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January 11, 2016

Mr. Travis Saunders, Senior Planner  
Development Service Group  
City of Mercer Island  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

**RE: Review of 5637 Mercer Way – December 11, 2015 Revised Critical Areas Report**

Dear Travis:

Environmental Science Associates (ESA) reviewed the Revised Critical Areas Report (CAR) for the property located at 5637 East Mercer Way. This document (prepared by Sewall Wetland Consulting, Inc. (Sewall) and dated December 11, 2015) was delivered electronically to ESA on December 11, 2015. ESA previously reviewed a Revised CAR, dated March 5, 2015, submitted by Sewall to the City of Mercer Island and ESA provided a comment letter on July 29, 2015. Sewall replied to this comment letter on October 21<sup>st</sup> in a response letter. In addition, ESA conducted a site visit on June 8, 2015 with Sewall senior wetland ecologist, Ed Seawall. For this letter, our review focuses on changes made to the March 5<sup>th</sup> Revised CAR based on ESA's previous comments.

This review is provided to ensure accuracy and compliance with Mercer Island Municipal Code (MIMC) 19.07 (Environment). A summary list of all recommendations is provided at the end of the letter.

**Site Overview**

ESA's July 29, 2015 review letter provides a description of on-site conditions; please see that document for a description of site conditions.

**Findings and Recommendations**

***Wetland and Stream Delineation***

The descriptions and ratings for Wetland A and Stream A are consistent with City code (including wetland rating forms based on Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology publication 04-06-025). Descriptions of Wetland A and Stream A are found in ESA's July 29<sup>th</sup> review letter. The December 11<sup>th</sup> Revised CAR also details an additional stream (Stream B) identified during the June 8<sup>th</sup> site visit. This stream discharges to the same catch basin as Stream A and was determined to be a Type 2 watercourse with a 50-foot standard buffer (Mercer Island Municipal Code [MIMC] 19.07.070.B.1). Stream B characteristics are discussed in ESA's July 29<sup>th</sup> review letter.

**Proposed Development Impacts**

The December 11<sup>th</sup> Revised CAR documents wetland and buffer impacts. As noted in ESA's July 29<sup>th</sup> review letter, the site is entirely constrained by wetlands, wetland buffers, streams, stream buffers, or geologic hazard area. The applicant proposes to develop the parcel through application of MIMC 19.07.030.B (Allowed alterations and reasonable use exception), and the proposed project appears to satisfy criteria listed in this code section, which allows for the alteration of Category III wetlands with associated mitigation.



### ***Wetland***

The applicant proposes to build a house on pin piles; however, the foundation of the house would rest on the soil surface or require excavation and would likely be considered fill within Wetland A. Based on project plans submitted with the March 5<sup>th</sup> Revised CAR, it appears the wetland will be filled due to construction of basement walls, basement stairs, a garage floor slab, a driveway, the front entrance to the house, and retaining walls.

Wetland A is rated as a Category III wetland and requires a 50-foot standard buffer (MIMC 19.07.080C(1)). This buffer can be reduced to 25 feet when buffer enhancement is implemented. Even if buffer reduction were to occur, the development would still impact portions of the wetland buffer (impacts due to the structure, stairs, driveway, and retaining walls).

MIMC 19.07.080.D allows for alterations of Category III and IV wetlands of less than one acre in size if the applicant can meet specific conditions (see Conceptual Mitigation Plan section below).

### ***Stream***

The proposed house would not directly impact either of the Type 2 streams; however, the proposed development is located within the 50-foot buffer of Stream B. The stream buffer may be reduced to 25 feet when buffer enhancement is implemented; however, multiple portions of the development (includes structure, driveway, and retaining walls) would still be located within the reduced buffer.

### **Conceptual Mitigation Plan**

The applicant has submitted a JARPA to the U.S. Army Corps of Engineers (Corps) that documents wetland impacts and proposed compensatory mitigation. The Corps determined the application incomplete and the applicant will reapply for a Nationwide Permit at a later time. As part of the reasonable use exception application, the applicant must provide the City with permit applications that are submitted to other agencies (MIMC 19.07.030.B(2)).

MIMC 19.07.080.D allows for wetland impacts if the applicant can demonstrate that the wetland will be restored, enhanced, and/or replaced with a wetland area of equivalent or greater function. If suitable onsite mitigation is not available, offsite mitigation may occur, within the same drainage sub-basin as the original wetland.

To mitigate for approximately 2,000 square feet of permanent wetland impacts, the applicant proposes to purchase the appropriate number of credits from the King County Mitigation Reserves Program (an in-lieu fee program). While federal and state regulators have a mitigation preference for in-lieu fee programs compared to permittee-responsible mitigation, MIMC 19.07.080.D appears to preclude such mitigation actions. The City would either have to grant the mitigation action a variance from City code or the applicant will be required to implement wetland mitigation within the same drainage sub-basin as the original wetland. If the applicant must implement permittee-responsible mitigation, these actions will likely need to occur offsite because current site conditions provide relatively high ecological functions (the site is composed of a native overstory, albeit dominated by deciduous species rather than conifers, and native understory).

To mitigate for 3,120 square feet of permanent buffer impact, the applicant proposes to plant conifers "...throughout the wetland in an area equal to the area of the coverage by the project within the critical areas, to enhance the plant community within this wetland as well as removal of any blackberry and English ivy in the vicinity of the home." Planting conifers (60, 2-gallon plants) and invasive species removal will provide ecological lift primarily to habitat functions and the proposed wetland enhancement appears to provide sufficient functional lift to the wetland to offset permanent buffer impacts. MIMC does not provide guidance for buffer mitigation.



An area 5 feet wide around portions of the development will be temporarily impact 1,900 square feet of wetland and buffer and will be restored with a mix of native shrubs following construction. MIMC 19.07.080 does not directly address mitigation of temporary wetland and buffer impacts; however, the applicant's mitigation approach to these impacts appears adequate and in-line with other local jurisdictions that require mitigation for temporary impacts.

As part of the final CAR submission to the City, the applicant should provide an impact figure that visually represents impact areas at the project site.

#### **Summary of Recommendations**

In summary from our findings above, we have the following recommendations to ensure project consistency with the requirements of MIMC 19.07:

- As part of the reasonable use exception application, the applicant must provide the City with permit applications that were submitted to other agencies (e.g., Corps Nationwide Permit).
- A code variance will likely be required to facilitate use of the King County Mitigation Reserves Program because MIMC 19.07.080.D requires the applicant to implement wetland mitigation within the same drainage sub-basin as the original wetland.
- The City should request a copy of the bill of sale for credit purchase from the King County Mitigation Reserves Program prior to commencement of the development.
- The applicant should provide an impact figure to the City that identifies wetland and buffer impact areas.

If you have any questions, please call me at (206) 789-9658.

Sincerely,  
ESA

A handwritten signature in blue ink that reads "Scott Olmsted". The signature is written in a cursive, flowing style.

Scott Olmsted  
Senior Associate