@BelcherSwanson.com>

Subject: RE: Request for Director's Interpretation

Hi Mr. Yamashita –

I am just following up on the letter that was sent to you on September 11 (attached).

Please let me know

Thanks

Kristen C. Reid

Attorney at Law

Belcher | Swanson Law Firm, PLLC

900 Dupont Street, Bellingham, WA 98225

Phone: 360-734-6390 ext. 317

Fax: 360-671-0753

www.belcherswanson.com

Please be advised that our office is currently open with only limited hours and by appointment only due to Governor Inslee’s “Stay Home, Stay Healthy” Order. I am working from home and email is the preferred way for contact during this time. You may also call and leave a voicemail message. My extension is 317.

NOTICE: This office does not accept, confirm, nor acknowledge service of process, legal proceedings or other form of notice by electronic mail or facsimile transmittal without prior written consent of the attorney handling the matter. This e-mail is for the sole use of the intended recipient(s) and contains information belonging to Belcher Swanson Law Firm, P.L.L.C., which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and destroy all copies of the original message.

From: Patrick Yamashita <Patrick.Yamashita@mercergov.org>
Sent: Friday, September 11, 2020 2:16 PM
To: Kristen Reid <kristen@belcherswanson.com>
Subject: RE: Request for Director's Interpretation

Ms. Reid,

I am writing to acknowledge receipt of your email. Either I or legal counsel will follow up with you after we look into your request.

[Patrick Yamashita, PE – working remotely](#)

City Engineer

Interim Director

City of Mercer Island - Community Planning & Development

206.275.7722 | mercerisland.gov/cpd

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From: Kristen Reid <kristen@belcherswanson.com>
Sent: Friday, September 11, 2020 11:32 AM
To: Patrick Yamashita <Patrick.Yamashita@mercergov.org>
Subject: Request for Director's Interpretation

Mr. Yamashita –

Please see the attached correspondence regarding property located at 7025 N. Mercer Way.

Feel free to contact me with any questions or concerns.

Thanks

Kristen C. Reid

Attorney at Law

Belcher | Swanson Law Firm, PLLC

900 Dupont Street, Bellingham, WA 98225

Phone: 360-734-6390 ext. 317

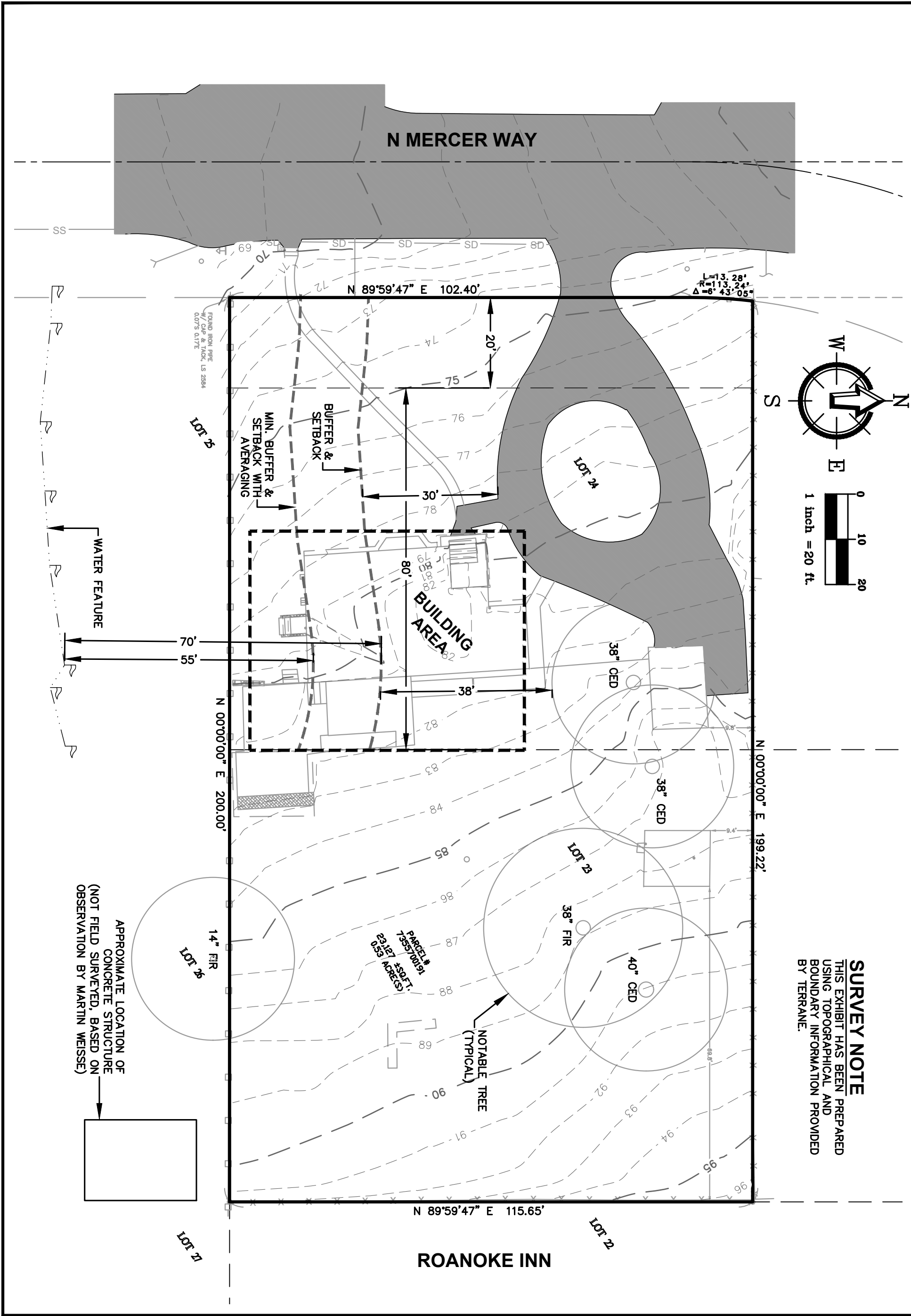
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FREELAND
 & ASSOCIATES

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