



# memorandum

date January 30, 2023  
to Ryan Harriman, City of Mercer Island  
from Emily Heim, ESA  
subject Review of 5637 East Mercer Way- Permit Application (2204-107)

On behalf of the City of Mercer Island (City), Environmental Science Associates (ESA) reviewed the application materials submitted on October 7, 2022 for the proposed development located at 5637 East Mercer Way, in the City of Mercer Island, Washington (King County Parcel #1924059312). This review is to determine if the proposed project complies with Mercer Island City Code (MICC) Chapter 19.07 (Environment) and Conditions of Approval outlined in the Hearing Examiner Decision following the most recent Remand Hearing dated December 15, 2021.

A previous review by ESA dated June 29, 2022 determined that four corrections should be made in order to accurately depict the proposed development and comply with the Conditions of Approval outlined in the Hearing Examiner Decision dated December 15, 2021.

The following materials were reviewed (listed chronologically):

- *Decision after a Remand Hearing for CAO15-001 & VAR18-002* by Hearing Examiner John E. Galt dated December 15, 2021.
- *Final Storm Drainage Report* prepared by Core Design dated May 29, 2022 (with comments).
- *Arborist Corrections* prepared by Gilles Consulting dated August 12, 2022.
- *Shoring Load Calculations for the MI Treehouse* prepared by Stoney Point Engineering dated August 22, 2022.
- *Final Storm Drainage Report* prepared by Core Design dated September 22, 2022.
- *Mitigation Bank Use Plan* prepared by Sewall Wetland Consulting dated October 5, 2022.
- *Revised Critical Areas Report* prepared by Sewall Wetland Consulting dated October 5, 2022.
- *Complete Plan Set* prepared by The Healey Alliance AZ dated October 5, 2022.

## Conditions Met from the December 15, 2021 Decision

The following Conditions of Approval set in the December 15, 2021 Examiner Decision on CAO15-001 & VAR18-002 have been addressed.

- A. Except as otherwise required by the conditions of approval contained herein, construction of the proposed single-family dwelling, driveway access, and other site improvements shall be completed in substantial compliance with the Site Plan by Core Design, received August 2, 2021 (Exhibit 87b).

*Condition met. ESA recommended the Site Plan be updated to include the split rail fence as described in Condition of Approval I determined by the Hearing Examiner December 15, 2021. These changes are reflected on the Complete Plan Set prepared by The Healey Alliance AZ dated October 5, 2022.*

The Variance granted hereby is limited to reduction in the required setback between the proposed residence and the on-site driveway access easement from 5 feet to 2 feet as generally depicted on Exhibit 87b. No other variance is either expressed or implied.

Mitigation measures contained within the Critical Area Enhancement Plan, last updated December 2, 2020 (Exhibit 80d), shall be undertaken at the appropriate stage(s) of the project. All mitigation measures shall have been completed (except monitoring) before final inspection and approval for occupancy has been granted by the City; PROVIDED, that if completion of the residence does not align with the best planting season for enhancement plantings, a performance bond or assignment of funds may be posted to guarantee installation during the next appropriate planting season. The amount of the bond or assignment of funds shall be set by the City. The amount shall be 150% of the total stated in a Bond Quantity Worksheet.

*Conditions will be met according to the Enhancement Plan Goals, Objectives, And Performance Standards set in the Critical Area Enhancement Plan. A bond of 150% of the total stated in a Bond Quantity Worksheet was included in January 2023 Recommendation 2.*

- B. Prior to approval of any site development permits or initiation of any site development work, the mitigation measures in the SEPA MDNS issued January 13, 2020 (Exhibit 46) shall be revised through whatever procedure is legally available such that they do not conflict with the conditions imposed herein.

*Recommended in January 2023 Recommendation 3.*

- C. 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.

*Condition met to date. The applicant has shown a history of documenting required changes. Required changes have included a corrected parcel number on the Mitigation Bank Plan and Revised Critical Areas Report; required changes in the Complete Plan Set prepared by The Healey Alliance AZ dated October 5, 2022; the addition of a Year 5 statement to the Critical Area Enhancement Plan; and addressing comments about a hydrologist review in a memorandum prepared by Core Design dated September 22, 2022.*

- D. Prior to issuance of construction permits, authorizing site grading or other construction work, and pursuant to MICC 19.07.080, a financial guarantee, in the form of a bond or assignment of funds, shall be required to guarantee that approved mitigation plans will be undertaken and completed to the City's satisfaction. The amount shall be 150% of the total stated in a Bond Quantity Worksheet.

*Recommended in January 2023 Recommendation 2.*

- E. Upon completion of the mitigation plantings, a letter written by a qualified professional detailing compliance with the approved mitigation plan shall be submitted to the City's Community Planning and Development Department. The compliance letter shall be accompanied by a set of as-built drawings depicting the type and location of mitigation plantings. A maintenance and monitoring memo shall be submitted to the City's Community Planning and Development Department annually for a period of five years. Plant survival rates are to meet or exceed those set out in Exhibit 80d.

*Condition will be met according to the Monitoring Plan included on Sheet 2 of the Critical Area Enhancement Plan. Plant survival rates of 100% survival in Year 1 and 85% survival in Year 5 are set in by the Critical Area Enhancement Plan, which are the same survival rates set in Exhibit 80d.*

- F. The property owner shall conduct a wetland delineation five years after the project is completed to confirm that there is no net loss of wetland area or function. If there is a loss in wetland area or function, this loss shall be mitigated through purchase of credits in an approved wetland bank or on-site mitigation as approved by local, state, or federal regulators.

*Condition will be met according to the Annual Monitoring and Contingency sections of the Critical Area Enhancement Plan. The Revised Mitigation Bank Plan states the applicant will purchase 0.070 mitigation credits from the King County Mitigation Reserves Program prior to the applicant's construction activities occurring and as a condition of the applicant's permit issuance to "appropriately mitigate for the proposed project impacts". Additionally, the Contingency section of the Critical Area Enhancement Plan (Sheet 2) states that "should any compliance monitoring assessment reveal that the performance standards for the respective year are not satisfied, the permittee shall work with the City of Mercer Island to develop a contingency plan to address the deficiency(ies)."*

- G. Prior to issuance of construction permits, authorizing site grading or other construction work, the developer shall provide development plans, for City review and approval, reflecting additional temporary and erosion sediment control BMPs, as generally described in Exhibit 50a.

*Exhibit 50a is the Core Design Memorandum Re: RUE CAO 15-001 dated March 23, 2018 which describes the additional temporary and erosion sediment control BMPs including restricting construction dates to dry season only, using additional filter fabric fence (double layer), restricting the clearing limit footprint (clear only what is necessary), and restricted construction entrance disturbance. These BMPs were included in January 2023 Recommendation 4a-d.*

- H. Land clearing, grading, filling, and foundation work shall be prohibited between October 1 and April 1 (Exhibit 50a)

*Recommended in January 2023 Recommendation 4a.*

- I. Upon completion of construction and prior to final inspection and approval for occupancy by the City, the developer shall have installed a split rail or equivalent fence around the north, west, and south sides of the clearing limits as depicted on Exhibit 87b.

*Condition will be met according to the Complete Plan Set dated October 5, 2022. See Response to ESA's June 29, 2022 Recommendation 2.*

## **Response to ESA's June 29, 2022 Recommendations**

The recommendations ESA provided based on the previous documents were addressed:

1. ESA recommended the following submittal documents be updated to reflect the correct parcel number:
  - a. Revise the *Mitigation Bank Use Plan* prepared by Sewall Wetland Consulting, Inc. dated December 28, 2020 to correct the parcel number to 192405-9312 instead of 192405-0312. This has been updated on the *Mitigation Bank Use Plan* dated October 5, 2022.
  - b. Revise the *Revised Critical Areas Report* dated January 26, 2021 to correct the parcel number to 192405-9312 instead of 192405-0312. This has been updated in the October 5, 2022 *Revised Critical Areas Report*.

2. The Site Plan did not show a split rail fence around the north, west, and south extent of the clearing limits. ESA recommended the Site Plan be updated to include the split rail fence as described in the Conditions of Approval determined by the Hearing Examiner December 15, 2021. This has been updated. The correction is shown on the Site, Storm, Utilities & Grading Plan & Notes Sheet (page 45) of the *Complete Plan Set* prepared by The Healey Alliance AZ dated October 5, 2022.

3. The MDNS requires consultation with a hydrologist to determine any impacts related to the final design of the drainage system. ESA recommended documentation of hydrologist review be added to the submittal documents. The *Final Storm Drainage Report* prepared by Core Design dated September 22, 2022 notes on page 18 that Core Design, Inc. conducted a hydrologic evaluation and analyzed the impacts. In the professional opinion of Core Design, “the discharge from the project site causes negligible increases at all storm events through the 100-year with no adverse impacts expected”. Therefore, updates to the mitigation plans are not needed.

4. The Conditions of Approval determined by the Hearing Examiner December 15, 2021 require the applicant to conduct a wetland delineation during Year 5 of monitoring to verify the boundaries and ensure no net loss of wetland area or function. ESA recommended the wetland delineation and functional assessment be added to the performance standards of the Critical Area Enhancement Plan. This has been corrected. The following statement was added to the Critical Area Enhancement Plan:

Year 5 only - Wetland limits shall be verified using the wetland delineation methods described in the 1987 Corps of Engineer Wetland Delineation Manual as amended by the Regional Supplement to the Corps of Engineers Manual: Western Mountains, Valleys, and Coast (version 2.0).

## January 2023 Recommendations

1. ESA recommends that verification of clearing limits occur prior to the beginning of construction.
2. ESA recommends the City set a performance bond in the amount of 150% of the total stated in the Bond Quantity Worksheet to guarantee that approved mitigation plans are undertaken and completed to the City’s satisfaction.
3. ESA recommends that any changes to the site plan show a net benefit gain to the ecosystem. The site plan should be approved through the Mercer Island Land Use Application process by a land use planner or other review staff.
4. ESA recommends the City uphold BMPs as conditions of receiving a permit as identified in the December 15, 2021 Hearing Examiner Decision and Exhibit 50a: the Technical Memorandum from Core Design dated March 23, 2018.
  - a. Land clearing, grading, filling and foundation work shall be prohibited between October 1 and April 1.
  - b. Additional filter fabric fence (double layer).
  - c. Clear only what is necessary for the home and driveway as discussed in the *Revised Critical Areas Report*.
  - d. Restricted construction entrance disturbance.

If you have any questions, please contact us at (206) 204-6980 or email [eheim@esassoc.com](mailto:eheim@esassoc.com).

Sincerely,  
ESA

Emily Heim  
Environmental Planner