

EXHIBIT “A”

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040
206.275.7605 | www.mercerisland.gov/cpd



PUBLIC NOTICE OF DECISION

NOTICE IS HEREBY GIVEN that approval has been granted for the application described below:

File No.: CAO23-011

Permit Type: Type III

Description of Request: A request for a Critical Area Review Type 2 for the demolition and construction of an approx. 4,000 square foot single-family residence on a site containing mapped geologically hazardous areas.

Applicant/Owner: Jeffrey Almeter / Dorothy Strand

Location of Property: 6950 SE Maker St, Mercer Island, WA 98040
King County Assessor tax parcel number: 9350900620

SEPA Compliance:

The project is exempt from SEPA Review pursuant to [WAC 197-11-800](#).

Applicable Development Regulations: Pursuant to Mercer Island City Code (MICC) [19.15.030](#) Table A, applications for Critical Area Type 2 Permits are required to be processed as Type III land use reviews. Processing requirements for Type III land use reviews are further detailed in MICC 19.15.030 Table B.

Other Associated Permits: ADU23-006; 2207-019.

Project Documents: <https://mieplan.mercergov.org/public/CAO23-011>

Decision: Approved subject to conditions.

Appeal Rights: *DISCLAIMER: This information is provided as a courtesy. It is the ultimate responsibility of the appellant to comply with all legal requirements for the filing of an appeal.*

Parties of record have the right to appeal certain permit and land use decisions. In some cases, other affected parties also have appeal rights. Depending on the type of decision, the appeal may be heard by a City Hearing Examiner, Commission, Board, or City Council, or outside the City to the State Shoreline Hearings Board, the State Growth Management Hearings Board, or King County Superior Court. For a comprehensive list of actions and the applicable entity who will hear the appeal, see MICC 19.15.030 Table B.

If you desire to file an appeal of a decision that is appealable to the City, you must submit the appropriate form and file it with the City Clerk **within the time stated in the Notice of Decision**. Forms are available from Community Development and Planning. Upon receipt of

a timely complete [appeal application](#) and [appeal fee](#), an appeal hearing will be scheduled. To reverse, modify or remand a decision, the appeal hearing body must find that there has been substantial error; the proceedings were materially affected by irregularities in procedure; the decision was unsupported by material and substantial evidence in view of the entire record; or the decision is in conflict with the City's applicable decision criteria.

Application	Date of Application:	July 3, 2023
Process	Determined to Be Complete:	July 6, 2023
Information:	Public Comment Period:	July 10, 2023 through 5:00 PM on August 10, 2023
	Date Notice of Decision Issued:	October 11, 2023
	Appeal Filing Deadline:	5:00 PM on October 23, 2023
Project Contact:	Molly McGuire, Planner molly.mcguire@mercerisland.gov (206) 275-7712	

CITY OF MERCER ISLAND

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STAFF REPORT

CAO23-011 CRITICAL AREA REVIEW 2

Project No.:	CAO23-011
Description:	A request for a Critical Area Review 2 for the demolition of an existing single-family residence and construction of a new approx. 4,000 square foot single-family residence on a property located within mapped geologically hazardous areas.
Applicant / Owner:	Jeffrey Almeter / Dorothy Strand
Site Address:	6950 SE Maker St, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 935090-0620.
Zoning District:	Single Family Residential (R-8.4)
Staff Contact:	Molly McGuire, Planner molly.mcguire@mercerisland.gov / (206) 275-7712
Exhibits:	<ol style="list-style-type: none">1. Development Application, received by the City of Mercer Island on July 3, 20232. Revised Development Plan Set, August 29, 20233. Project Narrative, received July 4, 20234. Hazard Report, generated August 9, 20235. Geotechnical Engineering Study and Critical Areas Study prepared by Geotech Consultants, Inc., dated March 21, 2022 and received July 3, 20236. Review of Revised Plans Letter Addendum prepared by Geotech Consultants, Inc., dated June 6, 2023 and received July 3, 20237. Review of Planting Plan prepared by Superior NW Enterprises, dated February 14, 20238. Review of Retaining Wall Plan Impacts prepared by Superior NW Enterprises, dated August 24, 20239. City of Mercer Island Arborist Approval, received October 2, 202310. City of Mercer Island Geotech Approval, received July 10, 202311. City of Mercer Island Geotech Review Letter, received September 22, 202312. Critical Areas Disclosure and Notice on Title, received August 23, 2023 via email13. City of Mercer Island CAO23-011 SUB1 Review Letter, sent August 18, 202314. Public Comments Received

- 14.1 Pamela Faulkner and Brigid Stackpool, received August 3, 2023 via email
 - 14.2 Dan Grove, received August 9 via email
 - 14.3 Jim Mattison, received August 9 via email
 - 14.4 Martin Snoey, received August 9 via email
 - 14.5 Dan Grove, received August 31, 2023 via email
 - 14.6 Martin Snoey, received August 31, 2023 via email
15. Applicant Response to Public Comments

INTRODUCTION

I. Project Description

The applicant has requested approval of a Critical Area Review 2 for the demolition of an existing single-family residence and construction of a new approx. 4,000 square foot single-family residence on a property located within mapped geologically hazardous areas.

The proposal consists of the following components:

- 1. A request to demolish the existing single-family residence and construct a new single-family residence subject to the standards of Mercer Island City Code (MICC) 19.07.160 Geologically hazardous areas.

II. Site Description and Context

- 1. The proposed activity is to occur at 6950 SE Maker St, Mercer Island, WA 98040. The property is designated Single Family Residential (zoned R-8.4). Adjacent properties are within the R-8.4 zone and contain residential uses. The subject property contains potential slide, steep slope, erosion, and seismic geologically hazardous areas.

III. Terms Used in this Staff Report

Term:	Refers to, unless otherwise specified:
Applicant	Jeffrey Almeter
Proposed development	Critical area review 2 for the construction of a single-family residence
Subject property	6950 SE Maker St, Mercer Island, WA 98040
City	City of Mercer Island
MICC	Mercer Island City Code
Code Official	Community Planning and Development Director City of Mercer Island or a duly authorized designee

1.

Findings of Fact & Conclusions of Law

IV. Application Procedure

- 1. The application for a Critical Area Review 2 was received by the City of Mercer Island on July 3, 2023. The application was determined to be complete on July 6, 2023.
- 2. Under MICC 19.15.030, Table A, applications for Critical Area Review 2 Permits must undergo Type III review. Type III reviews require notice of application (discussed below). A notice of

decision is issued once the project review is complete.

3. The City of Mercer Island provided public notice of application for this Critical Area Review 2 Permit, as set forth in MICC 19.15.090. The comment period for the public notice period lasted for 30 days, from July 10, 2023 to August 10, 2023. The following methods were used for the public notice of application:
 - 1) A mailing sent to neighboring property owners within 300 feet of the subject parcel.
 - 2) A sign posted on the subject parcel.
 - 3) A posting in the City of Mercer Island's weekly permit bulletin.
4. Six (6) public comments were received during and after the public comment period (**Exhibits 14.1 – 14.6**). The applicant provided written responses to the public comments (**Exhibit 15**).

V. State Environmental Policy Act (SEPA)

The proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(1)(a).

VI. Consistency with the Critical Areas Code and Land Development Code

1. MICC 19.07.070(A) requires the applicant to disclose to the city the presence of critical areas on the development proposal site and any mapped or identifiable critical areas within the distance equal to the largest potential required buffer applicable to the development proposal on the development proposal site.
 - a. (B) The owner of any property containing critical areas and/or buffers on which a development proposal is submitted, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the city with the records and elections division of King County. The notice shall inform the public of the presence of critical areas, buffers and/or mitigation sites on the property, of the application of the city's critical areas code to the property and that limitations on actions in or affecting such critical areas and/or buffers may exist. The notice shall run with the land in perpetuity.
 - b. (C) The applicant shall submit proof to the city that the notice has been recorded prior to approval of a development proposal for the property or, in the case of subdivisions, short subdivisions, and binding site plans, at or before recording of the final subdivision, short subdivision, or binding site plan.
 - c. (D) Notices on title may be removed or amended, whichever is applicable, at a property owner's request, after approval by the city if it is documented that the information contained in an existing notice is no longer accurate because a critical area has changed, for example, in its type or location, or if the notice is proposed to be replaced with a notice containing updated information.

Staff Analysis: The applicant has provided a draft Notice on Title for Disclosure of Critical Areas (**Exhibit 12**). The Notice shall be recorded with King County prior to approval of the development proposal for the property, associated building permit number 2207-019, as included in the Conditions of Approval; therefore, this requirement is met.

2. MICC 19.07.090 describes the purpose and procedures by which the city will review and authorize development and verify consistency with this chapter.
 - a. Critical Area Review 2. The purpose of a critical area review 2 is to review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.

- b. Review timing and sequence.
 - A. When development and/or activity within a wetland, watercourse, fish and wildlife habitat conservation area or buffer associated with these critical area types is proposed, a critical area review 2 is required to be reviewed and approved prior to construction authorization.
 - B. When development and/or activity is proposed on a site containing only geologically hazardous areas, an application has the option of either:
 - i. Applying for a critical area review 2 in advance of construction permits, using the procedures required for a Type III land use review; or
 - ii. Requesting consolidation of the review of geologically hazardous areas together with construction permit review.
 - C. When development and/or activity is proposed on a site containing geologically hazardous areas and on or more of the critical area types listed in subsection (B)(2)(a) of this section or the associated buffer of one of those critical areas, a critical area review 2 reviewing all critical areas is required to be reviewed and approved prior to construction authorization, using the procedures required for a Type III land use review.

Staff Analysis: The development is proposed on a site containing only geologically hazardous areas (**Exhibit 4**). The applicant applied for a critical area review 2 in advance of construction permits; therefore, the review timing and sequence requirements for this permit have been met.

- 3. MICC 19.07.100 lists requirements for mitigation sequencing. An applicant for a development proposal or activity shall implement the following sequential measures, listed below in order of preference, to avoid, minimize, and mitigate impacts to environmentally critical areas and associated buffers. Applicants shall document how each measure has been addressed before considering and incorporating the next measure in the sequence:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts. However, avoidance shall not be construed to mean mandatory withdrawal or denial of the development proposal or activity if the proposal or activity is an allowed, permitted, or conditional use in this title. In determining the extent to which the proposal should be redesigned to avoid the impact, the code official may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified changes to the proposal. Development proposals should seek to avoid, minimize and mitigate overall impacts based on the functions and values of all of the relevant critical areas and based on the recommendations of a critical area study. If impacts cannot be avoided through redesign, use of a setback deviation pursuant to section 19.06.110(C), or because of site conditions or project requirements, the applicant shall then proceed with the sequence of steps in subsections B through E of this section;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, using a setback deviation pursuant to section 19.06.110(C), using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations

during the life of the action;

- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- f. Monitoring the impact and taking appropriate corrective measures to maintain the integrity of compensating measures.

Staff Analysis: The applicant submitted a geotechnical engineering study and critical area study (**Exhibit 5**) that determines that the impact could not be avoided as the whole property is located within geologically hazardous areas. The study finds that, provided the recommendations in the study are followed, the planned alterations will render the development as safe as if it were not located in a geologically hazardous area and will not adversely impact critical areas on adjacent properties. The applicant also submitted a letter documenting geotechnical review of the revised plans (**Exhibit 6**) which states that the plans have incorporated the recommendations for shoring, foundations, and permanent stability; therefore, mitigation sequence subsection B has been demonstrated to be met.

- 4. MICC 19.07.110 lists requirements for a critical area study. A critical area study is required when a development proposal will result in an alteration to one or more critical area buffers or when required to determine the potential impact to a critical area. The critical area study may be waived or modified if the applicant demonstrates that the development proposal will not have an impact on the critical area or its buffer in a manner contrary to the purposes and requirements of this chapter.

Staff Analysis: The applicant submitted a geotechnical engineering study and critical area study (**Exhibit 5**) that addresses all of the requirements for a critical area study in MICC 19.07.110; therefore, this requirement is met.

- 5. MICC 19.07.160 lists standards for development on sites containing geologically hazardous areas.
 - A. Geologically hazardous areas are lands that are susceptible to erosion, landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not be suited for development activities because they may pose a threat to public health and safety. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas: landslide hazard areas, seismic hazard areas, and erosion hazard areas.

Staff Analysis: The subject property contains landslide, seismic, and erosion hazard areas (**Exhibit 4**). A geotechnical engineering study and critical area study was submitted showing that the proposed development has incorporated all geotechnical recommendations so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe.

- B. Alteration within geologically hazardous areas or associated buffers is required to meet the standards in this section, unless the scope of work is exempt pursuant to section 19.07.120, exemptions, or a critical area review 1 approval has been obtained pursuant to section 19.07.090(A).
 - 1. When an alteration within a landslide hazard area, seismic hazard area or buffer associated with those hazards is proposed, the applicant must submit a critical area study concluding that the proposal can effectively mitigate risks of the hazard. The study

shall recommend appropriate design and development measures to mitigate such hazards. The code official may waive the requirement for a critical area study and the requirements of subsections (B)(2) and (B)(3) of this section when he or she determines that the proposed development is minor in nature and will not increase the risk of landslide, erosion, or harm from seismic activity, or that the development site does not meet the definition of a geologically hazardous area.

Staff Analysis: The applicant submitted a geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) that states that the proposed development incorporates all recommendations to render the site safe and will not increase the risk of landslide, erosion, or harm from seismic activity. The geotechnical engineering study and critical area study were reviewed and approved by the City of Mercer Island's third-party geotechnical reviewer Michele Lorilla, PE (**Exhibits 10, 11**); therefore, this requirement is met.

2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur if the critical area study documents find that the proposed alteration:
 - a. Will not adversely impact other critical areas;
 - b. Will not adversely impact the subject property or adjacent properties;
 - c. Will mitigate impacts to the geologically hazardous area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and
 - d. Includes the landscaping of all disturbed areas outside of building footprints and installation of hardscape prior to final inspection.

Staff Analysis: The geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) state that the proposed development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe; therefore, this requirement is met.

3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if the conditions listed in subsection (B)(2) of this section are satisfied and the geotechnical professional provides a statement of risk matching one of the following:
 - a. An evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a landslide hazard area or seismic hazard area;
 - b. The landslide hazard area or seismic hazard area will be modified or the development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe;
 - c. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologically hazardous area and do not adversely impact adjacent properties; or
 - d. The development is so minor as not to pose a threat to the public health, safety and welfare.

Staff Analysis: The geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) state that the proposed development has been designed so that the risk to the site and adjacent property is eliminated or mitigated

such that the site is determined to be safe; therefore, this requirement is met.

- C. Development is allowed within landslide hazard areas and associated buffers, when the following standards are met:
1. A critical area study shall be required for any alteration of a landslide hazard area or associated buffer;
 2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest buffer shall be applied:
 - a. Buffer widths shall be equal to the height of a steep slope, but not more than 75 feet, and applied to the top and toe of slopes;
 - b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions; and
 - c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.

Staff Analysis: The geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) state that the proposed development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe. The geotechnical engineering study and critical area study were reviewed and approved by the City of Mercer Island's third-party geotechnical reviewer Michele Lorilla, PE (**Exhibits 10, 11**); therefore, this requirement is met.

- D. When development is proposed within a seismic hazard area:
1. A critical area study shall be required and shall include an evaluation by a qualified professional for seismic engineering and design, a determination of the magnitude of seismic settling that could occur during a seismic event, and a demonstration that the risk associated with the proposed alteration is within acceptable limits or that appropriate construction methods are provided to mitigate the risk of seismic settlement such that there will be no significant impact to life, health, safety, and property.
 2. Seismic hazard areas shall be identified by a qualified professional who references and interprets information in the U.S. Geological Survey Active Faults Database, performs on-site evaluations, or applies other techniques according to best available science.
 3. When development is proposed on a site with an active fault, the follow provisions shall apply:
 - a. A 50-foot minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault rupture traces as identified by the United States Geological Survey or Washington Geological Survey map databases or by site investigations by licensed geologic professionals with specialized knowledge of fault trenching studies; or
 - b. Mitigation sequencing shall be incorporated into the development proposal as recommended based on geotechnical analysis by a qualified professional to prevent increased risk of harm to life and/or property.

Staff Analysis: The geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) state that the proposed development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is

determined to be safe. The critical area study contains mitigation sequencing that minimizes the impact to the hazard area. The geotechnical engineering study and critical area study were reviewed and approved by the City of Mercer Island's third-party geotechnical reviewer Michele Lorilla, PE (**Exhibits 10, 11**); therefore, this requirement is met.

E. When development is proposed within an erosion hazard area:

1. All development proposals shall demonstrate compliance with chapter 15.09, storm water management program.
2. No development or activity within an erosion hazard area may create a net increase in geological instability on or off site.

Staff Analysis: The geotechnical engineering study and critical area study (**Exhibit 5**) and plan review addendum (**Exhibit 6**) state that the proposed development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe. The proposed development was reviewed and approved by Engineering under the associated Building Permit (2207-019) for compliance with chapter 15.09, storm water management program and the City of Mercer Island's third-party geotechnical reviewer Michele Lorilla, PE (**Exhibits 10, 11**); therefore, this requirement is met.

CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with **Exhibit 2** and all applicable development standards contained within Mercer Island City Code (MICC) Chapter 19.07.
2. The applicant is responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state and federal government agencies.
3. The Disclosure and Notice on Title in **Exhibit 12** shall be recorded with the King County Recorder's Office prior to approval of the development proposal for the property.
4. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within three years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made.

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies.
2. All required permits must be obtained prior to the commencement of construction.

DECISION

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Review 2 Permit application CAO23-011, as depicted in **Exhibit 2**, is hereby **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130(A), and all other applicable appeal regulations.

Approved this 9th day of October, 2023



Molly McGuire
Planner
Community Planning & Development
City of Mercer Island