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**CITY OF MERCER ISLAND**

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**CRITICAL AREA DETERMINATION**

**NOTICE OF DECISION**

**October 22, 2018**

<b>Project Number:</b>	CAO17-003
<b>Description:</b>	A request for a Critical Areas Determination (MICC 19.07.070(B) and 19.07.080(C) and Optional DNS. The proposed work is to reduce a Type 1 watercourse buffer and a piped watercourse buffer, and to reduce a Category IV wetland buffer, to construct a new single-family residence on the currently vacant lot. The buffer for the Type 1 watercourse will be reduced from 75 feet to 37 feet. The buffer for the majority of the Piped/Restored watercourse will be reduced from 25-feet to 16-feet. A small portion of the Piped watercourse buffer will be reduced to 3-feet. The buffer of the Category IV wetland will be reduced from 35-feet to 25-feet.
<b>Applicant/ Owner:</b>	Johan Valentin and Helena Kjellander 4346 E Mercer Way Mercer Island WA 98040
<b>Site Address:</b>	4346 E Mercer Way, Mercer Island, WA, 98040; Identified by King County Assessor tax parcel 004610-0150
<b>Zoning:</b>	R-15
<b>SEPA Compliance:</b>	A Determination of Nonsignificance was issued on October 1, 2018.
<b>Exhibits:</b>	<ol style="list-style-type: none"><li>1. Development Application dated March 24, 2017.</li><li>2. Valentin Residence – final cover letter prepared by J.S. Jones and Associates, Inc., dated received by the City on September 27, 2018</li><li>3. Critical Area Study prepared by J.S. Jones and Associates, Inc., received by the City on September 27, 2018.</li><li>4. SEPA Checklist, dated received by the City on September 27, 2018.</li><li>5. SEPA Threshold Determination, issued October 1, 2018</li><li>6. Landscape Bond Quantity Form, dated received by the City on September 27, 2018.</li></ol>

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**I. FINDINGS OF FACT**

**1. Application Description:**

The applicant has requested approval of a critical area determination to reduce a Type 1 watercourse buffer and a piped watercourse buffer, and to reduce a Category IV wetland buffer, to

construct a new single-family residence on the currently vacant lot. The buffer for the Type 1 watercourse will be reduced from 75 feet to 37 feet. The buffer for the majority of the Piped/Restored watercourse will be reduced from 25 feet to 16-feet. A small portion of the Piped watercourse buffer will be reduced to 3-feet. The buffer of the Category IV wetland will be reduced from 35-feet to 25-feet. No net loss will be ensured by buffer enhancement including removal of hardscape and planting native vegetation, and installation of a split rail fence and a vegetative screen.

**2. Zoning:**

The existing zoning of the subject site is R-15(Residential, 15,000 square foot minimum lot area).

**3. Adjacent Land Use:**

The surrounding land uses consist of single-family residences to the north, south, and west. Lake Washington is to the east

**4. Consistency with Land Use Code/Zoning Requirements:**

MICC 19.16 Definitions "Critical Area Determination" states that the land use application is "[a]n administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope." The applicant has applied for a Critical Area Determination to reduce a watercourse and a wetland buffer to construct a new single-family residence.

**5. SEPA:**

This project was issued a SEPA Threshold Determination of Nonsignificance on October 1, 2018. (Exhibit 5)

**6. Public Noticing and Comments:**

There is no public hearing requirement for a Critical Area Determination (an administrative action) pursuant to MICC 19.15.010(E) and 19.15.020(F)(1). On May 30, 2017 City staff sent a Public Notice of Application to all property owners within 300 feet of the subject property and placed the Public Notice of Application in the City Weekly Permit Bulletin. The site was posted with a public notice sign, in a location that is visible to the public right-of-way on May 30, 2017 as required by MICC 19.15.020(E)(4)(a). A public comment period ran from May 30, 2017 through 5:00 P.M. on June 29, 2017. No public comments were received during the public comment period, however, neighbors of the project, Ty Chen and Susanna Su, met with staff to discuss concerns on September 21, 2018.

The neighbors' concerns were not related to the current proposal, but rather were relevant to a future building permit for the property. Comments were related to stormwater/drainage, access, and easements. Staff made note of comments and informed the neighbors that they may comment during the building permit review process.

**7. MICC 19.07.070(B)(2)(a) and (b):**

Reduction of Watercourse Buffer Widths.

(a)The code official may allow the standard buffer width to be reduced to not less than the above listed minimum width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the watercourse, the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in not net loss of watercourse and buffer functions. However, in no case shall a reduced buffer contain a steep slope.

(b). The code official may consider the following mitigation options:

- i. Permanent removal of impervious surfaces and replacement with native vegetation;

- ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements;
- iii. Removal of noxious weeds, replanting with native vegetation and five-year monitoring;
- iv. Habitat enhancement within the watercourse such as log structure placement, bioengineered bank stabilization, culvert removal, improved salmonid passage and/or creation of side channel or backwater areas;
- v. Use of best management practices (e.g., oil/water separators) for storm water quality control exceeding standard requirements;
- vi. Installation of pervious material for driveway or road construction;
- vii. Use of “green” roofs in accordance with the standards of the LEED Green Building Rating System;
- viii. Restoration of off-site area if no on-site area is possible;
- ix. Removal of sources of toxic material that predate the applicant’s ownership; and
- x. Opening of previously channelized and culverted watercourses on-site or off-site.

**Staff Analysis:**

*The applicant provided a Critical Area Study (Exhibit 3) that provides mitigation measures that will mitigate for project impacts and result in no net loss of watercourse and buffer functions. Table 2 of the Critical Area Study (Exhibit 3) demonstrates compliance with No Net Loss. Section 13.2 of the Critical Area Study (Exhibit 3) provides recommended mitigation measures. Provided the recommendations of the Critical Area Study are followed, the criteria of MICC 19.07.070(B)(2)(a) and (b) will be met. This decision conditions that the applicant follow the procedures laid out in Table 2 and Section 13.2 of the Critical Area Study, and the plan sheets attached to the Critical Area Study.*

**8. MICC 19.07.080(C)(2)**

Reduction of Wetland Buffer Widths.

(2). Reduction of Wetland Buffer Widths. The code official may allow the standard wetland buffer width to be reduced to not less than the minimum buffer width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.070(B)(2), and the proposal will result in no net loss of wetland and buffer functions.

**Staff Analysis:**

*The applicant provided a Critical Area Study (Exhibit 3) that provides mitigation measures that will mitigate for project impacts and result in no net loss of wetland and buffer functions. Section 13.2 of the Critical Area Study (Exhibit 3) provides recommended mitigation measures. Provided the recommendations of the Critical Area Study are followed, the criteria of MICC 19.07.070(B)(2)(a) and (b) will be met. This decision conditions that the applicant follow the procedures laid out in Section 13.2, Table 2, and the plan sheets in Appendix A of the Critical Area Study.*

**9. Permit Expiration**

MICC 19.15.160 states “Except as stated below or otherwise conditioned in the approval process, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced...”

**Staff Analysis:**

*A condition of approval has been added to this decision, requiring the above standard to be met.*

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## **II. CONCLUSIONS OF LAW**

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Based on the above Findings of Facts, the following Conclusions of Law have been made:

1. The subject property contains a Type 1 and a Piped/Restored watercourse.
2. The subject property contains a Category IV wetland.
3. The proposed reduction of the watercourse buffer, as conditioned, is consistent with the provisions of MICC 19.07.070.
4. The proposed reduction of the wetland buffer, as conditioned, is consistent with the provisions of MICC 19.07.080.

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## **III. DECISION**

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Based upon the above noted Findings of Fact and Conclusions of Law, critical area determination application CAO17-003 to reduce a watercourse and a wetland buffer, as depicted by Exhibit 3 is hereby **APPROVED** subject to the following Conditions of Approval. This decision is final, unless appealed in writing consistent with adopted appeal procedures.

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## **IV. CONDITIONS OF APPROVAL**

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The following conditions shall be binding on the “Applicant,” which shall include owner or owners of the property, heirs, assigns and successors.

1. The approval of the permit is based on the proposal substantially complying with the submittal, as shown in Exhibit 3; in particular Section 13.2, Table 2, and the plan sheets attached to the Critical Area Study (Exhibit 3).
2. The following mitigation measures are required:
  - a. Non-native vegetation shall be removed, and native vegetation shall be planted within the watercourse and wetland buffers as shown in Plan Set Sheets 2 of 4 and 3 of 4;
  - b. The brick patio and the coal-fired barbeque shall be removed;
  - c. The watercourse outlet shall be lowered to enable access to the watercourse by fish. An HPA is likely required for this work. Please consult with the Washington Department of Fish and Wildlife before commencement of this work.
  - d. A split rail fence shall be installed along the edge of the Piped/Restored watercourse buffer. The split rail fence shall be installed house-ward of the piped watercourse adjacent to the 3-foot Piped watercourse buffer.
  - e. Install a vegetative screen from the east end of the 3-foot buffer segment to the enhanced wetland area to the east to minimize disturbance to the enhancement area.
3. The applicant shall post a bond for completion of the required mitigation as outlined in these Conditions of Approval and the Critical Area Study, before issuance of the associated building

permit. The bond shall be as determined by the Landscape Bond Quantity Form (Exhibit 6) or as revised and approved by the Code Official.

4. A 5-year monitoring period to ensure survival of the buffer plantings is required pursuant to Section 15.20 of the Critical Area Study (Exhibit 3).
5. This project is subject to building permit review, peer review, and subsequent approval. The applicant shall obtain all required permits for construction.
6. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.
7. This approval shall expire three years from the issuance of the Notice of Decision if the development proposal (construction of a single-family residence) is not commenced.

**Approved this 22nd day of October, 2018.**



**Nicole Gaudette  
Senior Planner  
Development Services Group  
City of Mercer Island**

Parties of record have the right to appeal the decision on this action when it is issued. If at that time you desire to file an appeal, you must submit the appropriate form, available from the Development Services Group, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this 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.

Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.